

**MARKET CONDUCT EXAMINATION**

**of**

**THE GUARDIAN INSURANCE AND ANNUITY COMPANY, INC**

**located in**

**NEW YORK, NEW YORK**

**as of**

**December 19, 2011**

**BY EXAMINERS**

**of the**

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

**MARKET CONDUCT EXAMINATIONS and ANTI-FRAUD  
COMPLIANCE SECTIONS**

**REPORT ADOPTED:**

**SEPTEMBER 27, 2012**

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## **I. INTRODUCTION**

This is a report of the Market Conduct activities of The Guardian Insurance and Annuity Company, Inc., (hereinafter referred to as “Guardian” or “the Company”). In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions and recommendations as a result of their examination.

### **A. SCOPE OF EXAMINATION**

The purpose of this examination was to evaluate Guardian’s compliance with certain regulations and statutes that pertain to immediate and deferred, fixed and variable annuities. Areas of review included advertising, marketing, forms, and agency licensing. The review period for the examination was May 1, 2010 to April 30, 2011. The examiners conducted their fieldwork at Guardian’s office in New York, New York, between July 26, 2011 and August 16, 2011. On various dates following the fieldwork, the examiners completed additional review work and report writing in Trenton, N.J. The Market Conduct Examiners were Examiner-in-Charge Monica Koch, Robert Greenfield, Robert Only and Richard Segin.

The examiners randomly selected files and records from computer listings and documents provided by the Company. The random selection process is in accordance with the National Association of Insurance Commissioner’s (NAIC) Market Regulation Handbook. The examiners used the NAIC Market Regulation Handbook, Chapters Sixteen (General Examination Standards) and Nineteen (Conducting the Life and Annuity Examination) as a guide to examine the Company and write this report.

### **B. ERROR RATIOS**

Error ratios are the percentage of files reviewed which an insurer handles in error. A file is counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners will count the file only once in calculating error ratios. However, any file that contains more than one error will be cited more than once in the report. In the event that the insurer corrects an error as a result of a consumer complaint or due to the examiners’ findings, the error will be included in the error ratio. If the insurer corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

There may be errors cited in this report that define practices as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors cited constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or errors of an insurer that may be technical in nature or which did not have an impact on a consumer. Even though such errors or practices would not be in compliance with law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices or errors do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report whenever they did not count particular files in the error ratio.

The examiners submitted written inquiries to Company representatives on the errors cited in this report. These inquiries provided Guardian the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported. In response to these inquiries, Guardian agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

### **C. COMPANY PROFILE**

The Guardian Insurance and Annuity Company Incorporated (GIAC), a wholly-owned subsidiary of The Guardian Life Insurance Company of America (GLIC), was organized on March 2, 1970 as a Delaware corporation. GIAC was organized under the laws of the state of Delaware and is a stock life insurance company primarily engaged in the sale of equity-based products such as variable life and annuities. The Company is licensed to conduct business in 51 jurisdictions of the United States.

The Guardian Life Insurance Company of America (GLIC) is a mutual insurance company organized under the laws of the state of New York. The principal executive offices for both companies are located at 7 Hanover Square, New York, NY 10004-2616. This examination was conducted exclusively on GIAC.

## **II. COMPLAINT REVIEW**

### **A. INTRODUCTION**

Guardian's complaint register indicates that a consumer filed one complaint with the New Jersey Department of Banking and Insurance. No consumers filed direct complaints against the Company during the review period of May 1, 2010 to April 30, 2011. The examiners reviewed Guardian's complaint register for compliance with **N.J.S.A. 17B:30-13.2**. The examiners used Chapters Sixteen (General Examination Standards) and Nineteen (Conducting the Life and Annuity Examination) of the Market Regulation Handbook, as a guide to conduct this review.

### **B. COMPLAINT REGISTER**

In accordance with **N.J.S.A. 17B:30-13.2**, insurers are required to maintain a record of all complaints received by the company. These records shall indicate the total number of complaints, the classification by line of insurance, the nature and the disposition of each complaint and the time it took to process each complaint. This statute is similar in content to Standard One of the NAIC Market Regulation Handbook which specifies that "All complaints (should be) recorded in the required format on the regulated entity's complaint register." Contrary to the above referenced statute, the complaint register that Guardian provided in response to the Department's call letter failed to include the disposition of each complaint, as well as the time taken to process or otherwise resolve the complaint. In response to the examiner's inquiry, Guardian then provided another complaint register that included the required information.

### III. REPLACEMENT REVIEW

#### A. INTRODUCTION

N.J.A.C. 11:4-2 et seq. governs insurer and agent replacements of existing insurance (both within the same company and between two different companies). This regulation protects the interests of life insurance and annuity policyholders by establishing minimum standards of agent and insurer conduct.

N.J.A.C. 11:4-2.2 defines a replacement "... as a transaction in which a new policy or contract is to be purchased, and is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy has been or is to be:

1. lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. converted to reduced paid-up insurance, continued on extended term insurance, or otherwise reduced in value by the use of non-forfeiture benefits or other policy values;
3. amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. reissued with any reduction in cash value; or
5. used in a financed purchase."

One focus of this examination was a sample review of the replacement activities of Guardian Insurance and Annuity Company for the review period of May 1, 2010 through April 30, 2011. Guardian's replacement log included 147 annuity contracts written during the review period, (four fixed annuities and 143 variable annuity contracts). From this log, the examiners randomly selected 40 files. In addition, the examiners randomly selected 33 files from the in-force population which consisted of 359 fixed annuity contracts. It should be noted that the 33 fixed annuity contracts were in force during the review period but written prior to May 1, 2010.

The examiners checked for compliance with all applicable New Jersey statutes and regulations including N.J.A.C. 11:4-2 et seq. which governs insurer and agent replacements of existing annuities (both within the same company and between two different companies). This regulation protects annuitants' interests by establishing minimum standards of agent and insurer conduct. The examiners also placed emphasis on the Company's ability to recognize and identify as replacements, all policy loans defined as a financed purchase.

## B. ERROR RATIOS

The examiners calculated error ratios for the replacement review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review sample, the number of errors and the error ratio.

<b><u>Review Sample Category</u></b>	<b><u>Files Reviewed</u></b>	<b><u>Files in Error</u></b>	<b><u>Error Ratio</u></b>
Fixed	37	37	100%
Variables	<u>36</u>	<u>34</u>	94%
<b>Total</b>	<b>73</b>	<b>71</b>	<b>97%</b>

## C. EXAMINERS' FINDINGS

### 1. **Failure to Provide Applicant With a Toll Free Compliance Staff Telephone Number for Contract Inquiries – 71 Files in Error (Improper General Business Practice)**

**N.J.A.C. 11:4-2.5(g)2 and 2ii** require an insurer, within 10 days of the issuance of the policy or contract, to provide the applicant with a toll free telephone number to enable the applicant to contact company compliance personnel in the event of questions or concerns regarding the replacement process or any forms or disclosures provided at the time of sale.

Contrary to this regulation, the examiners found 71 annuity contracts where the Company failed to provide the applicants with the referenced toll free telephone number. In response to a field inquiry the Company stated, "We are unable to provide the notice referenced above for the contracts listed." In response to the draft report, Guardian provided additional documents that did include a toll free number. However, that number was a general access number with a standard telephone tree or menu that did not specifically direct the caller to the Company's compliance staff. Accordingly, the Company was unable to verify compliance with this regulation. The examiners cited this error as an improper general business practice due to high frequency (71 out of 73 contracts reviewed, or 97% of the review population) of occurrence.

### **SEE APPENDIX A-1 FOR A LIST OF CONTRACTS IN ERROR**

### 2. **Failure to Provide Annuitant with Notice of Right to Return Contract Within 30-Days of Delivery – 7 Files in Error (Improper General Business Practice)**

N.J.A.C. 11:4-2.4(a)5 states that, where a replacement is involved in the transaction, the replacing insurer shall provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery and receive an unconditional full refund of all premiums or considerations paid, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations imposed under such policy or contract.

Additionally, Guardian's rule manual for existing contract replacements states in the Free Look section that "A 30 day free look period will apply to any life insurance or annuity contract issued as the result of a replacement."

Contrary to N.J.A.C. 11:4-2.4(a)5 and the Company's replacement procedure manual, Guardian provided the contract owners with a free look period of only 10 days on 7 annuity contracts.

**SEE APPENDIX A-2 FOR A LIST OF CONTRACTS IN ERROR**

**3. Failure to Notify Existing Insurer of Replacement Within Five Business Days – 2 Files in Error**

N.J.A.C. 11:4-2.4(a) and (a)3 state that, where a replacement is involved in the transaction, the replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement.

Contrary to this regulation, the Company failed to provide this notice within five business days on annuity contracts **110000734** (6 days late) and **600015050** (6 days late). Guardian agreed with the examiners' findings.

**THESE CONTRACTS ARE ALSO LISTED IN APPENDIX A-3**

**4. Failure of Producer to Sign Statement Advising that the Applicant has existing Policies or Contracts – 1 File in Error**

N.J.A.C. 11:4-2.5(c) states that each insurer shall require with, or as a part of each application for life insurance or an annuity, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

Contrary to this regulation, the Company's agent failed to sign such a statement on annuity contract **110000610** indicating that the applicant did indeed have existing contracts. The Company disagreed with this error in response to an inquiry and the draft report, asserting that the application

includes the relevant "... replacement question within Section 9 that includes information regarding the applicant's existing contract. The ... application form was signed by both the applicant and the agent and the replacement was checked..." The examiners note, however, that the referenced signatures were affixed to Section 8 of the application; that Section is limited in content to a warning against fraud or misrepresentation. Contrary to N.J.A.C. 11:4-2.5(c), the producer and applicant never signed that portion of the application that addresses the presence of existing annuities.

**THIS CONTRACT IS ALSO LISTED IN APPENDIX A-4**

## IV. ANNUITY SUITABILITY REVIEW

### A. INTRODUCTION

From the inforce population of 359 annuity contracts, the examiners reviewed all 24 contracts that were issued after April 1, 2009. As part of the examination, the examiners checked for compliance with N.J.S.A. 17B:25-38 (determination as to annuity suitability for consumers). This statute became effective April 1, 2009.

### B. ERROR RATIOS

The examiners calculated error ratios for the suitability review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review sample, the number of errors and the error ratio by type of termination.

<u>Suitability Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Fixed In-force Sample*	24	18	75%

\*One of these was newly written during the review period. The remaining 23 were written after the April 1, 2009 suitability determination effective date but were in force during the review period.

### C. EXAMINERS' FINDINGS

#### 1. Failure to Document Compliance with Suitability Requirements - 18 Files in Error (Improper General Business Practice)

N.J.S.A. 17B:25-38b(1) and (2)(a) through (e) permit an insurer or producer to negotiate or sell an annuity to a customer if that insurer or producer has reasonable grounds for believing that the annuity is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments, other insurance products, financial situation and objectives. The insurer or producer must also make reasonable efforts to obtain and record on a form prescribed by the commissioner, information concerning the consumer's:

- a) financial status;
- b) tax status;
- c) investment objectives;
- d) any other information relevant for providing reasonable grounds for believing that the annuity is suitable for the consumer;
- e) and the consumer's acknowledgment that the solicitation, negotiation and sale of the annuity are subject to regulatory

oversight by the Department and receipt of appropriate contact information for the Department's consumer assistance services.

The Commissioner issued Bulletin 09-06 on March 3, 2009 and Bulletin 09-12 on April 20, 2009 to remind carriers of the requirement stated in **N.J.S.A. 17B:25-38b(1)** and **(2)(a)** through **(e)** as referenced above. Those Bulletins advised carriers in part that all persons who sell individual fixed deferred and immediate annuities are required to make reasonable efforts to obtain and record information about the suitability of the product for the consumer and to retain and make available to the Department copies of the suitability form that records required information, dates and signatures.

The examiners reviewed the 24 contracts selected from the Company's system and paper files and did not find suitability forms for 18 contracts. Through several inquiries, the examiners requested that the Company provide documentation in order to verify compliance with the suitability elements outlined above. In response to those inquiries, the Company stated that it "did no [sic] locate." Failure to complete the forms containing the financial status, tax status and the consumer's investment objectives for the purpose of determining suitability is contrary to **N.J.S.A. 17B:25-38** and is further inconsistent with Bulletins 09-06 and 09-12.

Since Guardian failed to comply with this requirement on 18 out of 24 contracts (75%), the examiners cited this error as an improper general business practice.

2. **Failure to Maintain System of Supervision Concerning the Negotiation and Sale of Annuities**

Pursuant to **N.J.S.A. 17B:25-38c**, insurers are required as of April 1, 2009 to establish and maintain a system of supervision designed to assure compliance with consumer suitability standards specified in **N.J.S.A. 17B:25-38b(1)** and **(2)**. In response to the examiners' inquiries, Guardian provided the examiners with a comprehensive description of its supervision process that includes annual audits of producer and company records. This process became effective July 2008, well in advance of the April 1, 2009 suitability review effective date. The audit includes analysis of producer documentation regarding product suitability, such as information concerning the applicant's financial and tax status, investment objectives and other information relative to the suitability process.

Notwithstanding the establishment of an actual suitability supervision protocol or methodology, the examiners nevertheless found in section IV.C.1 above that Guardian failed to maintain that methodology, contrary to **N.J.S.A. 17B:25-38(c)**; the Company could not provide documentation of the suitability analysis process on 18 out of 24 contracts that producers wrote

after the April 1, 2009 effective date of N.J.S.A. 17B:25-38(b). See recommendations section.

**SEE APPENDIX B-1 FOR CONTRACTS IN ERROR**

## V. ADVERTISING AND FORMS REVIEW

### A. INTRODUCTION

Guardian provided the examiners with its website advertisement and 19 advertising forms that the Company utilized to solicit individual annuities during the review period. The examiners reviewed 19 advertising files for compliance with N.J.A.C. 11:2-23.1 et seq. (regulations governing advertisement of annuity contracts), N.J.A.C. 11:4-40.1 et seq. (regulations governing annuity contracts) and N.J.S.A. 17B:30-3 and 4 (statutes prohibiting misrepresentation, false information and false advertising). The examiners also checked the Company's Buyer's Guide for compliance with N.J.S.A. 17B:25-37b.

### B. ERROR RATIOS

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Buyer's Guide	1	0	0%
Forms	19	1	5%
Internet	<u>1</u>	<u>0</u>	<u>0%</u>
Total	21	1	4.8%

### C. EXAMINERS' FINDINGS

#### 1. Misleading Advertisement – 1 Advertisement in Error

N.J.A.C. 11:2-23.5(b) states that, no advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or State or Federal tax consequences. N.J.A.C. 11:2-23.4(a) requires that advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive. Lastly, N.J.A.C. 11:2-23.3 defines an advertisement as material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy.

The examiners reviewed advertisement form number 10-IFA, 10-WSC, labeled also as GFA\_Brochure\_final\_GI.com in response to the examination call letter, and noted on pages 7 and 8 that the Company included a visual graph that accompanies an immediate annuity scenario. Each scenario references a seven year guaranteed rate of return, but the actual rate is not

disclosed on the illustration. Moreover, this advertisement includes a graphic histogram with two variables. One is time that is measured horizontally. The other is what appears to be appreciation that is measured vertically as evidenced by a diagonal line and shaded area designated as Accumulation Value that begins at year one (initial \$100,000 premium) and ascends at a 45 degree angle to the end of the year seven guarantee period (when the annuitant has the opportunity to annuitize). In the absence of a stated rate of return, the upward slope of this graphic gives the appearance of a 50% return on a principle of \$100,000 at the end of year four, and 100% return on principle at the end of year seven.

The examiners determined that this advertisement is not in compliance with **N.J.A.C. 11:2-23.5(b)** to the extent that it omits a rate of return, the effect of which creates the capacity or tendency to mislead prospective purchasers into believing that the initial \$100,000 premium will appreciate to \$150,000 by year four and \$200,000 by year seven. The graph as described above, in conjunction with the omitted rate of return, is misleading by implication and does not satisfy **N.J.A.C. 11:2-23.4(a)**. This regulation specifies that the content and form of an advertisement must be complete and clear in a manner that avoids a tendency or capacity to mislead.

In response to a written inquiry, Guardian disagreed with this error, stating that a flyer providing the rate of interest applicable to that client and contract is included in the back pocket of the brochure. However, Guardian did not provide that flyer in response to the examination call letter that requested complete advertising materials; nor did the Company demonstrate that such a flyer was in fact utilized in conjunction with this advertisement. Guardian did provide a flyer/rate card in response to the draft report; however, that card was dated five months after the end of the examination review period. The Company agreed to amend this advertisement.

**SEE APPENDIX C-1 FOR THIS ADVERTISING ERROR**

**2. Incorrect New Jersey Department of Banking and Insurance Website Address on Advertising Form – 1 File in Error**

**N.J.A.C. 11:2-23.8(b)** states that every insurer shall at all times maintain complete control over the content, form and method of distribution of all advertisements of its contracts. On form **EB015911** the Company stated the Department's website as [www.njobi.org](http://www.njobi.org) which is incorrect. The website on the form should have read [www.njdobi.org](http://www.njdobi.org). The Company advised that it corrected this error. The examiners did not include this error in the error ratios.

**SEE APPENDIX C-2 FOR THIS ADVERTISING ERROR**

## **VI. LICENSING REVIEW**

According to N.J.S.A. 17:22A-26 et seq. and N.J.A.C. 11:17-1 through N.J.A.C. 11:17E-1, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for a specific line or lines of authority. Guardian Insurance and Annuity Company provided the examiners with a list of 264 agents who sell annuity products for the Company in New Jersey. The examiners found no errors in this review.

## VII. RECOMMENDATIONS

Guardian should inform all responsible personnel and third party entities who handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that Guardian establish procedures to monitor compliance with these measures.

Throughout this report, the examiners cite and/or discuss all errors found. If the report cites a single error, the examiners often include a "reminder" recommendation because if a single error is found, additional errors may have occurred.

Non-compliant activity was identified in this report which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to New Jersey law. When applicable, corrective action for other jurisdictions should be addressed.

For the purpose of obtaining proof of compliance and for the Company to provide its personnel with a document they can use for future reference, the examiners have listed all recommendations below.

### A. GENERAL INSTRUCTIONS

All items requested for the Commissioner and copies of all written instructions, procedures, recommended forms, etc., should be sent to the Commissioner, c/o Clifton J. Day, Manager of the Market Conduct Examinations and Anti-Fraud Compliance Unit, Mary Roebling Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

### B. COMPLAINTS

1. In order to comply with **N.J.S.A. 17:29B-4(10)**, Guardian must issue written instructions to all appropriate personnel stating that, in addition to other requirements, the complaint register must include:
  - a. the disposition of the complaint
  - b. the time taken to process each complaint

### C. REPLACEMENT

2. Guardian must issue written instructions to all appropriate personnel stating that **N.J.A.C. 11:4-2.5(g)2** and **2ii** require an insurer to provide the applicant with a toll free telephone number to contact the company within 10 days of the issuance of the policy or contract to permit timely

response to questions or clarification of contract terms specifically by Company compliance staff..

3. The company must issue written instructions to all appropriate personnel stating that, pursuant to **N.J.A.C. 11:4-2.4(a)5**, where a replacement is involved in the transaction, the replacing insurer shall provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of that contract and receive an unconditional full refund of all premiums.
4. The company must issue a written reminder to all appropriate personnel stating that, pursuant to **N.J.A.C. 11:4-2.4(a)** and **(a)3**, the replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application.
5. The company must issue written reminder to all appropriate personnel that pursuant to **N.J.A.C. 11:4-2.5(c)** a statement must be signed by the applicant and producer as to whether the applicant has existing policies or contracts and that they are being replaced.

#### **D. ANNUITY SUITABILITY**

6. Pursuant to **N.J.S.A. 17B:25-38** and Commissioner's Bulletins 09-06 and 09-12, the Company must issue written instructions to all appropriate personnel stating that suitability forms must be completed by the broker/dealer and the consumer whenever the company's representative has grounds to believe an annuity is suitable for the consumer. This form must also be completed if the consumer refuses to provide relevant information to determine the suitability of the product. Completed forms should also be retained.
7. Pursuant to annuity suitability oversight requirements specified in **N.J.S.A. 17B:25-38(c)**, Guardian must submit to the Commissioner a plan of correction to the company's oversight program. This plan should include, but not be limited to, identification and correction of all factors or reasons as to why 18 out of 24 annuity contracts were written without retention of suitability documentation.

#### **E. ADVERTISING AND FORMS**

8. The Company must issue a written reminder to all appropriate personnel stating that **N.J.A.C. 11:2-23.5(b)** prohibits omission of material information, words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable.

9. In order to comply with **N.J.A.C.11:2-23.8(b)**, the Company must revise internet-based advertising form EB015911 to correctly state NJDOBI'S correct website as [www.state.nj.us/dobi](http://www.state.nj.us/dobi).

## APPENDIX A – REPLACEMENT ERRORS

**1. Failure to Provide Applicant With a Toll Free Telephone Number – 71 Files in Error (Improper General Business Practice)**

<u>Contract Number Fixed Annuities</u>	<u>Contract Number Fixed Annuities</u>	<u>Contract Number Variable Annuities</u>	<u>Contract Number Variable Annuities</u>
100058335	100059794	210255623	600015814
100058512	100059795	210256212	600015872
100058513	100059833	210256213	600015878
100058663	100060399	210256959	600016372
100058687	100060659	210259695	602001450
100058691	100060702	210259959	600018569
100058699	100060739	210255560	600016837
100058703	100059816	210248852	600016468
100059630	110000507	210255502	602001447
100059750	110000561	210079421	602001375
100059778	110000610	210214476	600018540
100059609	110000647	210244700	600018327
100058704	110000638	210246385	600016493
100058709	110000622	210248074	600018265
100058710	110000648	210250286	600015050
100059518	110000734	210248853	600016724
100059551	110000649	210255559	600016588
100060749	110000651		
100058858			

**2. Failure to Provide Annuitant With Notice of Right to Return Contract Within 30-Days of Delivery – 7 Files in Error (Improper General Business Practice)**

<u>Contract Number Fixed Annuities</u>	<u>Contract Number Variable Annuities</u>	<u>Contract Number Variable Annuities</u>
600016493	602001375	600015878
100059630	210248074	600015872
600015814		

**3. Failure to Notify Existing Insurer of Replacement Within Five Business Days – 2 Files in Error**

<b><u>Contract Number</u></b>	<b><u>Application received Date</u></b>	<b><u>Notice Date</u></b>	<b><u>Days &gt; 5</u></b>
110000734	11/25/2009	12/07/2009	6
600015050	10/08/2010	10/18/2010	6

**4. Failure of Producer to Sign Statement Advising that the Applicant has Existing Policies or Contracts – 1 File in Error**

**Contract Number**  
110000610

## APPENDIX B – Annuity Suitability Errors

### 1. Failure to Document Compliance with Suitability Requirements - 18 Files in Error (Improper General Business Practice)

<u>Contract Number</u>	<u>Contract Number</u>
110000649	100059431
110000647	100059816
110000648	100059800
100059750	100060472
100059778	100059833
110000638	100059795
110000651	110001264
100059396	110000683
100059781	100059794

## **APPENDIX C – ADVERTISING and FORM ERRORS**

### **1. Misleading Advertisement – 1 Advertisement in Error**

#### **Advertising Form Number**

10-IFA, 10-WSC

### **2. Incorrect New Jersey Department of Banking and Insurance Website Address on Advertising Form – 1 File in Error**

#### **Advertising Form Number**

EB015911

## VIII. VERIFICATION PAGE

I, Monica Koch, am the Examiner-in-Charge of the Market Conduct Examination of Guardian Insurance and Annuity Company conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct examination of Guardian Insurance and Annuity Company as of December 19, 2011.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

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Date

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Monica Koch  
Examiner-In-Charge  
New Jersey Department  
of Banking and Insurance