

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)	
Banking and Insurance, State of New)	
Jersey, with respect to New York Life)	CONSENT
Insurance & Annuity Company NAIC No. 91596)	ORDER
and NYLIFE Insurance Company of Arizona,)	
NAIC No. 81359 and New York Life)	CONSENT
Insurance Company NAIC # 66915)	

TO: New York Life Insurance & Annuity Company
51 Madison Ave
New York, NY 10010

This matter, having been opened to the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon the filing of a Market Conduct Examination Report (the Report) containing the results of the May 1, 2008 through April 30, 2009 examination of certain advertising transactions, replacements, claim denials and agent files of New York Life Insurance Company; New York Life Insurance & Annuity Company and NYLIFE Insurance Company of Arizona (the Companies) performed by the Department of Banking and Insurance (Department) pursuant to the authority provided at N.J.S.A. 17:23-20 et seq.; and

WHEREAS, the market conduct examination revealed certain instances, as fully set forth in the Report, where the Companies practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

WHEREAS, based on the documentation and information submitted by the Companies, the Department is satisfied that the Companies have taken or will take corrective measures pursuant to the recommendations of the Report.

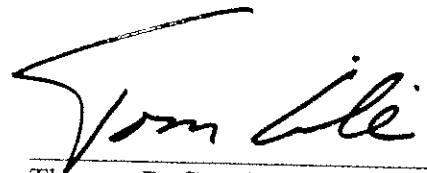
NOW, THEREFORE, IT IS on this 24th day of Sep, 2010

ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

IT IS FURTHER ORDERED AND AGREED that Companies shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report ; and

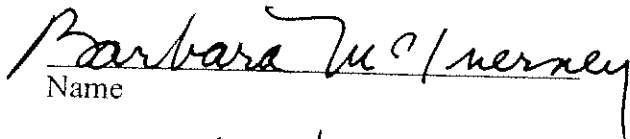
IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24d(1), within 30 days of the adoption of the Report, the Companies shall file an affidavit with the Department's Market Conduct Unit, stating under oath that its directors have received a copy of the adopted Report; and

IT IS FURTHER ORDERED AND AGREED that in accordance with N.J.S.A. 17:23-24e (1) the Department shall hold the content of the examination confidential for a period of 90 days.



Thomas B. Considine
Commissioner

Consented to as to form, content and entry


Name

Date: 9/14/10

Barbara McInerney
SVP & Chief Compliance Officer

nylfexamorder/amn

MARKET CONDUCT EXAMINATION

of

**NEW YORK LIFE INSURANCE COMPANY,
NEW YORK LIFE INSURANCE AND ANNUITY COMPANY,**

and

NYLIFE INSURANCE COMPANY OF ARIZONA

located in

NEW YORK, NEW YORK

as of

January 19, 2010

by EXAMINERS

of the

STATE of NEW JERSEY

DEPARTMENT of BANKING and INSURANCE

OFFICE of CONSUMER PROTECTION SERVICES

**MARKET CONDUCT EXAMINATION UNIT & ANTI-FRAUD
COMPLIANCE**

Date Report Adopted: October 5, 2010

Table of Contents

I. INTRODUCTION.....	1
II. COMPLAINTS.....	3
III. REPLACEMENT FILE REVIEW	5
IV. UNDERWRITING	10
V. CLAIMS REVIEW	11
VI. ADVERTISING AND FORMS.....	12
VII. AGENT DISCIPLINARY REVIEW	13
VIII. RECOMMENDATIONS.....	14
APPENDIX A – COMPLAINTS	15
VERIFICATION.....	16

I. INTRODUCTION

This is a report of the Market Conduct activities of the New York Life Insurance Company, New York Life Insurance and Annuity Company and NYLIFE Insurance Company of Arizona (hereinafter referred to collectively as “New York Life” or “the Company”). In this report, examiners of the New Jersey Department of Banking and Insurance (hereinafter “the Department” or “DOBI”) present their findings, conclusions and recommendations as a result of their market conduct examination.

A. SCOPE AND PURPOSE OF THE EXAMINATION

The examiners reviewed the life insurance business that the Company issued in New Jersey during the period May 1, 2008 to April 30, 2009. Between July 20, 2009 and August 14, 2009 and between October 19, 2009 and October 23, 2009, the examiners completed their fieldwork at the Company’s office in New York, New York. On various dates thereafter, the examiners completed their review work and report writing in Trenton, New Jersey. The Market Conduct team consisted of Monica Koch, Examiner-In-Charge, Ralph J. Boeckman and John Sivon. The Company provided the examiners with databases that included information on consumer complaints, underwriting and rating, agent disciplinary actions and claims. The examiners performed random and selected reviews by querying the databases in Microsoft Access or Excel format.

B. ERROR RATIOS

Error ratios are the percentage of files that the examiners found to be handled in error. Each file either mishandled or not handled in accordance with applicable state statutes or regulations is an error. Even though a file may contain multiple errors, the examiners counted the file only once in calculating the 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 Company corrected an error as a result of a consumer complaint or due to the examiners’ findings, the error is included in the error ratio. If the Company corrects an error independent of a complaint or DOBI intervention, the error is not included in the error ratios.

For purposes of the electronic database analyses, the examiners define an exception as a record in a database that does not meet specific criteria as set forth in database queries. The file or record has not been reviewed in depth by an examiner.

Whenever the examiners find that a company commits a type of error with sufficient frequency, they will cite the errors as an improper general

business practice. If an error constitutes an improper general business practice, the examiners have stated this in the report.

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

The examiners submitted written inquiries to Company representatives on the errors cited in this report. This provided New York Life the opportunity to respond to the examiners' findings and provide exception to the errors cited or mishandling of files reported herein. In response to these inquiries, New York Life agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the merits of each response and gave due consideration to all of its 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.

C. COMPANY PROFILE

The Company was originally chartered in May 1841 as Nautilus Insurance Company to write fire and marine insurance, inland navigation and transportation risks. In April 1843, the charter was amended to permit the Company to organize as a mutual company and write life insurance. On April 5, 1849, the company name was officially changed to New York Life Insurance Company.

Today, New York Life Insurance Company is licensed to conduct business in all 50 states and the District of Columbia. The Company currently offers individual life, annuity and long-term care insurance, separate account products, and group life, accident and health products to professional membership associations. The primary distribution channel for individual products is through its career agency system while group products are marketed through either independent agencies or direct marketing.

II. COMPLAINTS

A. INTRODUCTION

During the period of May 1, 2008 through April 30, 2009, New York Life's complaint register indicates that consumers filed 81 complaints against the Company. Consumers filed 11 complaints with the New Jersey Department of Banking and Insurance and 70 complaints directly with the Company. The examiners reviewed the Company's complaint register for compliance with N.J.S.A. 17B:30-13.2 (Complaint Handling Procedures) and N.J.A.C. 11:2-17.6 (Rules for Replying to Pertinent Communications).

B. COMPLAINT HANDLING ERRORS

Five claims complaints, 21 marketing and sales complaints and 55 policyholder service complaints make up the population of 81 complaints. The examiners completed a review of 30 direct complaints in the Company's database log. The review revealed four handling errors which represents an overall error ratio of 13%. In the following table, the examiners provide a breakdown of the errors by type of complaint.

<u>Type of Complaint</u>	<u>Files Reviewed</u>	<u>Errors</u>	<u>Error Ratios</u>
Direct Complaints:			
Claims	2	0	0%
Marketing and Sales	14	0	0%
Policyholder Services	<u>14</u>	<u>4</u>	29%
Total	30	4	13%

C. EXAMINERS' FINDINGS

1. Failure to Promptly Respond to Direct Complaint - 4 Files in Error

N.J.A.C. 11:2-17.6(e) requires that an appropriate response be provided to a claim-related communication received directly from an insured within 10 working days. Although this regulation applies to claims only, it does establish a reasonable guideline for non-claim related complaints.

The examiners found four complaints files where New York Life failed to provide a written response to the complainant within a reasonable period of 10 working days. Delays ranged from a low of 11 working days beyond 10 working days to a high of 176 working days beyond 10 working days.

The Company disagreed with the examiners' findings since none of the complaints was claim related. As stated above, however, the claim complaint response period provides a reasonable time standard for non-claim complaints.

The examiners cited these files as handling, as opposed to regulatory errors in the manner outlined in the introduction of this report.

See Appendix A for a List of Files in Error

III. REPLACEMENT FILE 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 policyholders by establishing minimum standards of agent and insurer conduct.

N.J.A.C. 11:4-2.2 defines 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.

N.J.A.C. 11:4-2.2 defines Financed Purchase as the purchase of a new policy involving the use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay premiums on a new policy owned by the same policyholder and issued by the same company four months before and 13 months after the effective date of the new policy.

One focus of this examination was a population review of the replacement activities of New York Life Insurance Company. The examiners placed emphasis on the Company’s ability to recognize and identify as replacements, all policy loans defined as a financed purchase. The Company provided the examiners with its replacement log that contained 887 life replacement policies and 1,372 annuity replacement policies that the Company wrote between May 1, 2008 and April 30, 2009. In addition, the Company provided the examiners with a policy disbursement database. This database indicated the nature of each disbursement. It included the following transactions: universal life withdrawal, surrender of paid up additions, policy

loan, partial surrender, full surrender, earned dividend payout, dividend withdrawal, combination loan and dividends, automatic premium loans and 1035 annuity exchanges. The examiners reviewed the disbursement and replacement databases to verify that New York Life implemented systematic measures to detect which replacement policies are financed purchases.

B. EXAMINER'S FINDINGS

The examiners' review indicates that New York Life has a series of procedures in place to detect replacements. The applications for life insurance solicit pertinent questions regarding existing policies and the funding of new policies. Once the application has been submitted, the process crosschecks all information supplied by the agent and applicant with the underwriting system to detect possible replacements. The information then is crosschecked and followed up with letters/surveys that are sent to the applicant to confirm the statements submitted on the application.

C. DATABASE ANALYSIS

The examiners requested from New York Life a policy transaction database for the period May 1, 2008 through April 30, 2009. The database contained specific information regarding new business that occurred in households with existing New York Life policies as well as households without any existing New York Life products. In addition, the Company provided the examiners with databases that included disbursement records from households with multiple New York Life policies and the Company's replacement records.

For all policies, the Company provided the following information: the insured's name, policy number, premium, face amount, billing mode, effective date, name of agent, marketing information and the current status of any policies in the household. The examiners were particularly interested in the Company's systems for monitoring replacement transactions and the Company's ability to identify funds from existing policies utilized to finance a new policy.

The examiners developed a series of computer queries to obtain certain information from the aforementioned databases. These queries provided the examiners with the following information:

Life Products

1. Total New Jersey policies in force during review period is 132,910 as follows:

<u>In force Category</u>	<u>Number of Policies</u>	<u>Percent of Total</u>
Unmatched (one policy per household)	48,703	37%
Matched (more than one per household)	75,966	57%
Not in House holding Report*	<u>8,241</u>	<u>6%</u>
Total in force	132,910	100%

* - products sold through the Bank and Brokerage Network

2. New policies issued in New Jersey during the review period is 9,401 as follows:

<u>In force Category</u>	<u>Number of Policies</u>	<u>Percent of Total</u>
Unmatched (one policy per household)	3,168	34%
Matched (more than one per household)	5,541	59%
Not in House holding Report*	<u>692</u>	<u>7%</u>
Total New Policies	9,401	100%

* - products sold through the Bank and Brokerage Network

3. Matched policies with disbursements is 12,158 as follows:

<u>Type of Transaction</u>	<u>Number of Policies</u>	<u>Percent of Total</u>
Universal Life Withdrawal	25	<1%
Surrender of Paid up Additions	1,953	16%
Policy Loan	3,977	33%
Partial Surrender	180	1%
Full Surrender	12	<1%
Earned Dividend Payout	1,359	11%
Dividend Withdrawal	137	1%
Combination Loan and Dividend	53	<1%
Automatic Premium Loan	4,459	37%
1035 Exchange	<u>3</u>	<u><1%</u>
Total Disbursements	12,158	100%

4. Total policy replacements is 887 as follows:

<u>Type of Replacement</u>	<u>Number of Policies</u>	<u>Percent of Total</u>
External Replacements	216	24%
Internal Replacements	<u>671</u>	<u>76%</u>
Total	887	100%

Based on the statistics presented above, 37% of New York Life's book of business is comprised of one policy households (unmatched business), and 57% of its book of business consists of two or more policies per household (matched business). The examiners noted that the distribution of New York Life's

matched and unmatched new business for the review period is similar to that of the overall in-force book of business: 34% of the company's new business was unmatched, while 59% of the new business was matched.

The examiners also noted that replacements accounted for 9% (887/9,401=9%) of all new business written during the review period. Of these, internal replacements accounted for only 7% (671/9,401=7%) of all new policies, and external replacements accounted for only 2% (216/9,401=2%). Based on the databases provided by the company, the examiners found no indication of excessive internal or external replacement activity.

Annuity Products

5. Total New Jersey annuities in force during review period is 16,298 as follows:

<u>In force Category</u>	<u>Number of Annuities</u>	<u>Percent of Total</u>
Unmatched (one contract per household)	2,501	15%
Matched (more than one per household)	3,734	23%
Not in House holding Report*	<u>10,063</u>	<u>62%</u>
Total in force	16,298	100%

* - products sold through either the supplemental distribution channel or Advanced Market Network, including, for example, investment firms that write on behalf of New York Life.

6. New annuities issued in New Jersey during the review period is 5,568 as follows:

<u>In force Category</u>	<u>Number of Annuities</u>	<u>Percent of Total</u>
Unmatched (one contract per household)	469	8%
Matched (more than one per household)	989	18%
Not in House holding Report*	<u>4110</u>	<u>74%</u>
Total New Policies	5,568	100%

* - products sold through either the supplemental distribution channel or Advanced Market Network, including, for example, investment firms that write on behalf of New York Life.

7. Matched annuities with disbursements is 1,295 as follows:

<u>Type of Transaction</u>	<u>Number of Policies</u>	<u>Percent of Total</u>
Partial Withdrawal	840	64.86%
Full Surrender	453	34.98%
Annuitization	<u>2</u>	<u>00.16%</u>
Total Disbursements	1,295	100.00%

8. Total annuity replacements is 1,372 as follows:

<u>Type of Replacement</u>	<u>Number of</u>	<u>Percent of</u>
----------------------------	------------------	-------------------

	<u>Policies</u>	<u>Total</u>
External Replacements	1232	90%
Internal Replacements	<u>142</u>	<u>10%</u>
Total	1374	100%

Based on the statistics presented above, 15% of New York Life's annuities book of business is comprised of one annuity households (unmatched business), and 23% of its book of business consists of two or more annuities per household (matched business). The examiners noted that the distribution of New York Life's matched and unmatched new business for the review period is similar to that of the overall in-force book of business: 8% of the company's new business was unmatched, while 18% of the new business was matched.

The examiners also noticed that replacements accounted for 25% (1,372/5,568=25%) of all new business written during the review period. Of these, internal replacements accounted for only 3% (142/5,568=3%) of all new policies, and external replacements accounted for 22% (1,232/5,568=22%). Based on the databases provided by the Company, the examiners found no indication of excessive internal or external replacement activity.

D. SUMMARY

According to the information provided by the Company, New York Life has computer systems that detect if a new policy is a replacement, including those involving financed purchases, for an existing policy. The Company's application for life insurance asks pertinent questions regarding existing policies and the funding of new policies. If the applicant does not answer these questions, the Company sends the application back to the agent for completion. Additionally, the Company sends a follow-up survey to newly issued policies asking questions regarding the funding of new policies. Also, the Company sends the insured a letter to confirm the replacement transaction listing all relevant policies.

IV. UNDERWRITING

A. INTRODUCTION

The examiners reviewed randomly selected life policy files from New York Life's database of 132,910 policies that were in force during the review period of May, 1 2008 through April 30, 2009. As part of the examination, the examiners checked for compliance with N.J.A.C. 11:4-52 (life insurance illustrations) as well as New York Life's underwriting criteria.

B. ERROR RATIOS

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Random Reviews			
New York Life Insurance Company	119	0	0%
New York Life and Annuity Insurance Company	<u>30</u>	<u>0</u>	0%
Total	149	0	0%

C. EXAMINERS' FINDINGS

1. Failure to Provide the Correct Policy Illustration – 1 File in Error

N.J.A.C. 11:4-52.4(a)3 requires that an illustration be used in the sale of a life insurance policy to contain the name, age and sex of the proposed insured.

On ordinary life policy 49155752, the examiners found that the illustration used in the sale of this policy did not correspond to the named insured. The illustration was prepared using the name, age and sex of the applicants' husband. Although the incorrect name, gender and age appeared on the illustration, after issuance of the policy and prior to the effective date, the Company corrected the error to reflect the proper premium charge according to the insured's age, sex and gender. In response to an inquiry, the Company agreed with the examiners' findings. The examiners did not include this error in the error ratio since the Company corrected this error independent of any complaint or DOBI involvement.

V. CLAIMS REVIEW

A. INTRODUCTION

New York Life denied 15 life insurance claims that were submitted during the review period May 1, 2008 to April 30, 2009. The examiners reviewed all 15 denied closed claims and checked for compliance with N.J.A.C. 11:2-17.1 et seq. The examiners found that New York Life provided a detailed notice of denial to the insureds. The examiners found no other errors on these files.

B. ERROR RATIOS

The examiners calculated error ratios for the review period by applying the procedures outlined in the introduction to this report. The following chart itemizes the number of files reviewed and the number and percentage of errors they found:

<u>Type of Claim</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Random Review			
Denied	15	0	0%
Total	15	0	0%

VI. ADVERTISING AND FORMS

A. INTRODUCTION

New York Life provided the examiners with 304 advertising and marketing materials and 33 forms that the Company utilized to solicit individual life insurance and annuities during the review period. The examiners reviewed 175 advertising files for compliance with N.J.A.C. 11:2-23.1 et seq. (regulations governing advertisement of life insurance), N.J.A.C. 11:4-11.1 et seq. (regulations governing life insurance solicitation) 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 and other forms for compliance with N.J.A.C. 11:4-11.3 et seq. (duties of insurers). The examiners found no errors on the 210 advertising files reviewed.

B. ERROR RATIOS

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Select	175	0	0%
Buyer's Guide	2	0	0%
Forms	<u>33</u>	<u>0</u>	<u>0%</u>
Total	210	0	0%

VII. AGENT DISCIPLINARY REVIEW

A. INTRODUCTION

The examiners reviewed records of New York Life agents who were investigated or disciplined during the review period beginning May 1, 2008 through April 30, 2009. The purpose of the review was to determine the number of agents investigated or disciplined, the type of investigation, disciplinary action implemented and the underlying reasons prompting investigation and/or disciplinary activity. The examiners also reviewed the extent to which New York Life investigated and disciplined agents for improper sales practices.

B. EXAMINERS' FINDINGS

The examiners requested agent investigation and discipline records. New York Life submitted a disciplinary log, which listed 11 agents as being disciplined. The disciplinary actions consisted of warning letters to each of the agents.

The examiners reviewed the entire agent file and crosschecked each agent against the replacement register as well as recaptured commission data provided by the Company. Analysis of the data showed that no agent was disciplined for activities related to the replacement of annuities or life insurance policies.

VIII. RECOMMENDATIONS

The recommendations below are applicable to individual insurance only as set forth in the Scope of Examination at the start of this report. New York Life should inform all employees, including all outside sales staff who may have handled the areas cited in this report, of the examiners' findings. The New Jersey Department of Banking and Insurance recommends the remedial measures listed below and that the Company 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, more errors may have occurred.

If any non-compliant practices were identified in this report, some of 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 and regulations. When applicable, corrective action for other jurisdictions should be addressed.

The examiners acknowledge that during the examination, New York Life agreed and had already complied with, either in whole or in part, some of the recommendations. 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 Market Conduct Examinations and Anti-Fraud Compliance Unit, 20 West State Street, PO Box 329, Trenton, NJ 08625, within thirty (30) days of the date of the adopted report.

B. COMPLAINTS

1. NY Life should issue a written reminder to appropriate personnel stating that 10 working days is considered a prompt response to a complaint.

C. UNDERWRITING

2. The Company should issue a written reminder to all appropriate personnel stating that N.J.A.C. 11:4-52.4(a)3 requires that an illustration used in the sale of a life insurance policy must contain the correct name, age and sex of the proposed insured.

APPENDIX A – COMPLAINTS

Failure to Promptly Respond to Direct Complaint - 4 Files in Error

<u>Policy Number</u>	<u>Document Receipt Date</u>	<u>Document Response Date</u>	<u>Total Work Days to Respond</u>	<u>Days Beyond 10 Working Days</u>
46692556	2/24/09	4/10/09	33	23
48442992	6/23/08	8/4/08	29	19
48996617	9/8/08	10/7/08	21	11
48851723	5/23/08	2/17/09	186	176

VERIFICATION

I, Monica Koch, am examiner-in-charge of the Market Conduct Examination of the New York Life Insurance Company conducted by the examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as required 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 the New York Life Insurance Company as of January 19, 2010.

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.

5/10/10

Date

Monica Koch

Monica Koch
Examiner-in-Charge
New Jersey Department
Banking and Insurance