

DELAWARE DEPARTMENT OF INSURANCE

MARKET CONDUCT EXAMINATION REPORT

American Equity Investment Life Insurance Company

NAIC # 92738

6000 Westown Parkway

West Des Moines, Iowa 50266-5921

As of

June 30, 2011

Karen Weldin Stewart, CIR-ML  
Commissioner



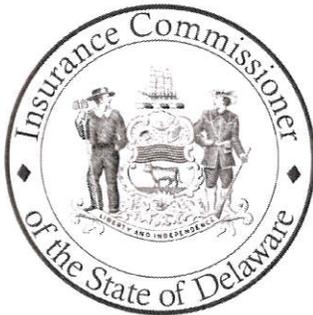
Delaware Department of Insurance

I, Karen Weldin Stewart, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON EXAMINATION, made as of June 30, 2011 on

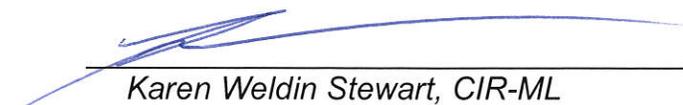
**American Equity Investment Life Insurance Company**

is a true and correct copy of the document filed with this Department.

Attest By: 



In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Dover.

  
\_\_\_\_\_  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

Karen Weldin Stewart, CIR-ML  
Commissioner



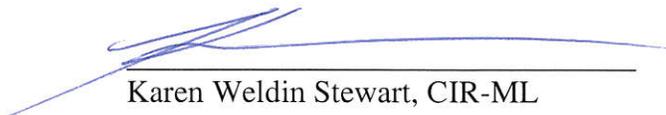
Delaware Department of Insurance

REPORT ON EXAMINATION  
OF THE  
**American Equity Investment Life Insurance Company**  
AS OF  
June 30, 2011

The above-captioned Report was completed by examiners of the Delaware Department of Insurance.

Consideration has been duly given to the comments, conclusions and recommendations of the examiners regarding the status of the Company as reflected in the Report.

This Report is hereby accepted, adopted and filed as an official record of this Department.



Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

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Honorable Karen Weldin Stewart CIR-ML  
Insurance Commissioner  
State of Delaware  
841 Silver Lake Boulevard  
Dover, Delaware 19904

Dear Commissioner Stewart:

In compliance with the instructions contained in Certificate of Examination Authority Number 11.ANN.11, and pursuant to statutory provisions including 18 Del. CODE §318-322, a market conduct examination has been conducted of the affairs and practices of:

**American Equity Investment Life Insurance Company**

The examination was performed as of June 30, 2011. American Equity Investment Life Insurance Company, hereinafter referred to as the "Company" or as "American Equity," was incorporated under the laws of Iowa. The examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the examination was conducted at the following Company location:

6000 Westown Parkway  
West Des Moines, IA 50266

The off-site examination phase was performed at the offices of the Delaware Department of Insurance, hereinafter referred to as the "Department" or "DDOI," or other suitable locations.

The report of examination herein is respectfully submitted.

## EXECUTIVE SUMMARY

American Equity Investment Life Insurance Company (the "Company") incorporated in Iowa on December 28, 1995, and commenced business on December 29, 1995. The Company's main administrative offices are located in West Des Moines, IA.

On their 2010 annual statement filed with the Department, the American Equity Investment Life Insurance Company reported Delaware direct premiums of \$15,838,927 of which all were direct annuity considerations and the subject of the examination.

The examination was announced as part of an examination series on companies in the Annuity marketplace in Delaware. The examination focused on the Company's annuity business in the following areas of operation: Company Operations/Management; Complaint Handling, Marketing and Sales, Producer Licensing, and Underwriting and Rating. This effort is being conducted to ensure compliance with 18 Del. Admin. Code 1214 Senior Protection in Annuity Transactions, 18 Del. Admin Code 1204 Replacements, and 18 Del. CODE §1716 Notification to Insurance Commissioner of Termination.

The following exceptions were noted in the areas of operations reviewed:

- Company Operations and Management - 1 Exception - 18 Del. CODE §2712. Filing, approval of form.
  - For not following the instructions associated with a form approval.
- Marketing and Sales - 5 Exceptions - 18 Del. CODE §2304(2). Unfair methods of competition and unfair or deceptive acts or practices defined
  - For utilizing marketing and sales materials which were not clear or accurate and could be considered misleading.
- Underwriting and Rating - Issued Annuities: 115 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.
  - For utilizing contract forms prior to approval by the Delaware Department of Insurance
- Underwriting and Rating - Surrendered Annuities: 4 Exceptions – 18 Del. CODE §2304. Unfair methods of competition and unfair or deceptive acts or practices defined.
  - For failure to disclosure all associated fees related to a surrendered annuity.
- Underwriting and Rating - Replaced Annuities: 82 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.
  - For utilizing contract forms prior to approval by the Delaware Department of Insurance

- Underwriting and Rating - Replaced Annuities: 4 Exceptions - 18 Del. Admin. Code 1204 §5.2 Replacement of Life Insurance
  - For acceptance of applications not signed by the applicant and producer.
- Underwriting and Rating - Replaced Annuities: 8 Exceptions - 18 Del. Admin. Code 1204 §7.1 Replacement of Life Insurance
  - For failure to send notifications to existing insurers of a pending replacement within seven days.

## **SCOPE OF EXAMINATION**

The Market Conduct Examination was conducted pursuant to the authority granted by 18 Del. CODE §318-322 and covered the experience period of January 1, 2010, through June 30, 2011, unless otherwise noted. The purpose of the examination was to determine Company's compliance with Delaware insurance laws and regulations related to the annuity market place.

The examination was a target market conduct examination of the Company's Senior Annuity in the following areas of operation: Company Operations and Management; Complaint Handling, Marketing and Sales, Producer Licensing, and Underwriting and Rating.

## **METHODOLOGY**

This examination was performed in accordance with Market Regulation standards established by the Department and examination procedures suggested by the NAIC. While examiners report on the errors found in individual files, the examination also focuses on general business practices of the Company.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

Delaware Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. An exception is any instance of Company activity that does not comply with an insurance statute or regulation. Exceptions contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of exceptions identified during the examination and review written summaries provided on the exceptions found.

## **COMPANY HISTORY AND PROFILE**

American Equity Investment Life Insurance Company was formed to develop, market, issue and administer annuities and life insurance. The Company was incorporated December 28, 1995, under the provisions of the Iowa Insurance Code as a stock life insurance company and commenced business on December 29, 1995.

The Company is a wholly-owned subsidiary of American Equity Investment Life Holding Company. They are a full service underwriter of fixed annuity and life insurance products with their business consisting primarily of the sale of fixed index and fixed rate annuities. As of December 31, 2010, the Company was licensed to sell their products in 49 states and the District of Columbia.

The Company's annual statement for 2010 nationwide reported a total of \$4.1 billion in premiums. The Delaware state page detailed 2010 premiums of \$15,838,927 of which all were annuity considerations and the subject of the examination.

## **COMPANY OPERATIONS AND MANAGEMENT**

### **Internal Audit**

The Company provided copies of their internal audit and compliance procedures. The internal audits and procedures were reviewed. The Company was able demonstrate reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings. Additionally, the lines of communication, control and responsibility are in place to mitigate any significant findings.

No exceptions were noted.

### **Policy Forms**

The Company provided a list of all annuity contracts in-force. The Company identified a universe of 1,051 Annuities in-force in the state of Delaware. Of the 1,051 annuities in-

force, 58 annuities consisted of contracts with the RG-FIA-09B form number. A review indicated that these contracts were approved with the provision that quarterly a Financial Investment Report be filed with the Department. The Company was unable to provide this Report.

Additionally, form approvals under replacements were reviewed to ensure additional compliance with 18 Del. CODE §2712, Filing, approval of forms. Exceptions related to the underwriting section review are addressed in the respective report section, as appropriate. The following exception was noted:

**1 Exception - 18 Del. C. §2712. Filing, approval of forms.**

*(a) No basic insurance policy or annuity contract, form, or application form where written application is required and is to be made a part of the policy or contract or printed rider or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner.*

***The following form was not properly filed with the Delaware Department of Insurance, as required:***

- RG-FIA-09B

The filing approval of RG-FIA-09B contained a requirement that the Company file a quarterly Financial Investment Report with the Department. The Company failed to follow the reporting requirements as directed in the form approval. The form language was utilized as approved in all 58 policies noted above.

Within the issued policy review, the examiners found a number of policies containing a non-approved policy form. The non-approved policy forms were not always included in policy when issued. These violations are documented in the Underwriting and Rating review.

*Recommendation:* It is recommended that the Company comply with all provisions within an approved form filing, as required within 18 Del. CODE §2712.

## **CONSUMER COMPLAINTS**

The Company provided a listing of all Delaware consumer complaints, Department of Insurance complaints, and their complaint handling procedures/guidelines during the experience period. The Company reported there were no Department of Insurance or consumer complaints from Delaware during the examination period.

No exceptions were noted.

## **PRODUCER LICENSING**

The Company provided a list of all producers, active and terminated during the experience period, in addition to the Company's oversight policies and procedures regarding the following activities:

- Appointment Procedures
- Product Training & Compliance
- Allegations of Misconduct Reports
- Producer Terminations
- Monitoring Producer Replacement Activity

The policies and procedures were reviewed. The Company provided a list with 23 terminations. The entire list was compared to departmental records of producers to verify appointments, terminations and licensing. Further, Individual Underwriting Files were reviewed for producer and producer licensing irregularities. Exceptions or violations noted as part of that review are noted in the appropriate file review section, as applicable.

No exceptions were noted.

## **MARKETING AND SALES**

The Company provided a list of all advertising and marketing material available for use during the experience period. The Company listed 1,571 company produced marketing materials and 26 producer generated materials used and distributed during the experience period. The advertising and marketing materials consisted of advertisements, ad slicks, brochures, disclosures, emails, informational sheets, videos, postcards, flyers, posters and power point presentations. The Marketing Material population count and sample requested and reviewed is summarized as follows:

<b>Advertising Material</b>	<b>Count</b>	<b>Sample</b>
Agent/Producer Prepared Materials	26	26
Company Produced Materials	1571	25
<b>Total</b>	<b>1597</b>	<b>51</b>

The advertising materials and the Company's web site were reviewed to ensure compliance with the applicable statutory and regulatory provisions.

**5 Exceptions - 18 Del. CODE §2304. Unfair methods of competition and unfair or deceptive acts or practices defined.**

*The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:*

*(1) Misrepresentations and false advertising of insurance policies. -- No person shall make, issue, circulate or cause to be made, issued or circulated any estimate, circular, statement, sales presentation, omission or comparison which:*

*a. Misrepresents the benefits, advantages, conditions or terms of any insurance policy;*

*b. Misrepresents the dividends or share of the surplus to be received on any insurance policy;*

*(2) False information and advertising generally. -- No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which is untrue, deceptive or misleading.*

The marketing and sales materials in question contained a comparison rate of return chart utilizing a fixed return, the S&P 500 and an index annuity return that is no longer offered by the Company. The index annuity which is no longer available out performed the fixed rate of return and the S&P 500 from a historical perspective. The utilization of closed index annuity as a marketing device with current applicants is misleading.

*Recommended:* It is recommended that the Company ensure its procedures enable it to identify and update all marketing and sales documentation to provide clear and accurate information that is current with investment comparisons that are not misleading to the insurance consumer and comply with 18 Del. CODE §2304.

## **UNDERWRITING AND RATING**

### **A) Issued Annuities**

The Company identified a universe of 203 annuities issued in the state of Delaware by American Equity during the experience period. A random sampling of 50 annuity contracts was reviewed. The following violations were noted:

**115 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.**

*(a) No basic insurance policy or annuity contract, form, or application form where written application is required and is to be made a part of the policy or contract or printed rider or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner.*

The 115 exceptions were derived from individual files with multiple forms exceptions within a single file. The findings all relate to disclosure statements within the sampled annuities because the disclosures vary from the approved System for Electronic Rate and Form Filing (SERFF) filings. The following forms were noted as not agreeing to the SERFF filing; Retirement Gold 1114-D, Lifetime Benefit Rider 1127-D, Bonus Gold Index Disclosure 1084-D, and the prior mentioned RG-FIA-09B

*Recommendation:* It is recommended that the Company ensure all forms are properly filed prior to use as required by 18 Del. CODE §2712.

**B) Terminated/Cancelled Annuities**

The Company provided a list of 30 annuities terminated during the experience period. These files were reviewed to ensure that terminations were not the result of any discriminatory underwriting practice. The files terminated due to death were reviewed for compliance with 18 Del. Admin. Code 902.

No exceptions were noted.

**C) Not Taken Annuities**

The Company provided a list of all annuity contracts not taken during the experience period. The Company indicated no annuity contracts were issued and not taken at delivery.

No exceptions were noted.

**D) Surrendered Annuities**

The Company identified a universe of 48 annuities surrendered by American Equity during the experience period. All 48 surrendered annuities were reviewed. The following violations were noted:

**4 Exceptions – 18 Del. CODE §2304. Unfair methods of competition and unfair or deceptive acts or practices defined.**

*The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:*

*(1) Misrepresentations and false advertising of insurance policies. -- No person shall make, issue, circulate or cause to be made, issued or circulated any estimate, circular, statement, sales presentation, omission or comparison which:*

*(a). Misrepresents the benefits, advantages, conditions or terms of any insurance policy;*

The noted exceptions involved surrenders with Market Value Adjustments (MVA) calculations which lowered the annuity value at the time of the surrender. The surrender letters presented to the annuitant did not contain a breakdown of the surrender charges explaining how the MVA affected the annuity value. This lack of detailed information is considered misleading to the annuitant.

*Recommendation:* It is recommended that the Company provide a breakdown of the surrender charges with detail that provides a separate line item for the Market Value Adjustment, when appropriate, to comply with 18 Del. CODE §2304.

**E) Replaced Annuities**

The Company identified a universe of 35 Annuities issued in the state of Delaware by American Equity during the experience period. All 35 replacement annuity contracts were reviewed. The following violations were noted:

**82 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.**

*(a) No basic insurance policy or annuity contract, form, or application form where written application is required and is to be made a part of the policy or contract or printed rider or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner.*

The 82 exceptions were derived from individual files with multiple forms exceptions within a single file. The findings all relate to changes related to disclosure statements which varied from SERFF filings.

*Recommendation:* It is recommended that the Company ensure all forms are properly filed prior to use as required by 18 Del. CODE §2712.

#### **4 Exceptions - 18 Del. Admin. Code 1204 §5.2 Replacement of Life Insurance**

*Where replacement is involved, the agent or broker shall:*

*5.2.1 Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" (Delaware Insurance Form R, attached as Exhibit A), or other substantially similar form approved by the Commissioner. The notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant.*

The replacement forms were not dated and signed at the time of application.

*Recommendation:* It is recommended that the Company ensure its procedures enable it to provide all replacement documents at the time of taking the application as required by 18 Del. Admin. Code 1204 §5.2.

#### **8 Exceptions - 18 Del. Admin. Code 1204 §7.1 Replacement of Life Insurance**

*Each insurer that uses an agent of broker in a life insurance or annuity sale shall:*

*7.1.2 Where a replacement is involved:*

*7.1.2.2 Send to each existing insurer a written communication advising of the replacement or proposed replacement of the policy. The communication should include the information obtained pursuant to section 7.1.2.1 above and a Summary or Ledger Statement describing the proposed new policy. This written communication shall be made within 7 working days of the date the application is received in the replacing insurer's home office, or the date the proposed life insurance policy or annuity contract is issued, whichever is sooner.*

The written communication advising of the replacement to the existing insurer was not provided as required (five files) or was beyond 7 working days (three files).

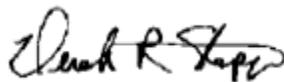
*Recommended:* It is recommended that the Company ensure its procedures enable it to provide a timely notice to the replacing insured as required by 18 Del. Admin. Code 1204 §7.1.

## CONCLUSION

The recommendations made below identify corrective measures the Department finds necessary as a result of the exceptions noted in the Report. Location in the Report is referenced in parenthesis.

1. It is recommended that the Company comply with all provisions within an approved form filing, as required within 18 Del. CODE §2712(Company Operations and Management - Policy Forms)
2. It is recommended that the Company ensure a timely notice of replacement is provided to the replacing insured as required by 18 Del. Admin. Code 1204 §7.1. (Marketing and Sales)
3. It is recommended that the Company ensure all replacement documents are provided at the time of taking the application as required by 18 Del. Admin. Code 1204 §5.2. (Underwriting and Rating - Issued Annuities and Replaced Annuities)
4. It is recommended that the Company ensure all forms are properly filed prior to use as required by 18 Del. CODE §2712. (Underwriting and Rating - Replaced Annuities)
5. It is recommended that the Company provide a breakdown of the surrender charges with detail that provides a separate line item for the Market Value Adjustment, when appropriate, to comply with 18 Del. CODE §2304.. (Underwriting and Rating - Replaced Annuities)
6. It is recommended that the Company ensure all forms are properly filed prior to use as required by 18 Del. CODE §2712. (Underwriting and Rating - Surrendered Annuities)
7. It is recommended that the Company ensure all marketing and sales documentation provides clear and accurate and comply with 18 Del. CODE §2304. (Underwriting and Rating - Surrendered Annuities)

The examination conducted by Shelly Schuman, Derek R. Stepp, Gwendolyn Douglas, John Rucidlo, and Candace Walker is respectfully submitted.



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Derek R. Stepp, CIE, MCM  
Examiner-in-Charge  
Market Conduct  
Delaware Department of Insurance