DELAWARE DEPARTMENT OF INSURANCE

MARKET CONDUCT EXAMINATION REPORT

Forethought Life Insurance Company

NAIC #91642
One Forethought Center
Batesville, IN, USA 47006

As of
December 31, 2016

Trinidad Navarro
Commissioner

Delaware Department of Insurance

I, Trinidad Navarro, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON EXAMINATION, made as of December 31, 2016 on

Forethought Life Insurance Company

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

Attest By: _____

Insurance Commissioner of the State of Delaware

In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Dover, this 15th day of October, 2018.

_____
Trinidad Navarro
Insurance Commissioner

841 Silver Lake Blvd., Dover, DE 19904-2465 • www.insurance.delaware.gov
(302) 674-7300 Dover • (302) 739-5280 fax • (302) 577-5280 Wilmington

Trinidad Navarro
Commissioner

Delaware Department of Insurance

REPORT ON EXAMINATION

OF THE

Forethought Life Insurance Company

AS OF

December 31, 2016

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.

Insurance Commissioner of the State of Delaware

In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Dover, this 15th day of October, 2018.

Trinidad Navarro
Insurance Commissioner

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Honorable Trinidad Navarro
Insurance Commissioner
State of Delaware
841 Silver Lake Boulevard
Dover, Delaware 19904

Dear Commissioner Navarro:

In compliance with the instructions contained in Exam Authority Number 91642-ANN-16-593, and pursuant to statutory provisions including 18 *Del. C.* §§ 318 - 322, a market conduct examination has been conducted of the affairs and practices of:

Forethought Life Insurance Company NAIC #91642

The examination was performed as of December 31, 2016. The examination consisted of an off-site phase which 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

According to the 2016 Annual Statement for the State of Delaware Forethought Life Insurance Company reported direct business life insurance premiums in the amount of $2,568,635 and annuity considerations in the amount of $18,975,145. As of the 2016 Annual Statement, Forethought Life Insurance Company reported direct business life insurance premiums in the amount of $248,392,090 and annuity considerations in the amount of $5,580,141,523 for all States, Territories, and Canada.

The examination was announced as part of a series of examinations on companies in the Annuity marketplace in Delaware. The examination focused on the Company's annuity and life insurance business in the following areas of operation: Company Operations and Management; Complaint Handling; Marketing and Sales; Producer Licensing; Policyholder Services; and Underwriting and Rating. This effort was conducted to gauge the Company's practices pertaining to suitability, replacement and surrender transactions.

All the exceptions were noted in the areas of Producer Licensing and Underwriting and Rating.

The following exceptions were noted and the details for the cited code references are noted in the section immediately following this summary:

- 1 Exception:
    - Individual Fixed Annuity Replacements

    18 *Del. Admin. C.* §1204 - 5.1.1 - Duties of Agents and Brokers.
    Each agent or broker who initiates the application shall, on the request of the prospective purchaser, furnish the Buyers Guide as described by Regulation 29 and shall submit to the insurer to which an application for life insurance or annuity is presented, with or as a part of each application:
    5.1.1 *statement signed by the applicant as to whether the replacement of existing life insurance or annuities are involved in the transaction;*

    The Company accepted an application in which the replacement question was answered incorrectly by the applicant.

- 2 Exceptions:
    - Individual Fixed Annuity Replacements

    18 *Del. Admin. C.* §1204 -5.1.2 - Duties of Agents and Brokers.
    Each agent or broker who initiates the application shall, on the request of the prospective purchaser, furnish the Buyers Guide as described by Regulation 29 and shall submit to the insurer to which an application for life insurance or annuity is presented, with or as a part of each application:
    5.1.2 *a signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction*

The Company accepted an application that omitted either the producer's signature or the producer's correct response in regard to the replacement question.

- 9 Exceptions:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity Replacements

  18 *Del. Admin. C.* §1204 - 5.2.1 - Duties of Agents and Brokers.
  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 Company failed to maintain evidence that the replacement notice was presented to the applicant no later than the time of taking the application.

- 1 Exception:
  - Individual Fixed Annuity New Issue

  18 *Del. Admin. C.* §1204 - 6.1.2 - Duties of All Insurers.
  Each Agent shall:
  6.1.2 *Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.*

  The Company failed to require, along with the completed application, a statement signed by the applicant as to whether the proposed annuity would replace an existing life insurance product or annuity.

- 2 Exceptions:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity Replacements

  18 *Del. Admin. C.* §1204 - 7.1.1 - Duties of Insurers That Use Agents or Brokers.

  Each insurer that uses an agent of broker in a life insurance or annuity sale shall:
  7.1.1 *Require with or as a part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.*

  The Company failed to require, along with the completed application, a statement signed and dated by the producer as to whether the proposed annuity would replace an existing life insurance product or annuity.

- 3 Exceptions:
  - Individual Fixed Annuity Replacements

- Individual Variable Annuity Replacements

18 *Del. Admin. C.* §1204 - 7.1.2.1.1 Duties of Insurers That Use Agents or Brokers.
Where a replacement is involved:
7.1.2.1 *Require from the agent or broker with the application for life insurance or annuity:*
7.1.2.1.1 *A list of all the applicant's existing life insurance or annuities to be replaced, and*
7.1.2.1.2 *A copy of the Replacement Notice provided the applicant pursuant to section 5.2.1.*
Such existing life insurance or annuity shall be identified by name of insurer, insured
and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

The Company failed to require a listing of the applicant's existing life insurance policies and/or annuities on the Replacement Notice.

- 18 Exceptions:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity Replacements

18 *Del. Admin. C.* §1204 - 7.1.2.2 Duties of Insurers That Use Agents or Brokers.
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 Policy is issued, whichever is sooner.*

The Company failed to send the existing insurer written communication advising of the replacement or proposed replacement of the policy within 7 working days.

- 42 Exceptions:
  - Individual Fixed Annuity New Issue
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity New Issue
  - Individual Variable Annuity Replacements

18 *Del. Admin. C.* §1204 - 7.3 Duties of Insurers That Use Agents or Brokers.
7.3 *The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the Policy Summary, and any Ledger Statements used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries or*

Ledger Statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

The Company failed to maintain evidence of the Notice Regarding Replacement.

- 1 Exception:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity New Issue
  - Individual Variable Annuity Replacements

  18 *Del. Admin. C.* §1214 - 6.2-6.2.4 Duties of Insurers and Insurance Producers.
  6.2 *Prior to the execution of an annuity transaction resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:*
  6.2.1 *the senior consumer's financial status;*
  6.2.2 *the senior consumer's tax status;*
  6.2.3 *the senior consumer's investment objectives; and*
  6.2.4 *such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.*

  The Company failed to maintain applicant information used to determine suitability in annuity sales.

- 1 Exception:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity New Issue
  - Individual Variable Annuity Replacements

  18 *Del. Admin. C.* §1214 - 8.0 Recordkeeping.
  8.1 *Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.*

  The Company failed to maintain documents used to determine suitability in annuity sales.

- 17 Exceptions:
  - Individual Fixed Annuity Replacements
  - Individual Variable Annuity Replacements

  18 Del. C. § 320(c) Conduct of examination; access to records; correction.
  (c) Every person being examined, the person's officers, attorneys, employees, agents and representatives, shall make freely available to the Commissioner, or

the Commissioner's examiners, the accounts, records, documents, files, information, assets and matters of such person, in the person's possession or control, relating to the subject of the examination and shall facilitate the examination.

The Company failed to provide pertinent information relating to the subject of the examination.

- 1 Exception:
  - Individual Variable Annuity New Issue

18 *Del. C.* § 1715. Appointments.

(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(b) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the Insurance Commissioner, a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request. The group appointment provision of this section is only applicable upon implementation by this Department of an electronic appointment process.

The Company accepted 33333insurance applications from a producer not duly appointed by the Company within 15 days of the receipt of the application.

DETAILS OF CODES IN VIOLATION:

As several of the violations are repeated in multiple sections of the Report, the applicable codes and regulations are summarized below for ease of reference:

18 *Del. Admin. C.* §1204 - 5.1.1 - Duties of Agents and Brokers.
Each agent or broker who initiates the application shall, on the request of the prospective purchaser, furnish the Buyers Guide as described by Regulation 29 and shall submit to the insurer to which an application for life insurance or annuity is presented, with or as a part of each application:
5.1.1 *statement signed by the applicant as to whether the replacement of existing life insurance or annuities are involved in the transaction;*

18 *Del. Admin. C.* §1204 -5.1.2 - Duties of Agents and Brokers.
Each agent or broker who initiates the application shall, on the request of the prospective purchaser, furnish the Buyers Guide as described by Regulation 29 and shall submit to

the insurer to which an application for life insurance or annuity is presented, with or as a part of each application:
5.1.2 *a signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.*

18 *Del. Admin. C.* §1204 5.2.1 - Duties of Agents and Brokers.
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.*

18 *Del. Admin. C.* §1204 -6.1.2 - Duties of All Insurers.
Each Agent shall:
6.1.2 *Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.*

18 *Del. Admin. C.* §1204 - 7.1.1 - Duties of Insurers That Use Agents or Brokers.
Each insurer that uses an agent of broker in a life insurance or annuity sale shall:
7.1.1 *Require with or as a part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.*

18 *Del. Admin. C.* §1204 -7.1.2.1.1 - Duties of Insurers That Use Agents or Brokers.
Where a replacement is involved:
7.1.2.1 *Require from the agent or broker with the application for life insurance or annuity:*
7.1.2.1.1 *A list of all the applicant's existing life insurance or annuities to be replaced, and*
7.1.2.1.2 *A copy of the Replacement Notice provided the applicant pursuant to section 5.2.1.*
Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

18 *Del. Admin. C.* §1204 - 7.1.2.2 - Duties of Insurers That Use Agents or Brokers.
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 Policy is issued, whichever is sooner.*

18 *Del. Admin. C.* §1204 - 7.3 - Duties of Insurers That Use Agents or Brokers.
7.3 *The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the Policy Summary, and any Ledger Statements used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries or Ledger Statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.*

18 *Del. Admin. C.* §1214 - 8.1 - Recordkeeping.
8.1 *Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.*

18 *Del. C.* § 320(c) - Conduct of examination; access to records; correction.
(c) Every person being examined, the person's officers, attorneys, employees, agents and representatives, shall make freely available to the Commissioner, or the Commissioner's examiners, the accounts, records, documents, files, information, assets and matters of such person, in the person's possession or control, relating to the subject of the examination and shall facilitate the examination.

18 *Del. C.* § 1715(a) – (b) – Appointments.
(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.
(b) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the Insurance Commissioner, a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request. The group appointment provision of this section is only applicable upon implementation by this Department of an electronic appointment process.

SCOPE OF EXAMINATION

The Market Conduct Examination was conducted pursuant to the authority granted by 18 *Del. C.* §§ 318 - 322 and covered the experience period of January 1, 2014 through December 31, 2016, unless otherwise noted. The purpose of the examination was to determine compliance by the Company with Delaware annuity suitability, replacement and surrender laws and regulations related to the sales and marketing of individual cash value life insurance, individual fixed annuities and individual variable annuities.

The examination was a targeted market conduct examination of the Company's life insurance and annuity business in the following areas of operation: Company Operations and Management; Complaint Handling; Marketing and Sales; Producer Licensing Policyholder Services; 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 examiners also focus 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

Forethought Life Insurance Company (formerly Fairfield Life Insurance Company) is domiciled in Indiana and was acquired by Forecorp, Inc., a subsidiary of Hillenbrand Industries, Inc., on July 1, 1986. Control was acquired by the purchase of 100% of the common stock of the company from General Reassurance Corporation of Stamford, Connecticut. The name "Forecorp, Inc." was changed in 1997 to Forethought Financial Services, Inc. Forethought Financial Services, Inc. ("FFSI") was acquired from Hillenbrand Industries, Inc. by Forethought Financial Group, Inc. ("FFG," formerly FFS Holdings, Inc.) on July 1, 2004. Century Capital Partners III, L.P., and Century Capital Partners, IV, L.P.

became principal stockholders on June 29, 2007. Private investment funds advised by Wellington Capital Management, LLC became principal stockholders on November 13, 2009.

On January 2, 2014, Forethought's parent company, Forethought Financial Group, Inc., was acquired by Global Atlantic (Fin) Company ("FinCo"), a subsidiary of Global Atlantic Financial Group Limited ("GAFGL"), pursuant to a merger transaction (the "Merger").

As a result of the Merger and certain other related transactions, FFG became a wholly owned, direct subsidiary of FinCo and Forethought became a direct subsidiary of Commonwealth Annuity and Life Insurance Company ("CwA"), which is directly (21%) and indirectly (79%) a wholly owned subsidiary of FinCo. FinCo and certain of its affiliates filed a Form A statement ("Form A") for the acquisition of control of FLIC with the Indiana Insurance Commissioner (the "Commissioner") on October 22, 2013, which was approved by order of the Commissioner on December 23, 2013. The Goldman Sachs Group, Inc. owns approximately 22% of the voting securities of GAFGL.

Forethought is an Indiana domiciled life insurance company licensed in 49 states (excluding New York), Puerto Rico and the District of Columbia as a life and annuity insurer. Forethought began issuing life insurance in 1985, focusing initially on preneed life insurance, where it established and has maintained a leading market position. In 2006 Forethought recruited a new executive management team with extensive experience in fixed and variable annuities with the intent to enter the annuity marketplace. In early 2007 Forethought successfully expanded its product lines from preneed life insurance to include fixed annuities and fixed indexed annuities sold through independent producers. In 2011 Forethought further expanded its annuity distribution by offering fixed annuities through banks and other financial institutions. On December 31, 2012, Forethought Financial Group, Inc., the parent of Forethought, completed its acquisition of the individual annuity new business capabilities and a broker-dealer from The Hartford. This acquisition broadened Forethought's annuity distribution platform to include the broker-dealer distribution channel while also facilitating the addition of a variable annuity product line.

According to the 2016 Annual Statement for the State of Delaware Forethought Life Insurance Company reported direct business life insurance premiums in the amount of $2,568,635 and annuity considerations in the amount of $18,975,145. As of the 2016 Annual Statement, Forethought Life Insurance Company reported direct business life insurance premiums in the amount of $248,392,090 and annuity considerations in the amount of $5,580,141,523 for all States, Territories, and Canada.

COMPANY OPERATIONS AND MANAGEMENT

The Company provided information documenting its management and operational procedures for the lines of business conducted in the state of Delaware, including:

- Company History and Profile
- Company Organization

- Internal Audit & Compliance
- Antifraud Program Compliance
- Managing General Agents (MGAs), General Agents (GAs), and Third-Party Administrators (TPAs)
- Company Records and Records Retention Policies and Procedures
- A statement that the Company's records are adequate, accessible, consistent and orderly, and comply with Delaware record retention requirements.
- Copies of Annual Reports for 2014, 2015, and 2016

The documents were reviewed to determine compliance with Delaware Laws and Regulations and NAIC Standards.

No exceptions were noted.

COMPLAINTS HANDLING

The Company noted no complaints for the experience period. There were no complaints lodged with the Delaware Department of Insurance.

No exceptions were noted.

MARKETING AND SALES

The Company provided a list of 2,364 advertising materials that were utilized during the exam period. The materials were then filtered to include only those client-facing materials that involved annuities. This resulted in a sub-universe of 786 advertisements from which a sample of 86 items was requested, received, and reviewed. Of the 86 advertising items reviewed, one item was a duplicate and 14 items were abandoned by the Company and never used. The advertising materials may have included: Letters, Direct Mailers, Brochures, Presentations, Radio and Television Scripts, Cards, Illustrations, Product Guides, Product Manuals, and the Company's Web Page. The advertising materials were reviewed to ascertain compliance with 18 *Del. C.* § 2303 - Unfair Methods of Competition and Unfair or Deceptive Acts or Practices and 18 *Del. C.* § 2304 - Unfair methods of competition and unfair or deceptive acts or practices defined.

No exceptions were noted.

PRODUCER LICENSING

The Company provided a list of 231 producers appointed with the Company in Delaware or authorized to conduct business in Delaware at any time during the examination period. A sample list of 79 producers was compared to departmental records of producers to

determine compliance with the Delaware licensing and appointment statutes and regulations. For examination purposes, producer licensing exceptions found in other sections of the examination were addressed in their respective sections.

No exceptions were noted.

POLICYHOLDER SERVICES

A) **Individual Fixed Annuity Contracts Surrendered**

The Company provided a list of 82 individual fixed annuity contracts surrendered during the experience period. All 82 contract files were requested, received, and reviewed. The files were reviewed to determine compliance with contract provisions, Delaware surrender laws and regulations, and the proper processing of any cash surrender value payment.

No Exceptions were noted.

B) **Individual Variable Annuity Contracts Surrendered**

The Company provided a list of variable annuities surrendered during the experience period. The Company identified a universe of 2 annuities surrendered. Both contract files were requested, received, and reviewed. The files were reviewed to determine compliance with pertinent statutes and regulations.

No Exceptions were noted.

UNDERWRITING AND RATING

A) **Individual Fixed Annuities – New Issue**

The Company identified a universe of 615 fixed annuity contracts issued as new during the experience period. A random sample of 86 fixed annuity contract files was requested. Of the original 86 files provided by the Company, the Examiners noted that twelve of those should have been categorized as either replacements or duplicates. The Company provided the examiners with an additional twelve files to replace the miscategorized files. The 86 files were reviewed to determine compliance with applicable statutes and regulations.

The following exceptions were noted:

1 Exception - 18 *Del. Admin. C.* 1204 § 6.1.2 - Duties of All Insurers

The applicant's replacement question was not addressed,

Recommendation: It is recommended the Company revise its procedures to ensure the replacement question is addressed and the replacement form is signed by the applicant in accordance with 18 *Del. Admin. C.* § 1204 - 6.1.2.

2 Exceptions - 18 *Del. Admin. C.* 1204 § 7.3 - Duties of Insurers That Use Agents or Brokers.

Evidence of the Notice Regarding Replacement was not maintained.

Recommendation: It is recommended the Company revise its procedures to ensure that evidence of the Notice Regarding Replacement is maintained in accordance with 18 *Del. Admin. C.* §1204 - 7.3.

B) **Individual Fixed Annuities - Replacements**

The Company identified a universe of 548 fixed annuity contracts issued as replacements during the examination period. All 86 annuity contract files were requested, received, and reviewed. The files were reviewed to determine compliance with Delaware issuance and replacement statutes and regulations.

The following exceptions were noted:

1 Exception - 18 *Del. Admin. C.* 1204 §5.1.1 - Duties of Agents and Brokers

The applicant's replacement question was answered incorrectly.

Recommendation: It is recommended the Company revise its procedures to ensure the required response to the replacement question is answered correctly by the applicant in accordance with 18 *Del. Admin. C.* 1204 § 5.1.1.

2 Exceptions - 18 *Del. Admin. C.* 1204 §5.1.2 - Duties of Agents and Brokers

The producer provided an incorrect response to the replacement question in one instance. The producer failed to sign the replacement form in one instance.

Recommendation: It is recommended the Company revise its procedures to ensure the correct response to the replacement question is provided by the producer and that the replacement form is signed by the producer in accordance with 18 *Del. Admin. C.* § 1204 -5.1.2.

6 Exceptions - 18 *Del. Admin. C.* § 1204 - 5.2.1 - Duties of Agents and Brokers
The "Notice Regarding Replacement" form was not maintained within the Company's records.

Recommendation: It is recommended the Company revise its procedures to ensure the replacement notice is presented to the applicant no later than the time of taking the application in accordance with 18 *Del. Admin. C.* § 1204 -5.2.1.

1 Exception - 18 *Del. Admin. C.* § 1204 - 7.1.1 - Duties of Insurers That Use Agents or Brokers.

The producer failed to date the replacement form.

Recommendation: It is recommended the Company revise its procedures to ensure the replacement statement is signed and dated by the producer in accordance with 18 *Del. Admin. C.* § 1204 - 7.1.1.

1 Exception - 18 *Del. Admin. C.* § 1204- 7.1.2.1.1 - Duties of Insurers That Use Agents or Brokers.

For failure to require that the existing insurer and contract number are listed on the Replacement Notice.

Recommendation: It is recommended the Company revise its procedures to ensure receipt of a listing of all the applicant's existing life insurance policies and/or annuities, along with the corresponding contract numbers, in accordance with 18 *Del. Admin. C.* § 1204 - 7.1.2.1.1

10 Exceptions - 18 *Del. Admin. C.* 1204 §7.1.2.2 - Duties of Insurers That Use Agents or Brokers.

The written communication advising the existing insurer of the replacement was missing in nine instances. In addition, there were six instances in which the notice to the existing insurer was not submitted within seven working days of the date the application was received in the replacing insurer's home office.

Recommendation: It is recommended the Company revise its procedures to ensure the written communication advising the existing insurer of the replacement is made within seven working days of the date the application is received in the replacing insurer's home office in accordance with 18 *Del. Admin. C.* §1204 - 7.1.2.2.

8 Exceptions - 18 *Del. Admin. C.* §1204 - 7.3 - Duties of Insurers That Use Agents or Brokers.

Evidence of the Notice Regarding Replacement was not maintained.

Recommendation: It is recommended the Company revise its procedures to ensure that evidence of the Notice Regarding Replacement is maintained in accordance with 18 *Del. Admin. C.* § 1204 - 7.3.

11 Exceptions – 18 *Del. C.* §320(c) - Conduct of examination; access to records; correction.

17 files were missing or were missing pertinent information.

Recommendation: It is recommended the Company revise its procedures to ensure that records are maintained and are readily accessible in accordance with 18 *Del. C.* § 320.

C) **Individual Variable Annuities - New Issue**

The Company identified a universe of 91 variable annuity contracts issued as new during the experience period. A random sample of 69 annuity contract files was requested, received, and reviewed. There were 12 replacement files in the new issue which were not reviewed. The remaining 22 files were reviewed. A total of 24 replacements in the sample were not reviewed in this section. The files were reviewed to determine compliance with issuance and replacement statutes and regulations.

The following exceptions were noted:

31 Exceptions - 18 *Del. Admin. C.* §1204 - 7.3 - Duties of Insurers That Use Agents or Brokers.

Evidence of the Notice Regarding Replacement was not maintained.

Recommendation: It is recommended the Company revise its procedures to ensure that evidence of the Notice Regarding Replacement is maintained in accordance with 18 *Del. Admin. C.* § 1204 - 7.3.

1 Exception- 18 *Del. Admin. C.* §1214 - 6.2-6.2.4 - Duties of Insurers and Insurance Producers

The Company failed to provide reasonable grounds for believing that the recommendation was suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

Recommendation: It is recommended the Company revise its procedures related to FINRA Rule 2211 (Suitability) to ensure that producers are conducting business in compliance with 18 *Del. Admin. C.* §1214 - 6.0.

1 Exception - 18 *Del. Admin. C.* §1214 - 8.0 - Recordkeeping

The Company failed to provide documentation that there were reasonable grounds for believing the recommendation was suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

Recommendation: It is recommended the Company revise its procedures related to FINRA Rule 2211 (Suitability) to ensure that producers are conducting business in compliance with 18 *Del. Admin. C.* §1214 - 8.0.

1 Exception - 18 *Del. C.* § 1715 - Appointments.

There was one (1) producer identified by the Company as holding an active appointment during the examination period who did not have an active appointment based on Department records.

Recommendation: It is recommended the Company revise its procedures to ensure that producers are properly appointed in accordance with 18 *Del. C.* § 1715.

D) **Individual Variable Annuities - Replacements**

The Company identified a universe of 18 variable annuity contracts issued as replacements during the experience period. All 18 annuity contract files were requested. Of the 18 files, two were duplicates. The remaining 16 files were reviewed to determine compliance with issuance and replacement statutes and regulations.

The following exceptions were noted:

3 Exceptions - 18 *Del. Admin. C.* §1204 - 5.2.1 - Duties of Agents and Brokers

The "Notice Regarding Replacement" form was not evident.

Recommendation: It is recommended the Company revise it procedures to ensure the replacement notice is presented to the applicant no later than the time of taking the application in accordance with 18 *Del. Admin. C.* §1204 - 5.2.1.

1 Exception - 18 *Del. Admin. C.* §1204 -7.1.1 - Duties of Insurers That Use Agents or Brokers.

The producer's statement on replacement was not signed or dated by the producer.

Recommendation: It is recommended the Company revise its procedures to ensure the replacement statement is signed and dated by the producer in accordance with 18 *Del. Admin. C.* 1204 § 7.1.1.

2 Exceptions - 18 *Del. Admin. C.* §1204 - 7.1.2.1.1 - Duties of Insurers That Use Agents or Brokers.

The producer's statement on replacement did not list the existing insurer and contract number.

Recommendation: It is recommended the Company revise its procedures to ensure receipt of a listing of all the applicant's existing life insurance policies and/or annuities, along with the corresponding contract numbers, in accordance with 18 *Del. Admin. C.* §1204 - 7.1.2.1.1.

8 Exceptions - 18 *Del. Admin. C.* §1204 - 7.1.2.2 - Duties of Insurers That Use Agents or Brokers.

The written communication advising the existing insurer of the replacement was missing in six instances and was not made within seven working days of the date of application in four instances.

Recommendation: It is recommended the Company revise its procedures to ensure the written communication advising the existing insurer of the replacement is made within seven working days of the date the application is received in the replacing insurer's home office in compliance with 18 *Del. Admin. C.* §1204 § 7.1.2.2.

1 Exception - 18 *Del. Admin. C.* §1204 - 7.3 - Duties of Insurers That Use Agents or Brokers.

Evidence of the Notice Regarding Replacement was not maintained.

Recommendation: It is recommended the Company revise its procedures to ensure that evidence of the Notice Regarding Replacement is maintained in accordance with 18 *Del. Admin. C.* §1204 - 7.3.

6 Exceptions – 18 *Del. C.* § 320(c) - Conduct of examination; access to records; correction.

The files were missing pertinent information.

Recommendation: It is recommended the Company revise its procedures to ensure that records are maintained and are readily accessible in accordance with 18 *Del. C.* § 320.

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 the Company revise its procedures to ensure the required response to the replacement question is answered correctly by the applicant in accordance with 18 *Del. Admin. C.* §1204 - 5.1.1. (Underwriting and Rating – Individual Fixed Annuity Replacements).

2. It is recommended the Company revise its procedures to ensure the correct response to the replacement question is provided by the producer and that the replacement form is signed by the producer in accordance with 18 *Del. Admin. C.* §1204 -5.1.2. (Underwriting and Rating – Individual Fixed Annuity Replacements).

3. It is recommended the Company revise its procedures to ensure the replacement notice is presented to the applicant no later than the time of taking the application in accordance with 18 *Del. Admin. C.* §1204 - 5.2.1. (Underwriting and Rating – Individual Fixed Annuity Replacements and Variable Annuity Replacements).

4. It is recommended the Company revise it procedures to ensure the replacement question is addressed and the replacement form is signed by the applicant in accordance with 18 *Del. Admin. C.* §1204 - 6.1.2. (Underwriting and Rating – Individual Fixed Annuity New Issue).

5. It is recommended the Company revise its procedures to ensure the replacement statement is signed and dated by the producer in accordance with 18 *Del. Admin. C.* §1204 - 7.1.1. (Underwriting and Rating –Individual Fixed Annuity Replacements and Variable Annuity Replacements).

6. It is recommended the Company revise its procedures to ensure receipt of a listing of all the applicant's existing life insurance policies and/or annuities, along with the corresponding contract numbers, in accordance with 18 *Del. Admin. C.* § 1204- 7.1.2.1.1. (Underwriting and Rating – Individual Fixed Annuity Replacements and Variable Annuity Replacements).

7. It is recommended the Company revise its procedures to ensure the written communication advising the existing insurer of the replacement is made within seven working days of the date the application is received in the replacing insurer's home office in accordance with 18 *Del. Admin. C.* §1204 - 7.1.2.2. (Underwriting and Rating – Individual Fixed Annuity Replacements and Variable Annuity Replacements).

8. It is recommended the Company revise its procedures to ensure that evidence of the Notice Regarding Replacement is maintained in accordance with 18 *Del. Admin. C.* §1204 - 7.3. (Underwriting and Rating – Individual Fixed Annuity New Issue, Individual Fixed Annuity Replacements, Variable Annuity New Issue and Individual Variable Annuity Replacements).

9. It is recommended the Company revise its procedures related to FINRA Rule 2211 (Suitability) to ensure that producers are conducting business in compliance with 18 *Del. Admin. C.* §1214 - 6.0. (Underwriting and Rating –Variable Annuity New Issue).

10. It is recommended the Company revise its procedures related to FINRA Rule 2211 (Suitability) to ensure that producers are conducting business in compliance with 18 *Del. Admin. C.* §1214 - 8.0. (Underwriting and Rating –Variable Annuity New Issue).

11. It is recommended the Company revise its procedures to ensure that records are maintained and are readily accessible in accordance with 18 *Del. C.* § 320. (Underwriting and Rating –Individual Fixed Annuity Replacements and Variable Annuity Replacements).

12. It is recommended the Company revise its procedures to ensure that producers are properly appointed in accordance with 18 *Del. C.* § 1715. (Underwriting and Rating – Variable Annuity New Issue).

The examination was conducted by Joseph Krug, Peter Salvatore, and Linda Armstrong. This report is respectfully submitted.

Linda Armstrong

Linda Armstrong, JD, MCM
Examiner-in-Charge
Market Conduct
Delaware Department of Insurance