

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2002

DATE OF REPORT:

JULY 16, 2003

EXAMINER:

IVOR D. PENHA

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

George E. Pataki
Governor

Gregory V. Serio
Superintendent

July 16, 2003

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21988, dated January 21, 2003 and annexed hereto, an examination has been made into the condition and affairs of Empire Fidelity Investments Life Insurance Company, hereinafter referred to as "the Company," at its home office located at 200 Liberty Street, One World Financial Center, New York, New York 10281.

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 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, 2002 filed annual statement. (See item 5 of this report)

The Company violated Section 1308(f)(1)(A) of the New York Insurance Law when it reinsured 100% of its whole risk with GE Capital Life Assurance Company of New York without the permission of the Superintendent. (See item 3E of this report)

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from its ultimate parent without giving prior notification to the Superintendent. (See item 3B of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1998. This examination covers the period from January 1, 1999 through December 31, 2002. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2002 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, 2002 to determine whether the Company's 2002 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
- Officers' and employees' welfare and pension plans
- 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 violations contained in the prior report on examination. The results of the examiner's review are contained in item 7 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

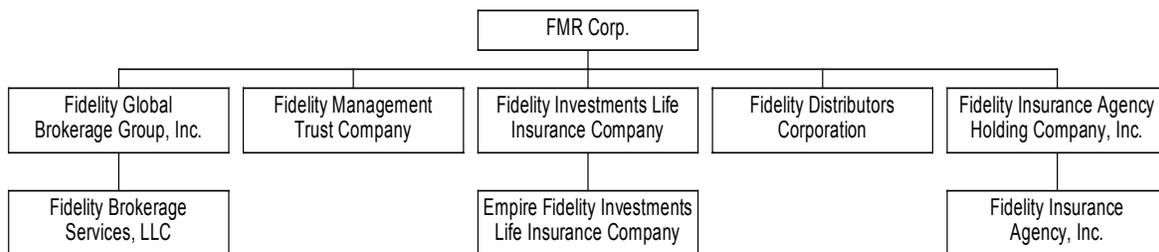
A. History

The Company was incorporated as a stock life insurance company under the laws of New York on May 1, 1991, was licensed and commenced business on June 1, 1992. Initial resources of \$7,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$5,000,000, were provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$35 per share. The Company received a surplus contribution from its parent in the amount of \$1,000,000 in 2000 resulting in paid in and contributed surplus of \$13,500,000 and common capital stock of \$2,000,000 as of December 31, 2002.

B. Holding Company

The Company is a wholly owned subsidiary of Fidelity Investments Life Insurance Company (“FILIC”), a Utah insurance company. FILIC is in turn a wholly owned subsidiary of FMR Corp. (“FMR”), a Massachusetts financial services company.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2002 follows:



The Company had seven service agreements in effect with affiliates as of December 31, 2002.

1. The Company had a service agreement with FILIC whereby the Company receives certain administrative services which include: accounting; tax and auditing; data processing; underwriting; claims; and actuarial services.
2. The Company had a selling agreement with Fidelity Brokerage Services, Inc., (now known as Fidelity Brokerage Services, LLC (“FBS”)), Fidelity Investments Institutional Services

Company, Inc. (“FIIS”), and Fidelity Insurance Agency, Inc. (“FIA”) whereby FBS acts as the Company’s principal underwriter for variable annuities and FIIS is appointed as distributor of the variable annuity contracts. FIIS is responsible for licensing the agents and insuring that they are appointed by the Company as designated agents of FIA.

3. The Company had a service agreement with Fidelity Insurance Agency, Inc., (“FIA”) whereby FIA acts as the Company’s general agent for immediate fixed annuities and term life insurance.

4. The Company had a service agreement with Fidelity Distributors Corporation (“FDC”), whereby FDC prints, assembles and mails quarterly statements and confirmations for variable annuity products on behalf of the Company.

5. The Company had a distribution agreement with FBS and FIA whereby FBS is the principal underwriter and FIA is the independent general agent.

6. The Company had a tax sharing agreement with FILIC to file a consolidated income tax return.

7. The Company had an investment management agreement with Fidelity Management Trust Company whereby the latter provided investment and managerial advice.

Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period . . .

(3) rendering of services on a regular or systematic basis . . .”

The Company does not have a filed service agreement with FMR. During the examination, the Company initially stated that FMR provided administrative services to the Company, and payments to affiliates were made through FMR. Subsequently, the Company qualified their previous statement and indicated that the only service FMR provides is the settlement of payments made to affiliates through an FMR bank account. The payments are for services provided as per the aforementioned service agreements. Accordingly, a separate agreement should have been filed to cover the services provided by FMR.

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from its ultimate parent without giving prior notification to the Superintendent.

The examiner recommends that the Company file a service agreement with the Superintendent to cover the services provided by FMR.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 directors. 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, 2002 the board of directors consisted of 14 members. Meetings of the board are held quarterly.

The 14 board members and their principal business affiliation, as of December 31, 2002, were as follows:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> | <u>Year First Elected</u> |
|--|---|---------------------------|
| Roy C. Ballentine* Wolfeboro, NH | President Ballentine & Co. | 1991 |
| Allan J. Brandon Holmdel, NJ | Vice President and Chief Administrative Officer Empire Fidelity Investments Life Insurance Company | 1991 |
| Melanie Calzetti-Spahr Winchester, MA | President Empire Fidelity Investments Life Insurance Company | 2002 |
| James C. Curvey Wellesley, MA | President FMR Corp. | 1991 |
| Albert Francke Millerton, NY | Lawyer Curtis, Mallet-Prevost | 2002 |
| Lena G. Goldberg Cohasset, MA | Vice President FMR Corp. | 1997 |
| Peter G. Johannsen* Wellesley, MA | Partner Sullivan & Worcester | 1991 |

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> | <u>Year First Elected</u> |
|---|--|---------------------------|
| Stephen P. Jonas Andover, MA | Chief Financial Officer FMR Corp. | 1998 |
| Malcolm MacKay* New York, NY | Managing Director Russell Reynolds Associates | 1991 |
| John J. Remondi Boston, MA | Chief Executive Officer and Director Fidelity Investors Management, LLC | 1991 |
| Rodney R. Rohda Waban, MA | President Fidelity Investments Life Insurance Company | 1991 |
| Floyd L. Smith* New York, NY | Retired Vice Chairman and Director MONY Life Insurance Company | 1993 |
| Richard A. Spillane, Jr. Wellesley, MA | Senior Vice President FMR Corp. | 2000 |
| David C. Weinstein Newton, MA | Executive Vice President – Government Affairs FMR Corp. | 1991 |

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

Robert A. Lawrence was elected to the board in May 2002 and resigned in December 2002.

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

The following is a listing of the principal officers of the Company as of December 31, 2002:

| <u>Name</u> | <u>Title</u> |
|-------------------------|---|
| Melanie Calzetti-Spahr | President |
| Farrell J. Dolan | Executive Vice President, Marketing |
| Tai S. Bright | Executive Vice President, Sales and Relationship Management |
| Joseph L. Kurtzer, Jr.* | Senior Vice President, Client Services Operations and Finance |
| Edward F. McHugh, Jr. | Senior Vice President, Strategic Services |
| Bret L. Benham | Senior Vice President, Life Insurance |
| William J. Johnson, Jr. | Senior Vice President, Actuary and Appointed Actuary |
| Allan J. Brandon | Vice President and Chief Administrative Officer |
| Haynes L. Turkle | Vice President, Human Resources |
| Janice M. Drew | Vice President, Systems Development |
| David J. Pearlman | Vice President, Secretary and General Counsel |
| Joseph F. Hope III | Treasurer |

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

Section 1210 of the New York Insurance Law states, in part:

“No by-law or amendment or repeal of a by-law of any domestic stock life insurance company shall be effective until approved by the superintendent. . . .”

A review of the board minutes revealed that the Company amended its by-laws twice during the period under examination. The Company failed to file the amendments for approval by the Superintendent.

The Company violated Section 1210 of the New York Insurance Law by failing to file the amendments to its by-laws for approval by the Superintendent.

Section 4211(a) of the New York Insurance Law states, in part:

“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”

A review of the board minutes revealed that the Company failed to notify the Superintendent ten days before the election of directors. The elections in question took place on February 22, 2002 and on May 1, 2002.

The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent ten days before the election of directors.

Section 4211(b) of the New York Insurance Law states:

“Whenever any directors of such a company shall have resigned and successors shall have been chosen pursuant to the provisions of the bylaws, such successors shall not take office nor exercise their duties until ten days after written notice of their election shall have been filed in the office of the superintendent.”

James G. Bulkhead and Joshua Berman resigned in 2002 and Albert Francke and Richard A. Spillane, Jr. became their successors, respectively. A review of the board minutes revealed that the Company failed to notify the Superintendent of the election of the successors.

The Company violated Section 4211(b) of New York Insurance Law by failing to notify the Superintendent of the election of successor directors.

D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business only in New York. Policies are written on a non-participating basis.

Since its inception in 1992, the Company has written mainly deferred variable annuity contracts. An immediate variable annuity product was introduced in the first quarter of 1994. A fixed account option is available in both the deferred and immediate variable annuities. In September 1998, the Company began offering a term life insurance product with level premiums for varying pay periods.

The Company sells its products through distribution agreements with FBS and FIA; both are subsidiaries of FMR Corp., the ultimate parent. FBS operates investor centers in six locations throughout New York State. FIA sells products over the telephone in response to calls

from potential customers. The FIA operations consist of four regional phone centers located in various states.

In 2002, all life premiums, annuity considerations and deposit type funds were received from New York.

E. Reinsurance

As of December 31, 2002 the Company had 11 reinsurance treaties in effect with six companies, all of which were authorized or accredited.

Section 1308(f)(1) of the New York Insurance Law states, in part:

“Unless the superintendent permits:

(A) No domestic life insurance company shall (i) reinsure its whole risk on any individual life or joint lives . . . ”

The examination revealed that the Company’s Fidelity Guaranteed Income Annuity product is 100% reinsured with GE Capital Life Assurance Company of New York.

The Company violated Section 1308(f)(1)(A) of the New York Insurance Law when it reinsured 100% of its whole risk with GE Capital Life Assurance Company of New York without the permission of the Superintendent. The Company filed the reinsurance agreement for approval on June 26, 2003.

The Company reinsures its variable annuity contracts with a guaranteed minimum death benefit on an aggregate stop loss basis. The Company’s life policies are ceded on a coinsurance basis. Reinsurance is provided on an automatic and/or facultative basis. The maximum retention limit for individual life contracts is \$100,000. The total face amount of life insurance ceded as of December 31, 2002 was \$435,208,000, which represents 77% of the total face amount of life insurance in force.

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>1999</u> | December 31, <u>2002</u> | Increase (Decrease) |
|--|-----------------------------|-----------------------------|------------------------|
| Admitted assets | <u>\$1,410,612,712</u> | <u>\$939,751,856</u> | <u>\$(470,860,856)</u> |
| Liabilities | <u>\$1,394,071,419</u> | <u>\$909,494,129</u> | <u>\$(484,577,290)</u> |
| Common capital stock | \$ 2,000,000 | \$ 2,000,000 | \$ 0 |
| Gross paid in and contributed surplus | 12,500,000 | 13,500,000 | 1,000,000 |
| Unassigned funds (surplus) | <u>2,041,293</u> | <u>14,757,727</u> | <u>12,716,434</u> |
| Total capital and surplus | <u>\$ 16,541,293</u> | <u>\$ 30,257,727</u> | <u>\$ 13,716,434</u> |
| Total liabilities, capital and surplus | <u>\$1,410,612,712</u> | <u>\$939,751,856</u> | <u>\$(470,860,856)</u> |

The decrease in admitted assets is due to the overall decline in the equity markets during the examination period and the limited product mix of the Company, which is concentrated in variable annuities.

The majority (92.93%) of the Company's admitted assets, as of December 31, 2002, is derived from Separate Accounts.

The Company's invested assets, as of December 31, 2002, exclusive of Separate Accounts, were comprised of bonds (97.6%) and cash and short-term investments (2.4%).

The Company's entire bond portfolio, as of December 31, 2002, was comprised of investment grade obligations.

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>1999</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|----------------------|--------------------|--------------------|--------------------|--------------------|
| Ordinary: | | | | |
| Life insurance | \$ (93,748) | \$ 14,542 | \$ 96,347 | \$ 87,325 |
| Individual annuities | <u>2,370,960</u> | <u>5,757,819</u> | <u>2,847,209</u> | <u>3,565,387</u> |
| Total | <u>\$2,277,212</u> | <u>\$5,772,361</u> | <u>\$2,943,556</u> | <u>\$3,652,712</u> |

The volatility of the equity markets generated the fluctuations in gains between years for the annuity line of business. Sales of variable annuities, the Company's primary product, decreased significantly in 2001 and 2002 at the same time that surrenders significantly increased. In addition, income taxes were significantly lower in 2000 than in 1999 and 2001, which resulted in a larger gain in 2000.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2002 as contained in the Company's 2002 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, 2002 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2002

Admitted Assets

| | |
|---|----------------------|
| Bonds | \$ 62,058,952 |
| Cash and short term investments: | 1,537,216 |
| Reinsurance ceded: | |
| Amounts recoverable from reinsurers | 414,438 |
| Commissions and expense allowances due | 52,288 |
| Other amounts receivable under reinsurance contracts | 1,199 |
| Federal and foreign income tax recoverable and interest thereon | 713,460 |
| Life insurance premiums and annuity considerations deferred and uncollected on in force business | 122,095 |
| Investment income due and accrued | 1,165,520 |
| Fund administration fee receivable | 36,085 |
| State income taxes recoverable | 312,356 |
| From Separate Accounts statement | <u>873,338,247</u> |
| Total admitted assets | <u>\$939,751,856</u> |

Liabilities, Capital, Surplus and Other Funds

| | |
|---|--------------------------|
| Aggregate reserve for life policies and contracts | \$ 35,133,568 |
| Policy and contract claims – Life | 92,937 |
| Premiums and annuity considerations for life and accident and health policies and contracts received in advance | 2,413 |
| Contract liabilities not included elsewhere: | |
| Other amounts payable on reinsurance ceded | 629,888 |
| Interest maintenance reserve | 106,709 |
| Commissions to agents due or accrued | 144,542 |
| General expenses due or accrued | 27,000 |
| Transfers to Separate Accounts due or accrued | 1,652 |
| Taxes, licenses and fees due or accrued | 4,000 |
| Amounts withheld or retained by company as agent or trustee | 1,804 |
| Remittances and items not allocated | 798,602 |
| Miscellaneous liabilities: | |
| Asset valuation reserve | 92,704 |
| Payable to parent, subsidiaries and affiliates | 371,343 |
| From Separate Accounts statement | <u>872,086,967</u> |
| Total liabilities | <u>\$909,494,129</u> |
| Common capital stock | \$ 2,000,000 |
| Gross paid in and contributed surplus | 13,500,000 |
| Unassigned funds (surplus) | <u>14,757,727</u> |
| Total capital, surplus and other funds | <u>\$ 30,257,727</u> |
| Total liabilities, capital, surplus and other funds | <u>\$939,751,856</u> |

B. CONDENSED SUMMARY OF OPERATIONS

| | <u>1999</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| Premiums and considerations | \$142,374,879 | \$194,452,572 | \$151,649,314 | \$ 58,373,112 |
| Investment income | 1,150,949 | 1,504,729 | 1,898,192 | 2,442,864 |
| Net gain from operations from Separate Accounts | 467,283 | 414,732 | 281,164 | 88,101 |
| Commissions and reserve adjustments on reinsurance ceded | 75,377 | 164,653 | 317,168 | 1,265,928 |
| Miscellaneous income | <u>9,599,068</u> | <u>13,271,155</u> | <u>10,525,442</u> | <u>8,876,795</u> |
| Total income | <u>\$153,667,556</u> | <u>\$209,807,841</u> | <u>\$164,671,280</u> | <u>\$ 71,046,800</u> |
| Benefit payments | \$ 54,617,987 | \$ 64,559,537 | \$103,572,578 | \$ 144,043,935 |
| Increase in reserves | (218,874) | 976,091 | 11,768,631 | 17,547,330 |
| Commissions | 4,360,730 | 5,939,982 | 4,700,199 | 2,694,546 |
| General expenses and taxes | 2,400,938 | 2,812,640 | 2,520,604 | 2,852,595 |
| Increase in loading on deferred and uncollected premiums | 0 | (1,817) | (1,560) | (5,885) |
| Net transfers to (from) Separate Accounts | <u>88,258,310</u> | <u>129,734,107</u> | <u>37,585,099</u> | <u>(100,240,676)</u> |
| Total deductions | <u>\$149,419,091</u> | <u>\$204,020,540</u> | <u>\$160,145,551</u> | <u>\$ 66,891,845</u> |
| Net gain (loss) | \$ 4,248,465 | \$ 5,787,301 | \$ 4,525,729 | \$ 4,154,955 |
| Federal and foreign income taxes incurred | <u>1,971,253</u> | <u>14,940</u> | <u>1,582,173</u> | <u>502,242</u> |
| Net gain (loss) from operations before net realized capital gains | \$ 2,277,212 | \$ 5,772,361 | \$ 2,943,556 | \$ 3,652,713 |
| Net realized capital gains (losses) | <u>0</u> | <u>0</u> | <u>(159,713)</u> | <u>(21,972)</u> |
| Net income | <u>\$ 2,277,212</u> | <u>\$ 5,772,361</u> | <u>\$ 2,783,843</u> | <u>\$ 3,630,741</u> |

C. CAPITAL AND SURPLUS ACCOUNT

| | <u>1999</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|---|----------------------|----------------------|----------------------|----------------------|
| Capital and surplus, December 31, prior year | \$ <u>14,276,119</u> | \$ <u>16,541,293</u> | \$ <u>23,294,729</u> | \$ <u>26,170,615</u> |
| Net income | \$ 2,277,212 | \$ 5,772,361 | \$ 2,783,843 | \$ 3,630,741 |
| Change in net deferred income tax | 0 | 0 | 0 | (324,723) |
| Change in non-admitted assets and related items | 4,159 | 4,158 | 4,159 | 242,945 |
| Change in asset valuation reserve | (16,197) | (23,083) | 87,884 | (70,912) |
| Cumulative effect of changes in accounting principles | 0 | 0 | 0 | 609,061 |
| Surplus adjustments: | | | | |
| Paid in | <u>0</u> | <u>1,000,000</u> | <u>0</u> | <u>0</u> |
| Net change in capital and surplus | \$ <u>2,265,174</u> | \$ <u>6,753,436</u> | \$ <u>2,875,886</u> | \$ <u>4,087,112</u> |
| Capital and surplus, December 31, current year | \$ <u>16,541,293</u> | \$ <u>23,294,729</u> | \$ <u>26,170,615</u> | \$ <u>30,257,727</u> |

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.

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 . . .”

The review of the Company's advertising file revealed that the file did not contain notations as to the manner and extent of distribution of the advertisements.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain the manner and extent of distribution of its advertisements.

B. Underwriting and Policy Forms

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

Based upon the sample reviewed, no significant findings were noted.

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.

Based upon the sample reviewed, no significant findings were noted.

D. Response to Supplement No. 1 to Department Circular Letter No. 19 (2000)

Supplement No. 1 to Circular Letter No. 19 (2000) (the "Supplement"), issued by the Department on June 22, 2000, notified all licensed life insurers that the Department was investigating allegations of race-based underwriting of life insurance by its licensees. The Supplement directed, pursuant to Section 308 of the New York Insurance Law, each domestic and foreign life insurer to review its past and present underwriting practices regarding race-based underwriting and to report its findings to the Department, no later than August 15, 2000.

Pursuant to Section 308 of the New York Insurance Law, the Company submitted in a timely manner a report of the findings of its review of past and present underwriting practices regarding race-based underwriting made in accordance with the requirements of the Supplement.

The Company reported that it has written mainly variable annuity contracts since its inception in 1992. In 1998, the Company began offering term life insurance products. The Company has never acquired any business from another insurer. In summary, the Company's findings were that it has never used race as a factor in any of its underwriting practices.

An analysis of the Company's response to the Supplement and other factors indicated that the Company's review of its past and present underwriting practices complied with the requirements of the Supplement.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 4230(a) of the New York Insurance Law when the board of directors failed to authorize payments made to an officer of the Company.</p> <p>The Company's board of directors approved officers' salaries during the examination.</p> |
| B | <p>The Company violated Section 2112(a) of the New York Insurance Law when it failed to license and appoint agents who sold insurance for the Company.</p> |
| C | <p>The Company violated Section 2114(a)(1) of the New York Insurance Law when it paid commissions to agents who were neither licensed nor appointed by the Company.</p> <p>A review indicated that the agents who sold insurance for the Company during the examination period were licensed and appointed.</p> |

8. SUMMARY AND CONCLUSIONS

Following are the violations and the recommendation contained in this report:

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|--|--------------------|
| A | The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from its ultimate parent without giving prior notification to the Superintendent. | 5 – 6 |
| B | The examiner recommends that the Company file a service agreement with the Superintendent to cover the services provided by FMR. | 5 – 6 |
| C | The Company violated Section 1210 of the New York Insurance Law by failing to file the amendments to its by-laws for approval by the Superintendent. | 8 |
| D | The Company violated Section 4211(a) of the New York Insurance Law by failing to notify the Superintendent ten days before the election of directors. | 8 – 9 |
| E | The Company violated Section 4211(b) of the New York Insurance Law by failing to notify the Superintendent of the election of successor directors. | 9 |
| F | The Company violated Section 1308(f)(1)(A) of the New York Insurance Law when it reinsured 100% of its whole risk with GE Capital Life Assurance Company of New York without the permission of the Superintendent. | 10 |
| G | The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain the manner and extent of distribution of its advertisements. | 17 |

APPOINTMENT NO. 21988

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

IVOR PENHA

as a proper person to examine into the affairs of the

EMPIRE FIDELITY INVESTMENTS LIFE INSURANCE COMPANY
and to make a report to me in writing of the condition of the said
COMPANY

with such other information as he 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 21st day of January, 2003



GREGORY V. SERIO
Superintendent of Insurance


Superintendent