



STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF THE  
AMERICAN EQUITY INVESTMENT  
LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2007

DATE OF REPORT:

DECEMBER 15, 2009

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY OF NEW YORK

AS OF

DECEMBER 31, 2007

DATE OF REPORT:

DECEMBER 15, 2009

EXAMINER:

IJEOMA NDIKA

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	4
A. History	4
B. Holding company	4
C. Management	6
D. Territory and plan of operation	10
E. Reinsurance	11
4. Significant operating results	12
5. Financial statements	14
A. Assets, liabilities, capital and surplus	14
B. Condensed summary of operations	15
C. Capital and surplus account	16
D. Reserves	16
6. Market conduct activities	17
A. Advertising and sales activities	17
B. Underwriting and policy forms	19
C. Treatment of policyholders	20
7. Department Regulation No. 152	21
8. Actuarial statement of self-support and supporting demonstrations	22
9. Prior report summary and conclusions	23
10. Summary and conclusions	27



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David Paterson  
Governor

James J. Wrynn  
Superintendent

December 18, 2009

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22754, dated March 4, 2008 and annexed hereto, an examination has been made into the condition and affairs of American Equity Investment Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 1979 Marcus Avenue, Suite 210, Lake Success, New York 11042.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The material violations and recommendations contained in this report are summarized below.

The Department conducted a review of the Company's reserves as of December 31, 2007. During the review, concerns were raised with regard to the lack of conservatism in the assumptions used, and also with regard to the methodology that was employed, for the asset adequacy analysis pursuant to Department Regulation No. 126. The examiner recommends that the Company incorporate adjustments to both reserve assumptions and reserve methodology in the manner agreed upon with the Department beginning with the Company's December 31, 2009 valuation and all subsequent valuations. (See item 5D of this report)

The Company violated Section 4228(h) of the New York Insurance Law by failing to sign the supporting demonstrations related to the actuarial statements of self support for the Company's primary policy forms. (See item 8 of this report)

The Company violated Section 308(a) of the New York Insurance Law by failing to file a copy of its tax allocation agreement with the Department in accordance with Department Circular Letter No. 33 (1979). (See item 3B of this report)

The Company violated Section 1202(b)(1) of the New York Insurance Law by failing to have at least one-third of the members of its executive and investment committees be persons who are not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company. (See item 3C of this report)

The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain its investment committee meeting minutes at its principal office in this state. (See item 3C of this report)

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with and approved by the Superintendent. (See item 6B of this report)

The examiner recommends that the Company implement changes for documenting its pricing and product development in the manner agreed upon with the Department. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2004. This examination covers the period from January 1, 2005 through December 31, 2007. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2007 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2007 to determine whether the Company's 2007 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comments contained in the prior report on examination. The results of the examiner's review are contained in item 8 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

### 3. DESCRIPTION OF COMPANY

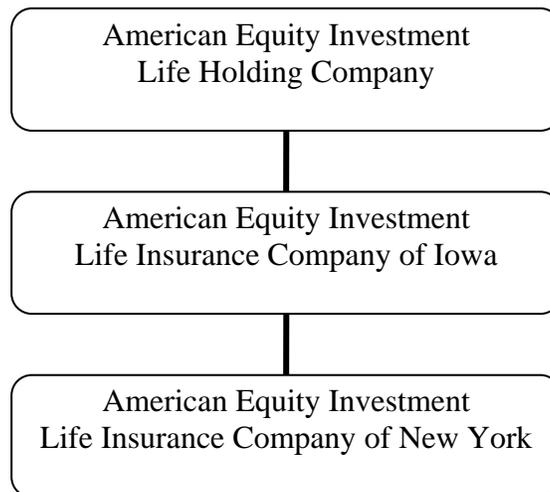
#### A. History

The Company was incorporated as a stock life insurance company under the laws of New York on March 15, 2001, was licensed on June 5, 2001 and commenced business on July 1, 2001. Initial resources of \$10,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$8,000,000 were provided through the sale of 2,000,000 shares of common stock (with a par value of \$1 each) for \$5 per share. In January 2004, American Equity Investment Life Insurance Company of Iowa (“AELIC”) made an investment in the Company in the amount of \$20,000,000 through a cash contribution. As of December 31, 2007, the Company reported total common capital stock and paid in and contributed surplus in the amounts of \$2,000,000 and \$27,948,754 respectively.

#### B. Holding Company

The Company is a wholly owned subsidiary of AELIC, an Iowa insurance company. AELIC is in turn a wholly owned subsidiary of American Equity Investment Life Holding Company (“AEL”) an Iowa life insurance holding company. AEL is the company’s ultimate parent.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2007 follows:



The Company had two service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Management Services Agreement 29073A	03/19/2001	AELIC	The Company	Agent licensing, commission payment, actuarial services, annuity policy issuance and service, accounting and financial, compliance, market conduct, general and informational services and marketing	2005 - \$(433,076) 2006 - \$(284,795) 2007 - \$(219,416)
Investment Advisory Agreement 29073A	03/22/2001	AEL	The Company	Investment advisory services	2005 - \$(197,021) 2006 - \$(246,167) 2007 - \$(265,896)

\* Amount of Income or (Expense) Incurred by the Company

The Company receives management and investment advisory services through the aforementioned service agreements.

Section 308(a) of the New York Insurance Law states, in part:

“The superintendent may also address to any . . . authorized insurer or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly . . .”

Department Circular Letter No. 33 (1979) advises, in part:

“ . . . Any domestic insurer which currently does not participate in a consolidated tax return shall file a copy of its tax allocation agreement with this Department within 30 days of electing to do so. . . .”

During the examination period, the Company filed its federal income tax return on a consolidated basis with the other members of its holding company system. The Company did not file its tax allocation agreement with the Department.

The Company violated Section 308(a) of the New York Insurance Law by failing to file a copy of its tax allocation agreement with the Department in accordance with Department Circular Letter No. 33 (1979).

### C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 17 directors and that the number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the admitted assets of the Corporation exceed one and one-half billion dollars. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2007, the board of directors consisted of 11 members. The Company's by-laws state the meetings of the board shall be held from time to time as determined by resolution of the board and at least two regular meetings shall be held in each calendar year.

The 11 board members and their principal business affiliation, as of December 31, 2007, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Wendy L. Carlson West Des Moines, IA	Chief Financial Officer, General Counsel and Assistant Secretary American Equity Investment Life Insurance Company of New York	2001
Alexander M. Clark* New York, NY	Managing Director Sanders Morris Harris	2005
James M. Gerlach Wauke, IA	Executive Vice President American Equity Investment Life Insurance Company of New York	2001
Robert L. Hilton* Hoover, AL	Retired	2005

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Robert L. Howe* Des Moines, IA	Retired	2005
John M. Matovina Johnston, IA	Vice Chairman American Equity Investment Life Holding Company	2001
David J. Noble Longboat Key, FL	President and Chairman of the Board American Equity Investment Life Insurance Company of New York	2001
Debra J. Richardson Des Moines, IA	Senior Vice President and Secretary American Equity Investment Life Insurance Company of New York	2001
Thomas S. Swain Brooklyn, NY	Vice President American Equity Investment Life Insurance Company of New York	2001
Harley A. Whitfield* Spirit Lake, IA	Attorney Whitfield & Eddy, PLC	2001
Kevin R. Wingert Panota, IA	Vice President American Equity Investment Life Insurance Company of New York	2001

\* Not affiliated with the Company or any other company in the holding company system

The examiner's review of the minutes of the meetings of the board of directors indicated that meetings were well attended and that each director attended a majority of meetings.

1. Section 1202(b)(1) of the New York Insurance Law states, in part:

“ . . . not less than one-third of the members of each committee of the board of directors of any domestic life insurance company shall be persons who are not officers or employees of such company or of any entity controlling, controlled by, or under common control with such company and who are not beneficial owners of a controlling interest in the voting stock of such company or any such entity . . . .”

Article IV Section 4.01 of the Company's By-laws states, in part:

“The Board of directors may, by resolution adopted by a majority of the entire board of directors designate from among its members as Executive Committee consisting of four or more directors including the Chairman . . . not less than one third of the members of such committee shall be persons who are not officers or employees of the Corporation, or any entity controlling, or controlled by or under common control with the Corporation and who are not beneficial owners of a controlling interest in the voting stock of the Corporation or any such entity.”

Article IV Section 4.02 of the Company's By-Laws states, in part:

“The Board of directors may, by resolution adopted by a majority of the entire board of directors designate from among its members an Investment Committee consisting of four or more directors . . . not less than one third of the members of such committee shall be persons who are not officers or employees of the Corporation, or any entity controlling, or controlled by or under common control with the Corporation and who are not beneficial owners of a controlling interest in the voting stock of the Corporation or any such entity.”

The examiner's review of the composition of the membership of the Company's executive and investment committees revealed that all of the directors serving on these committees were either officers or employees of the Company.

The Company violated Section 1202(b)(1) of the New York Insurance Law and failed to comply with its own by-laws by not having at least one-third of the members of its executive and investment committees be persons who are not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.

2. Section 1202(b)(2) states in part:

“The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for..., evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers...”

The Company's independent audit committee is comprised of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under

common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity.

The examiner's review of the Company's independent audit committee meeting minutes did not reveal any evidence of the evaluation of the performance of the principal officers of the Company or any recommendations for the compensation of such principal officers.

The Company violated Section 1202(b)(2) by failing to have its independent audit committee evaluate the performance of the principal officers of the Company and recommend the compensation of such principal officers.

3. Section 4211(a) of the New York Insurance Law states:

“No election of directors of a domestic stock life insurance company shall be valid unless a copy of the notice of election shall have been filed in the office of the superintendent at least ten days before the day of such election in addition to the service thereof, as required by section six hundred five of the business corporation law. . . .”

The examiner reviewed the Department's record of filings made in accordance with Section 4211(a) of the New York Insurance Law and noted that there were no notice of elections filed with the Department during the examination period although the Company had three persons elected to the Board in 2005.

The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least ten days before the day of such election.

4. Section 325 (a) of the New York Insurance Law states in part:

“(a) Every domestic insurer... shall, except as hereinafter provided, keep and maintain at its principal office in this state its charter and by-laws,... and its books of account, and if ..., and if a domestic corporation the minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof...”

During the review of the Company's board of director and committee meeting minutes, the examiner noted that the investment committee meeting minutes were not maintained in the Company's principal office in this state.

The Company violated Section 325(a) of the New York Insurance Law by failing to maintain their investment committee meeting minutes at their principal office in this state.

The following is a listing of the principal officers of the Company as of December 31, 2007:

<u>Name</u>	<u>Title</u>
David J. Noble	President and Chairman of the Board
Terry A. Reimer*	Chief Operating Officer, Treasurer and Executive Vice President
James M. Gerlach	Executive Vice President
Debra J. Richardson	Senior Vice President and Secretary
Wendy L. Carlson	Chief Financial Officer, General Counsel and Assistant Secretary
Kevin R. Wingert	Vice President
Bruce Cheek	Vice President - Information Management
Ted Johnson	Vice President - Accounting
Judith Z. Karcher	Vice President - Compliance
Judith A. Naanep	Vice President, Chief Actuary and Illustration Actuary
Marlys Van Manen	Vice President
Harley A. Whitfield	Vice President – Market Conduct and Assistant Secretary
Brenda Westvold	Vice President – Internal Audit

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

#### D. Territory and Plan of Operation

The Company is authorized to write life insurance and annuities as defined in paragraphs 1 and 2 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business only in New York State. The Company's product portfolio consisted of the following during the examination period: flexible premium deferred annuities; single premium deferred annuities and single premium immediate annuities. In 2007, 99.9% of annuity considerations were received from New York.

The Company reported 1,679 annuities in force as of December 31, 2007 with 88% of which were flexible premium deferred annuity contracts, 9% of which were single premium deferred annuity contracts and 3% of which were single premium immediate annuity contracts. All policies are written on a non-participating basis.

The Company's agency operations are conducted on a general agency basis. As of December 31, 2007, the sales force consisted of 798 licensed and appointed agents. 212 agents wrote policies during the entire examination period.

E. Reinsurance

As of December 31, 2007, the Company had no reinsurance treaties in effect.

#### 4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>2004</u>	December 31, <u>2007</u>	<u>Increase</u>
Admitted assets	<u>\$64,021,404</u>	<u>\$119,243,172</u>	<u>\$55,221,768</u>
Liabilities	<u>\$32,993,483</u>	<u>\$ 85,756,646</u>	<u>\$52,763,163</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	27,948,754	27,948,754	0
Unassigned funds (surplus)	<u>1,079,167</u>	<u>3,537,772</u>	<u>2,458,605</u>
Total capital and surplus	<u>\$31,027,921</u>	<u>\$ 33,486,526</u>	<u>\$ 2,458,605</u>
Total liabilities, capital and surplus	<u>\$64,021,404</u>	<u>\$119,243,172</u>	<u>\$55,221,768</u>

The significant growth in the Company's assets is due to the increase in the sale of its fixed annuity.

The Company's invested assets, as of December 31, 2007, were mainly comprised of bonds (98.0%).

The Company's entire bond portfolio, as of December 31, 2007, was comprised of investment grade obligations.

The following has been extracted from the Exhibits of Annuities in the filed annual statements for each of the years under review:

	<u>Ordinary Annuities</u>		
	<u>2005</u>	<u>2006</u>	<u>2007</u>
Outstanding, end of previous year	642	1,384	1,623
Issued during the year	785	338	153
Other net changes during the year	<u>(43)</u>	<u>(99)</u>	<u>(97)</u>
Outstanding, end of current year	<u>1,384</u>	<u>1,623</u>	<u>1,679</u>

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Ordinary:			
Individual annuities	\$350,273	\$1,062,371	\$1,171,829
Supplementary contracts	<u>105,221</u>	<u>301,353</u>	<u>(20,296)</u>
Total	<u>\$455,494</u>	<u>\$1,363,724</u>	<u>\$1,151,533</u>

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2007, as contained in the Company's 2007 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2007 filed annual statement.

### A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2007

#### Admitted Assets

Bonds	\$115,737,024
Cash, cash equivalents and short term investments	1,356,509
Other invested assets	1,061,536
Investment income due and accrued	1,016,862
Net deferred tax asset	70,991
Electronic data processing equipment and software	<u>250</u>
 Total admitted assets	 <u><u>\$119,243,172</u></u>

#### Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 82,837,092
Liability for deposit-type contracts	1,467,292
Interest maintenance reserve	234,017
General expenses due or accrued	14,428
Taxes, licenses and fees due or accrued, excluding federal income taxes	163,029
Current federal and foreign income taxes	807,937
Remittances and items not allocated	7,241
Asset valuation reserve	214,379
Payable to parent, subsidiaries and affiliates	<u>11,231</u>

Total liabilities \$ 85,756,646

Common capital stock	\$ 2,000,000
Gross paid in and contributed surplus	27,948,754
Unassigned funds (surplus)	<u>3,537,772</u>
Surplus	<u>\$ 31,486,526</u>
Total capital and surplus	<u>\$ 33,486,526</u>

Total liabilities, capital and surplus \$119,243,172

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Premiums and considerations	\$35,743,509	\$15,982,181	\$12,756,254
Investment income	<u>4,579,918</u>	<u>5,837,157</u>	<u>6,418,060</u>
Total income	<u>\$40,323,427</u>	<u>\$21,819,338</u>	<u>\$19,174,314</u>
Benefit payments	\$ 4,162,024	\$ 6,518,731	\$ 6,316,156
Increase in reserves	31,459,534	11,179,116	9,149,884
Commissions	2,847,352	1,167,611	1,038,356
General expenses and taxes	<u>1,019,287</u>	<u>879,521</u>	<u>881,052</u>
Total deductions	<u>\$39,488,198</u>	<u>\$19,744,979</u>	<u>\$17,385,448</u>
Net gain (loss)	\$ 835,229	\$ 2,074,358	\$ 1,788,866
Federal and foreign income taxes incurred	<u>379,736</u>	<u>710,634</u>	<u>637,333</u>
Net gain (loss) from operations			
before net realized capital gains	\$ 455,494	\$ 1,363,724	\$ 1,151,533
Net realized capital gains (losses)	<u>(6,510)</u>	<u>0</u>	<u>0</u>
Net income	<u>\$ 448,984</u>	<u>\$ 1,363,724</u>	<u>\$ 1,151,533</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Capital and surplus, December 31, prior year	\$ <u>31,027,921</u>	\$ <u>31,056,412</u>	\$ <u>32,313,933</u>
Net income	\$ 448,984	\$ 1,363,724	\$ 1,151,533
Change in net deferred income tax	238,239	25,924	6,295
Change in non-admitted assets and related items	(219,060)	(83,590)	64,555
Change in asset valuation reserve	(50,220)	(48,537)	(49,790)
Aggregate write ins for gains and losses in surplus	<u>(389,451)</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>28,492</u>	\$ <u>1,257,521</u>	\$ <u>1,172,593</u>
Capital and surplus, December 31, current year	\$ <u>31,056,412</u>	\$ <u>32,313,933</u>	\$ <u>33,486,526</u>

D. RESERVES

The Department conducted a review of the Company's reserves as of December 31, 2007. During the review, concerns were raised with regard to the lack of conservatism in the assumptions used, and also with regard to the methodology that was employed, for the asset adequacy analysis pursuant to Department Regulation No. 126.

The examiner recommends that the Company incorporate adjustments to both reserve assumptions and reserve methodology in the manner agreed upon with the Department beginning with the Company's December 31, 2009 valuation and all subsequent valuations. Had the Company incorporated these adjustments in its December 31, 2008 valuation, the Company's reserves would have been understated by approximately 7.7 million dollars.

## 6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

#### 1. Advertising

Section 219.5(a) of Department Regulation No. 34-A states in part:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised...”

The examiner was unable to locate all of the advertising files listed on the Company's advertising log within the advertisement documentation provided by the Company. 342 advertisements were listed on the advertising log. The examiner was unable to locate 204 advertisements listed on the advertising log in the advertising file. There were also many advertisements within the documentation provided that were not listed on the advertising log. In addition, the examiner noted that the advertising log does not indicate the manner and extent of distribution of each advertisement. In general there appeared to be a lack of controls over the maintenance of the Company's advertisements

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file including a notation indicating the manner and extent of distribution.

## 2. Replacements

Section 51.6 of Department Regulation No. 60 states, in part: . . .

“(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” and the completed “Disclosure Statement”;

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the “Disclosure Statement”, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part;

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed “Disclosure Statement”; . . . .

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”; the signed and completed “Disclosure Statement”; and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later;

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein; . . .

The examiner reviewed various elements of the Company’s replacement activities to determine compliance with applicable statutes and regulations, the operating rules of the Company, and internal control standards deemed adequate by the Department.

The examiner reviewed a sample of 103 annuity files from the population of 274 annuity replacements that occurred during the examination period.

The examiner's review revealed the following issues: One file did not contain a "Disclosure Statement"; two files did not contain an "Important Notice"; one file contained an authorization that was dated after the other replacement documents; one replacement file did not contain the ten-day letter to the insurer to be replaced notifying it that the contract was being replaced; in twelve replacement files the ten-day letters required by 51.6(b)(4) did not include the sales materials used in the sale of the proposed annuity contracts; and, in seven files, the agent indicated that there were no advantages to keeping the replaced policy where the Disclosure Statement requires the advantages of retaining the existing coverage to be listed, despite the fact that the existing coverage had no surrender charge while the proposed coverage did have a surrender charge.

The examiner recommends that the Company make a better effort to comply with the requirements of Department Regulation No. 60.

#### B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Section 3201(a) of the New York Insurance Law states, in part:

"In this article, "policy form" means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto . . ."

Section 3201(b)(1) of the New York Insurance Law states, in part:

"No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent . . ."

During the review of Company's market conduct activities, the examiner noted two instances where the Company utilized a form entitled "AMEND" to replace the issued SPDA contracts specified in the original application with a substantially different type of FPDA annuity contract. The "AMEND" form was used without the prior approval of the Superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form which was not filed with or approved by the Superintendent.

### C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Section 403(d) of the New York Insurance Law states:

“(d) All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms, except as provided for in subsection (e) of this section, shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.”

A review of the Company’s 46 death claims (100%) during the examination period showed that the fraud language used in the Company’s annuity claim form (8008-NY) omits a statement that violators who commit a crime of fraud are subject to a civil penalty not to exceed five thousand dollars and the value of the claim for each such violation.

The Company violated Section 403(d) of the New York Insurance Law by using a claim form that did not contain the complete fraud warning as required by law.

## 7. DEPARTMENT REGULATION NUMBER 152

Section 243.3(c) of Department Regulation No. 152 states in part:

“(c) An insurer shall establish and maintain a records retention plan. The plan shall include a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. Such plan shall be provided to the superintendent upon request. The insurer shall certify the accuracy of any records that are provided in accordance with its record retention plan.”

In response to a violation of Section 243.3(c) in the prior report on examination, the Company established a records retention plan; however, it did not fully include the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. Therefore, the Company is still in violation of Section 243.3(c).

The prior report on examination also included a recommendation that the Company have its formal written records retention plan reviewed and approved by its board of directors. The examiner did not note approval of the record retention plan by the Company’s board of directors in the board minutes.

The examiner recommends that the Company have its revised records retention plan reviewed and approved by its board of directors.

8. ACTUARIAL STATEMENT OF SELF-SUPPORT  
AND SUPPORTING DEMONSTRATIONS

Section 4228(h) of the New York Insurance Law states, in part:

“(h) No company shall offer for sale any life insurance policy form or annuity contract form covered by this section or any debit life insurance policy form which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, persistency, taxes, agents' and brokers' survival and expenses resulting from the sale of the policy or contract form. For all such forms offered for sale in this state, and for all forms filed for use outside this state by domestic life insurance companies, a statement that the requirements of this subsection have been met, signed by an actuary who is a member in good standing of the American Academy of Actuaries and meets the requirements prescribed by the superintendent by regulation shall be submitted with each such life insurance policy or annuity contract form filed pursuant to paragraph one or six of subsection (b) of section three thousand two hundred one of this chapter. A demonstration supporting each such statement, signed by an actuary meeting such qualifications, shall be retained in the company's home office, while such form is being offered in this state and for a period of six years thereafter and be available for inspection . . . .”

The examiner conducted a review of the pricing adequacy for various products subject to Section 4228(h) of the New York Insurance Law. This review included an examination of the required actuarial statements of self support and the supporting demonstrations. During the review, it was discovered that the Company failed to sign the supporting demonstrations. Additionally, concerns were raised with regard to the lack of narrative descriptions for the methodologies and material assumptions that were used in such demonstrations.

The Company violated Section 4228(h) of the New York Insurance Law by failing to sign the supporting demonstrations related to the actuarial statements of self support for the Company's primary policy forms.

The examiner recommends that the Company implement changes for documenting its pricing and product development in the manner agreed upon with the Department.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to notify the Superintendent, at least 30-days prior thereto, of its intention to enter into an agreement with EquiTrust where EquiTrust would perform investment accounting services on a regular and systematic basis.</p> <p>EquiTrust no longer performs any investment accounting services for the Company. All current service agreements with affiliates were filed with and approved by the Superintendent.</p>
B	<p>The examiner recommends that in the future, the Company obtain the Superintendent's prior approval for any surplus contributions involving five percent or more of the insurer's admitted assets at last year-end.</p> <p>The Company obtained the Superintendent's approval for the surplus contribution it received from its parent in January 2004.</p>
C	<p>The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to maintain at least nine directors on its board.</p> <p>The Company increased the number of directors to eleven in 2005 and is now in compliance with Section 1201(a)(5)(B)(v) of the New York Insurance Law.</p>
D	<p>The Company violated its own by-laws by failing to maintain at least the minimum number of directors on its board as fixed by its by-laws.</p> <p>The Company increased the number of directors to eleven in 2005 and is now in compliance with its by-laws.</p>
E	<p>The Company violated Section 1201(a)(5)(B)(v) of the New York Insurance Law by failing to ensure that at least four directors of the Corporation were not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.</p> <p>The Company increased the number of directors who are not officers or employees of the Company or any controlling entity of the Company to four in 2005 and is now in compliance with Section 1201(a)(5)(B)(v) of the New York Insurance Law.</p>

<u>Item</u>	<u>Description</u>
F	<p>The Company violated Section 1201(a)(5)(B)(vi) of the New York Insurance Law by failing to maintain at least the minimum numbers of directors who are residents of New York State on its board of directors.</p> <p>The Company increased the number of directors who are residents of New York State on its board to two in 2005 and is now in compliance with Section 1201(a)(5)(B)(vi) of the New York Insurance Law.</p>
G	<p>The Company did not comply with Article III Section 3.01 of its by-laws when it failed to maintain at least three directors who were residents of New York State and when it failed to ensure that at least four directors were not officers or employees of the Company, or any entity controlling, controlled by, or under common control with the Company.</p> <p>The Company amended its by-laws in 2005, reducing the number of directors who are required to be residents of New York from three to two. The Company increased the number of directors who are not officers or employees of the Company, or any entity controlling, controlled by, or under common control with the Company to four in 2005.</p>
H	<p>A review of the attendance at the board meetings revealed that two of the directors did not attend any meetings and a third director did not attend the first three board meetings or 25% of the total meetings held during the examination period.</p> <p>The examiner's review of the board of director meeting minutes indicated that meetings were well attended and that each director attended a majority of meetings.</p>
I	<p>The examiner recommends that the Company replace, in a timely manner, any board member who consistently fails to attend board meetings.</p> <p>The examiner's review of the board of director meeting minutes indicated that meetings were well attended and that each director attended a majority of meetings.</p>
J	<p>The Company violated Section 1202(b)(2) of the New York Insurance Law when it failed to establish a committee comprised solely of directors who are not officers or employees of the Company.</p> <p>The Company established an audit committee in 2005 that is comprised solely of directors who are not officers or employees of the Company.</p>

<u>Item</u>	<u>Description</u>
K	<p>The Company violated Section 51.6(b)(3) of Department Regulation No. 60 when it failed to examine completed “Disclosure Statements” in order to ascertain that they were accurate and met the requirements of the Insurance Law and Department Regulation No. 60.</p> <p>The Company implemented a remediation plan that was provided by the Department.</p>
L	<p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60, because where the required forms were not accurate, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.</p> <p>The Company implemented a remediation plan that was provided by the Department. A recommendation appears in this report (See item 6A of this report).</p>
M	<p>The Company violated Section 51.6(b)(5) of Department Regulation No. 60 when it failed to file quarterly reports to the Superintendent of Insurance, indicating the insurers, if any, have failed to provide the information as required in Section 51.6(c)(2).</p> <p>The Company filed quarterly reports during the examination period.</p>
N	<p>The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted above and provide relief to all contract holders whose contracts were replaced prior to March 2005, and who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing annuity contracts.</p> <p>The Company implemented a remediation plan.</p>
O	<p>The Company violated Section 4232(a)(2)(iii) of the New York Insurance Law for crediting additional amounts on annuity contracts without written criteria approved by the board of directors of the Company.</p> <p>The Company has adopted written criteria for crediting additional amounts of interest on its annuity products.</p>

<u>Item</u>	<u>Description</u>
P	<p>The Company violated Section 243.3(c) of Department Regulation No. 152 when it failed to establish and maintain a records retention plan that included a description of the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records.</p> <p>The Company established a records retention plan, however, it did not fully include the types of records being retained, the method of retention, and the safeguards established to prevent alteration of the records. (See item 7 of this report).</p>
Q	<p>The examiner recommends that the Company establish a formal written records retention plan and have such plan reviewed and approved by its board of directors.</p> <p>The Company provided a draft copy of its records retention plan; however the Company failed to have it approved by its board of directors. (See item 7 of this report).</p>
R	<p>The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control.</p> <p>The Company established an internal audit function in 2005 and it has provided audit reports.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 308(a) of the New York Insurance Law by failing to file a copy of its tax allocation agreement with the Department in accordance with Department Circular Letter No. 33 (1979).	6
B	The Company violated Section 1202(b)(1) of the New York Insurance Law and its own by-laws by failing to have at least one-third of the members of the executive and investment committees be persons who are not officers or employees of the Company or any entity controlling, controlled by, or under common control with the Company.	7-8
C	The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have its independent audit committee evaluate the performance of the principal officers of the Company and recommend the compensation of such principal officers.	8-9
D	The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least ten days before the day of such election.	9
E	The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain their investment committee minutes at their principal office in this state.	9-10
F	The examiner recommends that the Company incorporate adjustments to both reserve assumptions and reserve methodology in the manner agreed upon with the Department beginning with the Company's December 31, 2009 valuation and all subsequent valuations.	16
G	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain a complete advertising file with a notation indicating the manner and extent of distribution.	17
H	The examiner recommends that the Company make a better effort to comply with the requirements of Department Regulation No. 60.	18-19

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form which was not filed with and approved by the Superintendent.	19
J	The Company violated Section 403(d) of the New York Insurance Law by using a claim form that did not contain the complete fraud warning.	20
K	The Company violated Section 243.3(c) of Department Regulation No. 152 since its records retention plan failed to fully disclose the records being retained, the method of retention, and the safeguards established to prevent alteration of the records. This is a repeat violation	21
L	The examiner recommends that the Company have its revised record retention plan reviewed and approved by its board of directors.	21
M	The Company violated Section 4228(h) of the New York Insurance Law by failing to sign the supporting demonstrations related to the actuarial statements of self support for the Company's primary policy forms.	22
N	The examiner recommends that the Company implement changes for documenting its pricing and product development in the manner agreed upon with the Department.	22

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Ijeoma Ndika  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )SS:  
COUNTY OF NEW YORK    )

Ijeoma Ndika being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Ijeoma Ndika

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**APPOINTMENT NO. 22754**

**STATE OF NEW YORK**  
**INSURANCE DEPARTMENT**

I, **ERIC DINALLO**, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**IJEOMA NDIKA**

*as a proper person to examine into the affairs of the*

**AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY OF NEW YORK**

*and to make a report to me in writing of the condition of the said*

**COMPANY**

*with such other information as she shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York*

*this 4th day of March, 2008*



**ERIC DINALLO**

\_\_\_\_\_  
Superintendent of Insurance

A handwritten signature in black ink, appearing to read "Eric Dinallo", written over a horizontal line.

\_\_\_\_\_  
Superintendent