



THE COMMONWEALTH OF MASSACHUSETTS

**OFFICE OF CONSUMER AFFAIRS AND BUSINESS
REGULATION**

Division of Insurance

Report on the Comprehensive Market Conduct Examination of

Berkshire Life Insurance Company of America

Pittsfield, Massachusetts

For the Period January 1, 2005 through June 30, 2006

NAIC COMPANY CODE: 71714

EMPLOYER'S ID NUMBER: 75-1277524



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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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April 9, 2007

Honorable Nonnie S. Burnes
Secretary, Northeast Zone
Commissioner of Insurance
Division of Insurance
Commonwealth of Massachusetts
One South Station
Boston, Massachusetts 02110-2208

Dear Commissioner Burnes:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 175, Section 4, a comprehensive examination has been made of the market conduct affairs of

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

at its home office located at:

700 South Street
Pittsfield, Massachusetts 01201

The following report thereon is respectfully submitted.

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SCOPE OF EXAMINATION

The Massachusetts Division of Insurance (the "Division") conducted a comprehensive market conduct examination of Berkshire Life Insurance Company of America ("BLICOA" or "the Company") for the period January 1, 2005 to June 30, 2006. The examination was called pursuant to authority in Massachusetts General Laws Chapter ("M.G.L. c.") 175, Section 4. The market conduct examination was conducted at the direction of, and under the overall management and control of, the market conduct examination staff of the Division. Representatives from the firm of Rudmose & Noller Advisors, LLC ("RNA") were engaged to complete certain agreed upon procedures.

The Company sells individual disability income products, specialty individual life insurance products and individual long-term care insurance. During the period of the examination, the specialty life insurance and long-term care business sold in Massachusetts was deemed immaterial and therefore excluded from the scope of the examination.

EXAMINATION APPROACH

A tailored audit approach was developed to perform the examination of the Company using the guidance and standards of the *NAIC Market Conduct Examiner's Handbook*, ("the Handbook") the market conduct examination standards of the Division, the Commonwealth of Massachusetts insurance laws, regulations and bulletins and selected federal laws and regulations. All procedures were performed under the management and control and general supervision of the market conduct examination staff of the Division, including procedures more efficiently addressed by the concurrent Division financial examination. For those objectives, market conduct examination staff discussed, reviewed and used procedures performed by the Division's financial examination staff to the extent deemed necessary and appropriate and effective to ensure that the objective was adequately addressed. The following describes the procedures performed and the findings for the workplan steps thereon.

The basic business areas that were reviewed in under this examination were:

- I. Company Operations/Management
- II. Complaint Handling
- III. Marketing and Sales
- IV. Producer Licensing
- V. Policyholder Service
- VI. Underwriting and Rating
- VII. Claims

In addition to the processes' and procedures' guidance in the Handbook, the examination included an assessment of the Company's internal control environment. While the Handbook approach detects individual incidents of deficiencies through transaction testing, the internal control assessment provides an understanding of the key controls that Company management uses to run their business and to meet key business objectives, including complying with applicable laws and regulations related to market conduct activities.

The controls assessment process is comprised of three significant steps: (a) identifying controls; (b) determining if the control has been reasonably designed to accomplish its intended purpose in mitigating risk (i.e., a qualitative assessment of the controls); and (c) verifying that the control is

functioning as intended (i.e., the actual testing of the controls). For areas in which controls reliance was established, sample sizes for transaction testing were accordingly adjusted. The form of this report is “Report by Test,” as described in Chapter VI A. of the Handbook.

FOR INFORMATION PURPOSES ONLY

EXECUTIVE SUMMARY

This summary of the comprehensive market conduct examination of the Company is intended to provide a high-level overview of the examination results. The body of the report provides details of the scope of the examination, tests conducted, findings and observations, recommendations and, if applicable, subsequent Company actions. Managerial or supervisory personnel from each functional area of the Company should review report results relating to their specific area.

The Division considers a substantive issue as one in which corrective action on part of the Company is deemed advisable, or one in which a “finding,” or violation of Massachusetts insurance laws, regulations or bulletins was found to have occurred. It also is recommended that Company management evaluate any substantive issues or “findings” for applicability to potential occurrence in other jurisdictions. When applicable, corrective action should be taken for all jurisdictions and a report of any such corrective action(s) taken should be provided to the Division.

The following is a summary of all substantive issues found, along with related recommendations and, if applicable, subsequent Company actions made, as part of the comprehensive market conduct examination of the Company. All Massachusetts laws, regulations and bulletins cited in this report may be viewed on the Division’s website at www.mass.gov/doi.

The comprehensive market conduct examination resulted in no recommendations with regard to complaint handling, marketing and sales, underwriting and rating or claims. Examination results showed that the Company is in compliance with all tested Company policies, procedures and statutory requirements addressed in these sections. Further, the tested Company practices appear to meet industry best practices in each of these areas.

SECTION I -COMPANY OPERATIONS/MANAGEMENT

STANDARD I-3

Findings: None.

Observations: RNA reviewed the Anti-Fraud Plan, and confirmed that the Company began completing criminal background checks for its existing employees in August 2002, and further that the Company completes criminal background checks on prospective new employees prior to hiring them.

Recommendations: RNA recommends that the Company conduct a criminal background check for any employee for whom a criminal background check has not been conducted.

SECTION IV-PRODUCER LICENSING

STANDARD IV-1

Findings: None.

Observations: RNA noted that the Company timely reconciled its agent records to those from the Division, but that Guardian has not timely performed such reconciliation of its BLICOA appointed agents.

Recommendations: Guardian should timely reconcile its agent records to those from the Division. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at a mutually agreed upon date to ensure that both databases are complete and accurate. The Company's internal audit department should periodically monitor compliance to ensure that future Guardian and Company reconciliations are timely and effective.

STANDARD IV-2

Findings: Except for a California producer who solicited two sales in Massachusetts, RNA noted that the producer for each sale tested was included on the Division's list of the Company's appointed agents. Although the California producer was not licensed in Massachusetts, a commission was paid to him in violation of M.G.L c. 175, § 177. RNA noted that the Company provides written notice to producers of the requirements of 18 U.S.C. § 1033.

Observations: None.

Recommendations: The Company shall ensure that all business solicited in Massachusetts, or sales using a Massachusetts policy form, shall be solicited by Massachusetts-licensed producers. Commissions shall only be paid to Massachusetts-licensed producers. The Company's internal audit department shall periodically monitor compliance with this requirement.

STANDARD IV-3

Findings: None.

Observations: The results of testing showed that all terminations were timely reported to the Division. None of the terminations tested was "for cause." Due to system design problems, Guardian's system did not provide the proper termination dates for several terminated agents.

Recommendations: The Company and Guardian should implement enhancements to the Guardian appointment system to ensure that it maintains accurate and complete agent termination data. The Company's internal audit department should periodically monitor the system implementation process to ensure that the enhancements are effective.

SECTION V-POLICYHOLDER SERVICE

STANDARD V-3

Findings: None.

Observations: The Company's Balanced Scorecard, policyholder survey results and independent research firm monitoring of service performance indicate that the Company generally meets its service standards. One post sale survey response received was not addressed timely.

Recommendations: The Company should ensure that all post sale and policyholder service survey responses received are responded to fully and timely. Further, the Company should independently monitor to ensure that all post sale and policyholder service survey responses received are responded to fully and timely, and that the Company is treating any written communication primarily expressing a grievance as a complaint.

FOR INFORMATION PURPOSES ONLY

COMPANY BACKGROUND

BLICOA is a wholly-owned subsidiary of Guardian. Founded in 1860, Guardian is the fourth largest mutual life insurance company in the United States. Based upon statutory accounting principles as of December 31, 2005, Guardian had \$24.8 billion in assets and \$3.2 billion in surplus. With more than 5,000 employees 2,900 financial representatives and over 80 agencies nationwide, Guardian and its subsidiaries provide individuals, businesses and their employees with life, disability, health and dental insurance products, and offer 401(k), financial products and trust services. BLICOA was formed in 2001 as the result of the merger of the former mutual company, Berkshire Life Insurance Company ("BLICO"), into Guardian. BLICO then ceased to exist as a separate mutual company, and its policyholders became policyholders of Guardian. Immediately following the merger, Guardian contributed certain assets and continuing operations of BLICO into the newly formed BLICOA. BLICOA's primary mission is to operate a fully functioning disability income insurance business for the Guardian group of companies.

The Company sells individual disability income products, specialty life insurance products and a small amount of long-term care insurance. BLICOA primarily markets its products through Guardian's career agency system, which consists of approximately 80 general agencies nationwide, five of which are located in Massachusetts. A small portion of BLICOA's business is sold by three general agencies outside Massachusetts that were under contract with BLICO prior to the merger with Guardian, but who did not sign general agency contracts with Guardian. In addition, the Company has a contractual relationship with Security Mutual Life Insurance Company of New York, whereby its producers may sell BLICOA disability income and long-term care products.

The Company is rated A+ (Superior) by A.M. Best Company. In addition, Guardian is also rated AA (Very Strong) by Standard & Poors Corp and Aa2 (Excellent) by Moody's. BLICOA had \$1.98 billion in admitted assets and \$292.9 million in surplus as of December 31, 2005. For the year ended December 31, 2005, the Company's premiums were \$357.9 million, and net income was \$41.2 million.

The key objectives of this examination were determined by the Division with emphasis on the following areas.

I. COMPANY OPERATIONS/MANAGEMENT

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard I-1. The company has an up-to-date, valid internal, or external, audit program.

Objective: This Standard addresses the audit function and its responsibilities.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's internal audit department performs audits of the Company's operational functions. The internal audit department is an independent function which includes six auditors, including the director of auditing, who are dedicated to performing audit procedures.
- The Board of Directors Audit Committee ("Audit Committee") approves the audit plan and schedule in October of the preceding year, and is apprised of the audit plan progress and results throughout the year.
- The audit plan is generally prepared using a formal risk evaluation process with input from Company management, Guardian management and the Audit Committee. Based upon this input, a risk evaluation is completed and a schedule is prepared for all "auditable" units. The auditable units are typically defined as functional business processes or special assignments. Both the schedule and risk evaluation are included in the annual audit plan.
- The Company's internal audit department issues written reports on each of its audits which contain three categories of exceptions - A, B or C level exceptions. Level A exceptions note a significant risk where immediate action is necessary. Level B exceptions note a serious risk where corrective action is needed, and without prompt action, the risk could easily develop into an A level exception. Level C exceptions note a risk where action is recommended to improve controls. All audit reports are circulated to relevant senior management and the Audit Committee, which monitors corrective actions monthly using a written status report. The status report summarizes the audit report exceptions, corrective action, responsible person, and the date for completion.
- The Guardian internal audit department conducts field audits of each of the Guardian general agencies that comprise the Company's primary distribution channel at least every three to four years. Prior to scheduling field audits, Guardian performs a risk assessment of each agency by considering their cash position, sales, complaints, advances and concerns identified during previous examinations.
- The Company has received unqualified opinions on its financial statements, which are audited annually by an independent auditor.

Controls Reliance: Controls, tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA reviewed 13 internal audit reports and two field audit reports, and discussed these reports with Company management. The audit reports were selected

because the scope of the audits was relevant to the Company's market conduct internal control environment.

Transaction Testing Results:

Findings: None.

Observations: The review of the internal audit and field audit reports indicated that the reviews were in-depth, and in some cases resulted in findings and recommendations along with timeframes to implement the recommendations. The internal audit departments appeared to follow up to ensure that key recommendations were implemented.

Recommendations: None.

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Standard I-2. The company has appropriate controls, safeguards and procedures for protecting the integrity of computer information.

No work performed. All required activity for this Standard is included in the scope of the ongoing statutory financial examination of the Company.

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Standard I-3. The company has antifraud initiatives in place that are reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

18 U.S.C. § 1033; Division of Insurance Bulletins 1998-11 and 2001-14.

Objective: This Standard addresses the effectiveness of the Company's antifraud plan.

Pursuant to 18 U.S.C. § 1033 of the Violent Crime Control and Law Enforcement Act of 1994 ("Act"), it is a criminal offense for anyone "engaged in the business of insurance" to willfully permit a "prohibited person" to conduct insurance activity without written consent of the primary insurance regulator. A "prohibited person" is an individual who has been convicted of any felony involving dishonesty or breach of trust or certain other offenses, and who willfully engages in the business of insurance as defined in the Act. In accordance with Division of Insurance Bulletins 1998-11 and 2001-14, any entity conducting insurance activity in Massachusetts must notify the Division in writing of all employees and producers affected by this law. Individuals "prohibited" under the law may apply to the Commissioner for written consent, and must not engage or participate in the business of insurance unless and until they are granted such consent.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has adopted a written Anti-Fraud Plan which requires them to take all reasonable precautions to prevent, detect and thoroughly investigate potential insurance fraud.
- The Anti-Fraud Plan defines required procedures for employees to report suspected fraud to the Company's Special Investigations Unit, the Company's Office of the General Counsel and to the Massachusetts Insurance Fraud Bureau.

- The Company's policy is to not hire employees who are "prohibited persons."
- The Company's policy, commenced in August 2002, is to complete criminal background checks for all prospective employees prior to hiring them.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA reviewed the Company's policies and procedures for addressing fraud and employee hiring due diligence.

Transaction Testing Results:

Findings: None.

Observations: RNA reviewed the Anti-Fraud Plan, and confirmed that the Company began completing criminal background checks for its existing employees in August 2002, and further that the Company completes criminal background checks on prospective new employees prior to hiring them.

Recommendations: RNA recommends that the Company conduct a criminal background check for any employee for whom a criminal background check has not been conducted.

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Standard I-4. The company has a valid disaster recovery plan.

No work performed. All required activity for this Standard is included in the scope of the ongoing statutory financial examination of the Company.

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Standard I-5. The company is adequately monitoring the activities of any entity that contractually assumes a business function or is acting on behalf of the company.

Objective: This Standard addresses the Company's efforts to adequately monitor the activities of the contracted entities that perform a business function.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has contractual arrangements where third parties other than producers perform a business function or action on behalf of the Company. Such third parties conduct medical examinations of applicants prior to policy issuance, conduct telephone interviews of applicants in certain instances and complete background checks on prospective new employees and producers prior to their appointment.
- The Guardian internal audit department conducts field audits of each of the Guardian general agencies that comprise the Company's primary distribution channel at least every three to four years.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed management about its use of third parties to perform Company functions, and reviewed supporting documentation. RNA also reviewed two field audit reports and discussed these reports with management.

Transaction Testing Results:

Findings: None.

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the field audit reports indicated that Guardian and the Company appear to be adequately monitoring the activities of their producers.

Recommendations: None.

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Standard I-6. Records are adequate, accessible, consistent and orderly and comply with record retention requirements.
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Objective: This Standard addresses the adequacy and accessibility of the Company's records.

Controls Assessment: The Company has adopted written procedures to ensure that records are appropriately retained.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA read the Company's record retention policy, and performed various procedures throughout this examination related to review of retained documentation.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that the Company's record retention policy adequately discloses its record retention policies and procedures. Testing results relating to documentation evidence are also noted in the various examination areas.

Recommendations: None.

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Standard I-7. The company is licensed for the lines of business that are being written.

M.G.L. c. 175, §§ 32 and 47.

Objective: This Standard is concerned with whether the lines of business written by a Company are in accordance with the authorized lines of business.

Pursuant to M.G.L. c. 175, § 32, domestic insurers must obtain a certificate authorizing it to issue policies or contracts. M.G.L. c. 175, § 47 sets forth the various lines of business for which an insurer may be licensed.

Controls Assessment: Due to the nature of this Standard, no controls assessment was performed.

Controls Reliance: Not applicable.

Transaction Testing Procedure: RNA discussed with the Division the lines of business that the Company writes in the Commonwealth, and reviewed its certificate of authority. RNA also reviewed the Company's annual statement premium to confirm that it includes only those lines reflected on Division records.

Transaction Testing Results:

Findings: None.

Observations: According to the Division, the Company is licensed for the lines of business being written, and its annual statement reported premium supports that the Company is writing only the lines for which it is licensed.

Recommendations: None.

* * * * *

Standard I-8. The company files all certifications with the Department of Insurance as required by statutes, rules, and regulations.

M.G.L. c. 175, § 25.

Objective: This Standard addresses the Company's efforts to file certifications with the Division as required.

M.G.L. c. 175, § 25 sets forth the form and content requirements for annual statements insurers file with the Division.

Controls Assessment: Due to the nature of this Standard, no controls assessment was performed.

Controls Reliance: Not applicable.

Transaction Testing Procedure: RNA confirmed that certifications are filed with the Division in connection with the annual financial reporting process.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to file all required certifications with the Division.

Recommendations: None.

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Standard I-9. The company cooperates on a timely basis with examiners performing the examinations.

M.G.L. c. 175, § 4.

Objective: This Standard is concerned with the Company's cooperation during the course of the examination conducted in accordance with M.G.L. c. 175, § 4.

Controls Assessment: Due to the nature of this Standard, no controls assessment was performed.

Controls Reliance: Not applicable.

Transaction Testing Procedure: The Company's level of cooperation and responsiveness to examiner requests was assessed throughout the examination.

Transaction Testing Results:

Findings: None.

Observations: The Company's level of cooperation and responsiveness to examiner requests met the Division's expectations.

Recommendations: None.

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Standard I-10. The company has procedures for the collection, use and disclosure of information gathered in connection with insurance transactions to minimize any improper intrusion into the privacy of applicants and policyholders.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard is concerned with the Company's policies and procedures to ensure it minimizes improper intrusion into the privacy of consumers as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various

disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: The following controls were noted in conjunction with the review of this Standard and Standards I-11 through I-17:

- The Company's definitions of Adverse Underwriting Decision, Personal Information and Pretext Interview appear to comply with Massachusetts law. Company policy prohibits pretext interviews except as allowed by law.
- The Company's practice is to provide the Notice of Insurance Information Practices at the policy application date. The Notice is part of the application package, and the application must be completed for all new business. The Company does not ask specific questions on the application designed to obtain information for marketing or research purposes.
- The Notice of Insurance Information Practices states that certain types of personal information is collected from third parties or other sources and gives examples of such third parties or other sources. Further, the Notice of Insurance Information Practices notes that that information may be disclosed in some cases, and that a right of access and correction exists.
- The Company requires that the HIPAA/Privacy Disclosure Authorization be signed by the applicant at time of application for a policy and when a claim is filed.
- The Company's practice is to provide the Privacy Policy when the policy is delivered. The Privacy Policy states that the Company shares personal information with affiliates, and with other financial service providers and non-financial companies for marketing purposes. The Company allows the customer to opt out of participation in the sharing of their information with affiliates and non-affiliates.
- At least annually, the Company mails the Privacy Policy to each customer.
- The Company provides the applicant a written Notice of Adverse Underwriting Decision when it declines to provide coverage, elects to provide a reduced amount of coverage or offers to provide insurance at higher than standard rates. The Notice of Adverse Underwriting Decision includes all statutory requirements.
- Company policy does not base an adverse underwriting decision on the existence of a previous adverse underwriting decision; on the basis of sexual orientation or perceived orientation; or on personal information obtained from an insurance support organization, provided that the Company can base their decision on further information obtained as a result of the initial receipt of such personal information.
- Company policy is to disclose nonpublic personal health information only as required or permitted by law to regulators and law enforcement agencies. Such information is provided to third parties who assist the Company in processing customer business transactions only if expressly authorized by the applicant.
- The Company will not disclose to applicants information it obtains from medical professionals when applicants authorize medical professionals to provide such information. Rather, the Company requires applicants to obtain such information directly from those medical professionals.
- The Company provides its privacy policies on the Company's and Guardian's website.
- The Company annually conducts an information systems risk assessment to consider, document and review information security threats and controls. The risk assessment evaluations have resulted in continual improvements to information systems security.
- Company policy requires that its information technology security practices safeguard nonpublic personal and health information, and communicates these practices to employees and producers in training programs, compliance presentations and various

memoranda as needed. All staff has taken privacy training as required by Company policy.

- Only individuals approved by Company management are granted access to the Company's key electronic and operational areas where nonpublic personal and health information is located. Access is frequently and strictly monitored.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA reviewed written Company policies and procedures requiring that the Notice of Adverse Underwriting Decision be provided when it declines applications, and when it offers coverage at higher than standard rates. RNA tested 20 underwriting declinations from the examination period for evidence that the Company provided a timely Notice of Adverse Underwriting Decision. As part of new business testing, RNA also reviewed 22 applications where the Company offered coverage with exclusions or coverage at higher than standard rates, both of which requires them to provide the Notice of Adverse Underwriting Decision to the applicant. RNA also reviewed underwriting and claims documentation for any evidence of the use of pretext interviews.

Transaction Testing Results:

Findings: None.

Observations: For the 20 underwriting declinations tested, the Company provided the Notice of Adverse Underwriting Decision when it declined to provide coverage. The Company also provided the Notice of Adverse Underwriting Decision to 22 applicants who were offered coverage with exclusions or coverage at higher than standard rates. In testing of claims and new business processing, RNA noted no instances where the Company conducted pretext interviews.

Recommendations: None.

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Standard I-11. The company had developed and implemented written policies, standards and procedures for the management of insurance information.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

The objective of this Standard relates to privacy matters and is included in Standards I-10 and I-12 through I-17.

* * * * *

Standard I-12. The company has policies and procedures to protect the privacy of nonpublic personal information relating to its customers, former customers and consumers that are not customers.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard addresses policies and procedures to ensure privacy of non-public personal information as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for privacy compliance, and reviewed documentation supporting its privacy policies and procedures. RNA tested 20 underwriting declinations for evidence that the Company provided consumers with information supporting the reason(s) for the declinations. RNA also sought any evidence that the Company improperly provided personal information to parties other than the applicant.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that for each of the underwriting declinations tested, the Company offered to make available driving records, consumer reporting information and results of laboratory and medical tests conducted for the purpose of obtaining insurance only when requested by the applicant. RNA noted no instances where the Company improperly provided information to parties other than the applicant.

Recommendations: None.

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Standard I-13. The company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding treatment of nonpublic personal financial information.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard addresses requirements to provide privacy notices as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16

CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA reviewed the Company's compliance with statutory privacy disclosure requirements in conjunction with its testing of 50 new business applications from the examination period.

Transaction Testing Results:

Findings: None.

Observations: As required by the Company, the applicant for each new business sale tested acknowledged on the application that he or she received the Notice of Insurance Information Practices. Producers are required to provide the Privacy Policy when they deliver policies. RNA also noted that the Company has procedures for providing the Annual Privacy Notice to the customer by mail prior to the annual policy anniversary date.

Recommendations: None.

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Standard I-14. If the company discloses information subject to an opt out right, the company has policies and procedures in place so that nonpublic personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the company provides opt out notices to its customers and other affected consumers.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard addresses policies and procedures with regard to opt out rights as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for privacy compliance, and reviewed supporting documentation regarding consumer opt out rights. RNA examined documentation supporting the Company's procedures for disclosing opt out rights, collecting such opt out information and managing requests for this information.

Transaction Testing Results:

Findings: None.

Observations: The Company's documentation supports that it allows the customer to opt out of participation in the Company's sharing of information with affiliates and non-affiliates. Further, the Company appears to have policies and procedures in place to collect such opt out information, and to manage requests it receives for this option.

Recommendations: None.

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Standard I-15. The company's collection, use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules and regulations.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard is concerned with the Company's collection and use of nonpublic personal financial information as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA reviewed the Company's compliance with statutory and regulatory requirements pertaining to collection and use of nonpublic personal financial information in conjunction with its testing of 50 new business applications from the examination period.

Transaction Testing Results:

Findings: None.

Observations: RNA noted from its testing of new business applications that that the Company's collection and use of nonpublic personal financial information was reasonable and proper.

Recommendations: None.

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Standard I-16. In states promulgating the health information provisions of the NAIC model regulation, or providing equivalent protection through other substantially similar laws under the jurisdiction of the Department of Insurance, the company has policies and procedures in place so that nonpublic personal health information will not be disclosed except as permitted by law, unless a customer or a consumer who is not a customer has authorized the disclosure.

M.G.L. c. 175I, §§ 1-22.

Objective: This Standard addresses efforts to maintain privacy of nonpublic personal health information.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for privacy compliance, and reviewed supporting documentation. RNA also sought any evidence that the Company improperly disclosed nonpublic personal health information in conjunction with underwriting declinations, claims and new business testing. Finally, RNA reviewed the Company's compliance with the appropriate use of the HIPAA/Privacy Disclosure in conjunction with its testing of 50 new business applications and claims filed during the examination period.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that that the HIPAA/Privacy Disclosure was received and signed by each applicant for all new business applications and claims filed during the examination period. RNA noted no instances where the Company improperly disclosed nonpublic personal health information in testing underwriting declinations, new business applications and claims filed.

Recommendations: None.

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Standard I-17. Each licensee shall implement a comprehensive written information security program for the protection of nonpublic customer information.

M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Objective: This Standard is concerned with the Company's information security efforts to ensure that nonpublic consumer information is protected as required by M.G.L. c. 175I, §§ 1-22. Also, the Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 set forth requirements for proper notice to consumers and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Further, a financial institution must provide its customers with a written notice of its privacy policies and practices. In addition, a financial institution is prohibited from disclosing nonpublic personal consumer information to nonaffiliated third parties, unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of such disclosure.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for privacy compliance, and reviewed supporting documentation. Review of information technology access and authorization controls is also included in the scope of the concurrent statutory financial examination of the Company.

Transaction Testing Results:

Findings: None.

Observations: The Company's documentation supports that it routinely conducts an information systems risk assessment to consider, document and review information security threats and controls. Further, the Company's documentation shows that it has procedures to implement and monitor information technology security practices to safeguard nonpublic personal and health information. Further, documentation supports that the Company communicates such practices to employees and producers in training programs, compliance presentations and various memoranda. All staff has taken privacy training as required by Company policy. Finally, documentation supports that only individuals approved by Company management are granted access to its key electronic and operational areas where such information is located, and further that such access is frequently monitored by management.

Recommendations: None.

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II. COMPLAINT HANDLING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard II-1. All complaints are recorded in the required format on the company complaint register.

M.G.L. c. 176D, § 3(10).

Objective: This Standard addresses whether the Company formally tracks complaints or grievances as required by statute.

Pursuant to M.G.L. c. 176D, § 3(10), an insurer is required to maintain a complete record of all complaints it received from the date of its last examination. The record must indicate the total number of complaints, the classification of each complaint by line of insurance, the nature of each complaint, the disposition of each complaint and the time taken to process each complaint.

Controls Assessment: The following controls were noted in review of complaint Standards:

- Written Company policies and procedures govern the complaint handling process.
- The Company classifies written or oral complaints received directly by the Company as "executive complaints" while regulatory complaints are classified as "state complaints."
- The Company logs all written and oral complaints in its complaint registers in a consistent format. The Company maintains separate registers for executive and state complaints.
- For each complaint, the complaint registers record the date received, the date closed, the person making the complaint, the insured, the policy number, state of residence, the nature of the complaint using NAIC reason codes and the complaint disposition using NAIC reason codes.
- The Company responds to Division complaints within 14 calendar days of receipt when possible, and in a timely manner once it receives and evaluates all required information.
- The Company states that it provides its toll free telephone number and address in its written responses to consumer inquiries and on its web site.
- The Company conducts post sale and policyholder service surveys, and its policy is to timely and fully respond to all significant comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company management and staff responsible for complaint handling, and examined evidence of related processes and controls. The Company received no state complaints in Massachusetts in 2005 and 2006. RNA reviewed the sole executive complaint in Massachusetts, and noted the format used for recording such complaints.

Transaction Testing Results:

Findings: None.

Observations: For the executive complaint reviewed, RNA noted that the Company's format for recording the complaint included all necessary information.

Recommendations: None.

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Standard II-2. The company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

M.G.L. c. 176D, § 3(10).

Objective: This Standard addresses whether the Company has adequate complaint handling procedures, and communicates those procedures to policyholders.

M.G.L. c. 176D, § 3(10) requires that (a) the Company has documented procedures for complaint handling (b) the procedures in place are sufficient to enable satisfactory handling of complaints received as well as to conduct root cause analyses in areas developing complaints; (c) there is a method for distribution of and obtaining and recording responses to complaints that is sufficient to allow response within the time frame required by state law, and (d) the Company provides a telephone number and address for consumer inquiries.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: RNA interviewed management and staff responsible for complaint handling, and examined evidence of the Company's related processes and controls. The Company received no state complaints in Massachusetts in 2005 and 2006. RNA reviewed the sole executive complaint in Massachusetts, and noted the response date and the documentation supporting the resolution of the complaint. In addition, RNA reviewed the results of post sale and policyholder service surveys to evaluate the Company's response process. Finally, the Company's website and various forms sent to policyholders were reviewed to determine whether they comply with the requirement that the Company provide contact information for consumer inquiries.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to have adequate complaint procedures in place to address state and executive complaints. Further, the Company adequately communicates such procedures to policyholders. For the executive complaint reviewed, RNA noted that the Company properly handled the complaint in accordance with its policies and procedures. Further, the Company has stated that it would treat any written

communication primarily expressing a grievance as a complaint, including those from post sale or policyholder service surveys.

Recommendations: None.

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Standard II-3. The company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.

Objective: This Standard addresses whether the Company's response to the complaint fully addresses the issues raised, and whether policyholders with similar fact patterns are treated consistently and fairly.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: RNA interviewed management and staff responsible for complaint handling, and examined evidence of the Company's related processes and controls. The Company received no state complaints in Massachusetts in 2005 and 2006. RNA reviewed the sole executive complaint in Massachusetts, and noted the response date and the documentation supporting the resolution of the complaint.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that the Company fully addressed the issue raised in the executive complaint, and that its documentation appeared complete, including the original complaint, related correspondence and the Company's complaint register information. RNA is not aware of any complainants with similar fact patterns who were not treated consistently and reasonably.

Recommendations: None.

* * * * *

Standard II-4. The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with the time required for the Company to process each complaint.

Massachusetts does not have a specific complaint processing time standard in statute or regulation. However, the Division has established a practice of requiring an insurer to respond to any notice of complaint that it sends within 14 calendar days of receipt.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: RNA interviewed management and staff responsible for complaint handling, and examined evidence of the Company's related processes and controls. The Company received no state complaints in Massachusetts in 2005 and 2006. RNA reviewed the sole executive complaint in Massachusetts to evaluate whether the Company's response was timely.

Transaction Testing Results:

Findings: None.

Observations: Resolution of the executive complaint was reasonably timely. The Company's policy is to respond to state complaints within 14 calendar days as required by the Division.

Recommendations: None.

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FOR INFORMATION PURPOSES ONLY

III. MARKETING AND SALES

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard III-1. All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

M.G.L. c. 176D, § 3; M.G.L. c. 175, § 181; 211 CMR 42.09 and Division of Insurance Bulletin 2001-02.

Objective: This Standard is concerned with whether the Company maintains a system of control over the content, form and method of dissemination for all advertising materials.

Pursuant to M.G.L. c. 176D, § 3 and M.G.L. c. 175, § 181, it is deemed an unfair method of competition to misrepresent or falsely advertise insurance policies, or the benefits, terms, conditions and advantages of said policies. 211 CMR 42.09 requires that advertising and marketing for individual disability income products not be misleading. Pursuant to Division of Insurance Bulletin 2001-02, an insurer who maintains an Internet website must disclose on the website the name of the company as it appears on the certificate of authority and the address of its principal office.

Controls Assessment: The following controls were noted as part of this Standard:

- Company personnel serve as subject matter experts for the Guardian companies for issues related to disability income business.
- Using the Guardian Electronic Advertising Review ("GEAR") system, all printed or web-based advertising and sales promotion materials are logged for review and approval. The Company does not use television or radio advertising. The GEAR system tracks each advertising or promotional piece from its inception through final approval by the Company's compliance department.
- The Company has adopted written policies and procedures for review and use of advertising materials, including a provision in producer contracts requiring adherence to such procedures.
- The GEAR system maintains a listing of approved advertising materials that are available for use by producers. A catalog of such material is maintained on the producers' web portal and is periodically updated in paper form.
- The Company discloses the Company's name and address on its website.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA obtained lists of home office and Massachusetts general agency approved sales and advertising materials utilized during the examination period. From the lists, RNA reviewed 10 pieces of advertising and sales material from the home office, and 10 pieces of advertising and sales material from Massachusetts general agencies, for evidence of home office approval prior to use. RNA also reviewed the Company's website for disclosure of

its name and address. Finally, RNA sought evidence of the use of unapproved sales and marketing materials as part of new business testing.

Transaction Testing Results:

Findings: None.

Observations: The testing results indicate that the Company's process to approve advertising and sales materials prior to use is functioning in accordance with its policies, procedures and statutory requirements. The Company's website disclosure complies with Division of Insurance Bulletin 2001-02. Finally, the results of new business testing showed no evidence of the Company's or its agents' use of unapproved advertising and sales materials.

Recommendations: None.

* * * * *

Standard III-2. Company internal producer training materials are in compliance with applicable statutes, rules and regulations.
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Objective: This Standard is concerned with whether the Company's producer training materials are in compliance with state statutes, rules and regulations.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has developed producer training programs for disability income products for the Guardian career agency force. The training programs are tailored to the agents' experience and needs.
- All such training materials are approved by management and the Company's compliance department prior to use, and the GEAR system is used to document such review and approval.
- The Company and Guardian offer producers several training courses based upon producer experience level related to disability income products. Many of the courses have been approved by various insurance departments for compliance with continuing education requirements.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for producer and employee training, and obtained documentation and training materials supporting the Company's training and orientation programs. RNA reviewed the materials for 10 selected training programs for appropriateness, approval prior to use and inclusion in the GEAR system.

Transaction Testing Results:

Findings: None.

Observations: The Company's producer training materials appear appropriate, and testing results indicate that its process for approving training materials prior to use is functioning in accordance with policies and procedures.

Recommendations: None.

* * * * *

Standard III-3. Company communications to producers are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the written and electronic communication between the Company and its producers is in accordance with Company policies and procedures.

Controls Assessment: The following controls were noted as part of this Standard:

- Producer communications including electronic mail and bulletins are approved by Company personnel prior to distribution.
- The Company updates producers on product and compliance matters by circulating "Guardian Weekly," an electronic newsletter containing headline topics and links to specific related articles.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA selected 10 pieces of producer communication to test for appropriateness and approval prior to use.

Transaction Testing Results:

Findings: None.

Observations: The testing results indicated that communications to producers appear appropriate and are approved prior to distribution.

Recommendations: None.

* * * * *

Standard III-4. Company rules pertaining to producer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

211 CMR 42.08 and 42.11.

Objective: This Standard addresses appropriate replacement handling by the producer, including identification of replacement transactions on applications and use of appropriate replacement related forms.

For individual disability income insurance, 211 CMR 42.08 and 42.11 require the application to inquire whether the sale involves a replacement, and requires the replacing insurer or producer to furnish a proper replacement notice to the applicant.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company's applications require a response from the applicant and producer as to whether or not the policy applied for will replace another policy.
- Producers are required to submit applications that include copies of replacement disclosure forms provided to, and signed by, the applicant on the application date.
- Company policy requires that producers take responsibility for evaluating all replacement sales to ensure that they are in the applicants' best interests.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: As part of new business testing of 50 disability income sales from the examination period, RNA noted that two of these sales were external replacement sales. Both of these replacements were tested to evaluate the Company's compliance with its policies, procedures and regulatory requirements.

Transaction Testing Results:

Findings: None.

Observations: The results of testing showed that there was evidence of signed disclosure forms and other replacement requirements for both external replacements as required by 211 CMR 42.08 and 42.11.

Recommendations: None.

* * * * *

Standard III-5. Company rules pertaining to company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

211 CMR 42.08 and 42.11.

Objective: This Standard addresses appropriate replacement handling by the Company, including identification of replacement transactions on applications, use of appropriate replacement related forms, and timely notice of replacements to existing insurers.

211 CMR 42.08 and 42.11 require that applications for individual disability income insurance ask whether the sale involves a replacement, and require the replacing insurer or producer to furnish a proper replacement notice to the applicant.

Controls Assessment: The following controls were noted as part of this Standard:

- Written policies and procedures govern replacement handling, and the Company's definition of replacement meets regulatory requirements.
- All replacements are to be consistently recorded in the Company's replacement register.
- The Company's applications require applicants and producers to state whether or not the policy or contract applied for will replace another policy or contract.

- Producers are required to submit applications that include copies of replacement disclosure forms provided to, and signed by, the applicant on the application date.
- The Company reviews all submitted applications for undisclosed replacements. During the underwriting process, telephone interviews of applicants, when utilized, also inquire about replacement.
- Company policy requires that producers evaluate all replacement sales to ensure that they are in the applicants' best interests.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: As part of new business testing of 50 disability income sales from the examination period, RNA noted that two of these sales were external replacement sales. Both of these replacements were tested to evaluate the Company's compliance with its replacement policies, procedures and regulatory requirements. RNA further reviewed the Company's replacement register to determine whether any Massachusetts general agents were replacing a high volume of policies.

Transaction Testing Results:

Findings: None.

Observations: The results of testing showed that there was evidence of signed disclosure forms and other replacement requirements for both replacements as required by 211 CMR 42.08 and 42.11, and that both sales were included on the replacement register. Further, review of the replacement register indicated that no Massachusetts agent replaced more than three policies during the examination period.

Recommendations: None.

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Standard III-6. An illustration used in the sale of a policy contains all required information and is delivered in accordance with statutes, rules and regulations.

211 CMR 42.09.

Objective: This Standard is concerned with ensuring that illustrations, policy summaries and buyer's guides contain all required information, and are timely provided to applicants.

211 CMR 42.09 requires that individual disability income insurance applicants receive disclosure forms at policy delivery, unless such forms were delivered when the application was made. Such forms require disclosure of information regarding certain policy benefits, terms, premiums, exclusions and limitations. Also, if a policy is issued other than as applied for, disclosure must be made to the applicant. Further, the regulation sets forth disclosure requirements for Medicare-eligible applicants.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has written policies and procedures which require that applicants for disability income insurance receive policy summaries and other required disclosures on the application date.
- The Company reviews all submitted applications to ensure that all applicable questions are answered and that required forms and information are consistently provided.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for new business processing and obtained supporting documentation. RNA selected 50 new business sales for disability income insurance from the examination period, and verified that each application submitted was signed and complete. Further, RNA reviewed the policy summaries and disclosures and verified that they were timely provided to the applicants. Finally, RNA noted whether the contracts received were consistent with those applied for, or that any changes resulted in full disclosure to applicants.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that the applications submitted were signed and complete, and that the producer and/or the Company timely provided policy summaries and other disclosures to applicants. Contracts received by applicants were issued consistent with their applications, or any changes resulted in full disclosure to the applicants.

Recommendations: None.

* * * * *

Standard III-7. The company has suitability standards for its products when required by applicable statutes, rules and regulations.
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Objective: This Standard is concerned with whether the Company maintains suitability or needs assessment standards for its products.

Controls Assessment: The following controls were noted as part of this Standard:

- Guardian's *Field Compliance Manual* contains policies and procedures which require agents and their supervisors to ensure that products meet applicants' needs.
- The Company's disability income applications require submission of information regarding the applicant's income, net worth, age, family status and occupation to assist in determining the applicant's needs.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for new business processing and obtained supporting documentation. RNA selected 50 new business sales for disability income insurance from the examination period for testing. RNA verified that the application submitted for each of the selected sales was signed and completed in accordance with Company policy. RNA further reviewed the application package and confirmed that the policy was issued consistent with the application, that any changes resulted in full disclosure to the applicant and that the product appeared to meet the applicant's needs.

Transaction Testing Results:

Findings: None.

Observations: The application submitted for each new business sale tested was signed and completed in accordance with Company policy, and each policy was issued consistent with the application or any changes resulted in full disclosure to the applicant. Finally, each disability income insurance policy appeared to meet the applicant's needs.

Recommendations: None.

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Standard III-8. Pre-need funeral contracts or pre-arrangement disclosures and advertisements are in compliance with statutes, rules, and regulations.

No work performed. This Standard is not covered in scope of examination because the Company does not offer such products anywhere it is licensed.

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Standard III-9. The company's policy forms provide required disclosure material regarding accelerated benefit provisions.

No work performed. The Standard is not applicable to disability income products.

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Standard III-10. Policy application forms used by depository institutions provide required disclosure material regarding insurance sales.

Gramm-Leach-Bliley Act and Rule 12 CFR Parts 14, 208, 343, and 536.

No work performed. The Company does not offer its products through depository institutions.

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IV. PRODUCER LICENSING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard IV-1. Company records of licensed and appointed (if applicable) producers agree with department of insurance records.

M.G.L. c. 175, §§ 162I and 162S; Division of Insurance Bulletins 1998-11 and 2001-14; 18 U.S.C. § 1033.

Objective: This Standard compares the Company's and the Division's agent licensing records.

M.G.L. c. 175, § 162I requires that all persons who solicit, sell or negotiate insurance be licensed for that authority line. Further, no producer may act as a Company agent unless appointed by them pursuant to M.G.L. c. 175, § 162S. Pursuant to 18 U.S.C. § 1033 of the Act, it is a criminal offense for anyone "engaged in the business of insurance" to willfully permit a "prohibited person" to conduct insurance activity without the written consent of the primary insurance regulator. A "prohibited person" is an individual who has been convicted of any felony involving dishonesty or a breach of trust or certain other offenses, who willfully engages in the business of insurance as defined in the Act. In accordance with Division of Insurance Bulletins 1998-11 and 2001-14, any entity conducting insurance activity in Massachusetts must notify the Division in writing of its agents and employees who are affected by this law. Individuals "prohibited" under the law may apply to the Commissioner for written consent, and must not engage or participate in the business of insurance unless and until they are granted such consent.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company uses career producers known as "field representatives" that are primarily recruited by producers in Guardian career general agencies. Prospective producers submit an application which contains employment history, criminal, financial and other background information. The application further includes any evidence that the applicant is licensed or has passed the insurance producer licensing test in the jurisdiction where they will be located and soliciting business. Applicants are finger printed, and must undergo criminal, employment, financial and credit background checks conducted by Guardian prior to appointment. Once appointed, field representatives are considered independent contractors exclusive to Guardian and the Company, with some limited ability to sell products from other insurers.
- Independent brokers who wish to contract through the Guardian career general agencies submit an application which contains employment history, criminal, financial and other background information. The applicant must submit evidence that he or she is licensed in the jurisdiction where they will be located and soliciting business. No criminal background or other checks are completed for independent brokers who wish to contract with Guardian.
- The Company and Guardian use standard individual written producer contracts that define the field representative's or broker's duties and responsibilities, including their responsibility to maintain current licenses, comply with laws and regulations and conduct business honestly and ethically.

- Once the contract has been signed and the applicant has passed the insurance producer examination, the Company or Guardian submits the information to the Division to appoint the field representative or producer as an agent within 15 days from the date the contract is executed. Agent information is also entered into the Company's producer database which interfaces with the Company's new business processing and policy administration systems.
- Guardian requires the general agencies to maintain E&O coverage.
- The Company's policy is that it would seek the Division's approval regarding the appointment of any "prohibited person" if it wishes to appoint such person as agent.
- Guardian maintains a database that tracks all agent appointments and producer licenses, and periodically reconciles its agent records to those from the Division.
- A Company database tracks all agent appointments and producer licenses for producers that are not part of the Guardian career agency system. The Company also periodically reconciles these records with Division records.
- Written Company and Guardian policy requires notice, as defined in the agreement, to agents when their appointment is terminated.
- The Company's written policy is to notify the Division of all agent terminations and the reason for any "for cause" termination.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company employees with responsibility for producer contracting, processing of agent appointments and reconciliation of agent records. RNA reviewed the Company's and Guardian's reconciliations of agent records with such records from the Division.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that the Company timely reconciled its agent records to those from the Division, but that Guardian has not timely performed such reconciliation of its BLICOA appointed agents.

Recommendations: Guardian should timely reconcile its agent records to those from the Division. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at a mutually agreed upon date to ensure that both databases are complete and accurate. The Company's internal audit department should periodically monitor compliance to ensure that future Guardian and Company reconciliations are timely and effective.

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Standard IV-2. Producers are properly licensed and appointed (if required by state law) in the jurisdiction where the application was taken.

M.G.L. c. 175, §§ 162I, 162S and 177; Division of Insurance Bulletins 1998-11 and 2001-14; 18 U.S.C. § 1033.

Objective: This Standard addresses the requirement that producers must be licensed and agents must be appointed.

M.G.L c. 175, § 162I requires that all persons who solicit, sell or negotiate insurance be licensed for that authority line. Further, no producer may act as an agent of the Company unless appointed by the Company pursuant to M.G.L c. 175, § 162S. M.G.L c. 175, § 177 prohibits payment of compensation to any person acting as an insurance producer in the Commonwealth who is not duly licensed as an insurance producer.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: RNA interviewed Company employees with responsibility for producer contracting and agent appointments, and selected 50 new business disability income sales from the examination period for testing. RNA verified that the selling producer for each sale was included on the Division's list of the Company's appointed agents.

Transaction Testing Results:

Findings: Except for a California producer who solicited two sales in Massachusetts, RNA noted that the producer for each sale tested was included on the Division's list of the Company's appointed agents. Although the California producer was not licensed in Massachusetts, a commission was paid to him in violation of M.G.L c. 175, § 177. RNA noted that the Company provides written notice to producers of the requirements of 18 U.S.C. § 1033.

Observations: None.

Recommendations: The Company shall ensure that all business solicited in Massachusetts, or sales using a Massachusetts policy form, shall be solicited by Massachusetts-licensed producers. Commissions shall only be paid to Massachusetts-licensed producers. The Company's internal audit department shall periodically monitor compliance with this requirement.

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Standard IV-3. Termination of producers complies with applicable standards, rules and regulations regarding notification to the producer and notification to the state, if applicable.

M.G.L. c. 175, §§ 162R and 162T.

Objective: This Standard addresses termination of agents, and the requirement that companies notify the regulator and the agent of such terminations.

M.G.L. c. 175, § 162T requires that the Company notify the Division in writing within 30 days of the effective date of an agent's termination, including the reason for any "for cause" terminations as defined in M.G.L. c. 175, § 162R.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: RNA interviewed company employees with responsibility for processing agent terminations. RNA selected 10 terminations from the Division's records, and 10 terminations from the Company's and Guardian's records, to determine whether the termination dates agreed. RNA further inquired whether any terminations were "for cause," and if the reasons for any such terminations were timely reported to the Division.

Transaction Testing Results:

Findings: None.

Observations: The results of testing showed that all terminations were timely reported to the Division. None of the terminations tested was "for cause." Due to system design problems, Guardian's system did not provide the proper termination dates for several terminated agents.

Recommendations: The Company and Guardian should implement enhancements to the Guardian appointment system to ensure that it maintains accurate and complete agent termination data. The Company's internal audit department should periodically monitor the system implementation process to ensure that the enhancements are effective.

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Standard IV-4. The company's policy of producer appointments and terminations does not result in unfair discrimination against policyholders.

Objective: The Standard addresses the Company's policy for ensuring that producer appointments and terminations do not unfairly discriminate against policyholders.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for producer contracting, appointments and terminations. RNA also selected 10 terminations from the Division's records, and 10 terminations from the Company's and Guardian's records, to review for any evidence of unfair discrimination against policyholders. Further, RNA sought any evidence of producer appointments resulting in unfair discrimination against policyholders in testing of 50 disability income sales from the examination period.

Transaction Testing Results:

Findings: None.

Observations: RNA's testing noted no evidence of unfair discrimination against policyholders resulting from producer appointments and terminations.

Recommendations: None.

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Standard IV-5. Records of terminated producers adequately document reasons for terminations.

M.G.L. c. 175, § 162R and 162T.

Objective: The Standard addresses whether Company records of terminated agents adequately document the action taken.

Pursuant to M.G.L. c. 175, § 162T, the Company must notify the Division in writing within 30 days of the effective date of an agent's termination, and of the cause for any "for cause" termination as defined in M.G.L. c. 175, § 162R.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: RNA interviewed company employees with responsibility for processing agent terminations. RNA also selected 10 terminations from the Division's records, and 10 terminations from the Company's and Guardian's records, to test for adequate documentation of reasons for terminations.

Transaction Testing Results:

Findings: None.

Observations: RNA's testing noted that Company and Guardian records adequately document the reasons for agents' terminations.

Recommendations: None.

* * * * *

Standard IV-6. Debit producer accounts current (account balances) are in accordance with the producer's contract with the company.

Objective: The Standard is concerned with whether the Company's contracts with producers limit excessive balances with respect to handling funds.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's policies are billed on either a direct or employer list basis, mitigating the possibility for excessive balances owed by producers.
- The Company advances commissions to producers based upon first year premium on new sales. In accordance with contractual terms, the Company provides producers with a monthly statement of new and renewal premium commissions, variable compensation, and other commission adjustments.
- The Company actively monitors producers' balances to ensure that outstanding amounts do not exceed amounts it determines are reasonable.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for producer contracting and commission processing. RNA reviewed commission activity for 10 producers for selected sales from the examination period, to ensure that commissions were paid in accordance with the Company's standard commission scales and contract terms. The Division's financial examiners are also evaluating producers' debit balances in conjunction with the ongoing financial examination of the Company.

Transaction Testing Results:

Findings: None.

Observations: Based upon review, producers' debit balances and commissions paid appear to comply with the producer contract.

Recommendations: None.

* * * * *

V. POLICYHOLDER SERVICE

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard V-1. Premium notices and billing notices are sent out with an adequate amount of advance notice.

M.G.L. c. 175, §§ 108, 110B, 187C and 187D.

Objective: This Standard addresses efforts to provide policyholders with sufficient advance notice of premiums due and disclosure of the lapse risk due to non-payment.

M.G.L. c. 175, § 108 requires that individual disability income policies provide a 31 day grace period on premium payments after the due date before lapse can occur. Pursuant to M.G.L. c. 175, § 110B, no individual disability income policy may lapse for nonpayment of premium until after three months from the premium due date, unless, within 10 days prior to the due date, the Company has mailed a notice to the policyholder showing the premium due and the due date, with notice that the policy will lapse if no payment is made on or before the due date. M.G.L. c. 175, § 187C and 187D require written notice to the policyholder for Company cancellations, including those for non-payment of premium.

Controls Assessment: The following observations and controls were noted in review of this Standard:

- Most disability income policyholders pay monthly premium electronically via pre-authorized check, with the remaining policyholders billed quarterly, semi-annually or annually. In addition, policies sold through marketing arrangements with employers are billed to the employer and paid by policyholders via payroll deduction.
- The Company generates and mails billing notices for disability income policies to the policyholder 30 days prior to the premium due date. The notices state that the policy will lapse unless payment is made by the due date.
- If premiums are not received by the due date, the Company mails a late payment offer to the policyholder stating that the policy will lapse if payment is not made. The policy lapses on the 62nd day after the original due date if payment has not been received. The Company sends a lapse notice with a reinstatement offer to the policyholder on the 70th day after the original premium due date.
- The Company monitors service standards to ensure the timely processing of premium and billing notices.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed billing procedures with Company personnel, and obtained supporting documentation including service standards. RNA selected five policy lapses that occurred during the examination period to test whether adequate notice was given prior to lapse. RNA discussed billing procedures with management, and corroborated their

assertions through review of Company documents, sample premium billing notices and complaints.

Transaction Testing Results:

Findings: None.

Observations: The Company gave timely notice to the policyholder prior to the lapse of each of the five tested policies in compliance with statutory requirements. Premium billing notices appeared to be mailed with adequate advance notice and included required disclosure of potential lapse in the event of non-payment. The Company appears to be meeting its premium billing service standards.

Recommendations: None.

* * * * *

Standard V-2. Policy issuance and insured requested cancellations are timely.

211 CMR 42.05.

Objective: This Standard addresses the Company's procedures to ensure that customer cancellation requests are processed timely.

211 CMR 42.05 requires that a 10 day free look be given on disability income insurance policies. Review of procedures pertaining to policy issuance is included in Underwriting and Rating Standard VI-9.

Controls Assessment: The following controls were noted in review of this Standard:

- Upon request to cancel an insurance policy, the Company sends the customer required forms, which they must sign, and communicates the cancellation request to the agent to enable the conservation of the business. The cancellation is effective on the date the Company receives the signed form, and a check for any return premium due is sent to the customer.
- All customers have the right to return a newly purchased policy within 10 days of receiving it. Applicable premium payments are then returned to the customer within 30 days.
- The Company has written service standards to ensure the timely processing of these transactions.
- The Company conducts post sale and policyholder service surveys, and their policy is to timely and fully respond to all significant comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed policy cancellation procedures with Company personnel, and obtained supporting documentation including written service standards and responses to policyholder surveys. RNA selected five insured requested cancellations that

occurred during the examination period to ensure that cancellations were processed accurately and timely.

Transaction Testing Results:

Findings: None.

Observations: The five policy cancellations tested appeared to be processed accurately, reasonably timely and in compliance with statutory requirements. In addition, the Company's policyholder survey results indicate that the Company is meeting its customers' expectations.

Recommendations: None.

* * * * *

Standard V-3. All correspondence directed to the company is answered in a timely and responsive manner by the appropriate department.
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Objective: This Standard addresses the Company's procedures for providing timely and responsive information to customers. Complaints and claims are covered in the Complaint Handling and Claims sections, respectively.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's disability income administration and call center department is staffed by employee representatives who process address and billing changes, send forms for other requests, and answer basic benefit questions about existing coverage.
- The Company has established call center service standards in its Balanced Scorecard to ensure the timely processing of these transactions, and has contracted with an independent research firm to monitor service performance.
- The Company conducts post sale and policyholder service surveys, and its policy is to timely and fully respond to all significant comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed correspondence procedures with Company personnel and obtained supporting documentation, including service standard monitoring reports and responses to policyholder surveys. The Company's response to correspondence related to the various examination areas is addressed for each specific Standard.

Transaction Testing Results:

Findings: None.

Observations: The Company's Balanced Scorecard, policyholder survey results and independent research firm monitoring of service performance indicate that the Company generally meets its service standards. One post sale survey response received was not addressed timely.

Recommendations: The Company should ensure that all post sale and policyholder service survey responses received are responded to fully and timely. Further, the Company should independently monitor to ensure that all post sale and policyholder service survey responses received are responded to fully and timely, and that the Company is treating any written communication primarily expressing a grievance as a complaint.

* * * * *

Standard V-4. Reinstatement is applied consistently and in accordance with policy provisions.

M.G.L. c. 175, § 108.

Objective: This Standard addresses consistent reinstatement processing in compliance with policy provisions.

M.G.L. c. 175, § 108 states that policies must allow reinstatement.

Controls Assessment: The following controls were noted in review of this Standard:

- Company policy provides that disability income policies lapse for non-payment 62 days after the premium is due. The Company sends a lapse notice including a reinstatement offer to the policyholder on the 70th day after the premium due date. The reinstatement offer gives the policyholder the opportunity to apply for policy reinstatement for up to six months after the lapse date.
- Company policy requires that individual disability income reinstatements within the first six months after termination include a completed short form application confirming no changes in policyholder medical status or history, job status or earned income within that period. Six months after termination, reinstatement is not available.
- The Company has written service standards to ensure the timely processing of these transactions.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed reinstatement procedures with Company personnel, and obtained supporting documentation including written service standards. RNA selected five reinstatements from the examination period to ensure that they were handled consistently, timely and in accordance with policy provisions.

Transaction Testing Results:

Findings: None.

Observations: The Company consistently and timely processed each of the five reinstatement transactions in accordance with policy provisions. The results of testing indicate that the Company meets its service standards.

Recommendations: None.

* * * * *

Standard V-5. Policy transactions are processed accurately and completely.

M.G.L. c. 175, § 110H.

Objective: This Standard addresses procedures for processing policy transactions such as benefit changes, elimination periods, coverage amounts or automatic additional insurance options, etc.

M.G.L. c. 175, § 110H requires notice to the policyholder at least 60 days prior to cancellation for accident and sickness insurance, including disability income coverage cancelable at age 65.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's disability income administration and call center department is staffed by employee representatives who process policy transactions, send forms for other requests and answer basic benefit questions about existing coverage.
- The Company gives written notice prior to maturity for disability income policies that are cancelable at age 65.
- The Company has established call center service standards in its Balanced Scorecard to ensure the timely processing of these transactions, and has contracted with an independent research firm to monitor service performance.
- The Company conducts post sale and policyholder service surveys, and its policy is to timely and fully respond to all significant comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed policy change and service procedures with Company personnel, and obtained supporting documentation including service standard monitoring reports and responses to policyholder surveys. RNA selected five policyholder change and service requests that occurred during the examination period to ensure that the requested transactions were processed accurately and timely.

Transaction Testing Results:

Findings: None.

Observations: The five policy change and service transactions were processed accurately and timely. The results of testing indicate that the Company is meeting its service standards.

* * * * *

Standard V-6. Non-forfeiture options are communicated to the policyholder and correctly applied in accordance with the policy contract.

No work performed. This Standard was not covered in the scope of this examination as it focused on individual disability income business, which does not provide for non-forfeiture options.

* * * * *

Standard V-7. Reasonable attempts to locate missing policyholders or beneficiaries are made.

M.G.L. c. 200A, §§ 7-7B, 8A and 9.

Objective: This Standard addresses efforts to locate missing policyholders and claimants, and to comply with escheatment and reporting requirements.

M.G.L. c. 200A, §§ 7-7B, 8A and 9 prescribe annual reporting to the State Treasurer's Office regarding efforts to locate owners of abandoned property, and the statutes require payments to the State Treasurer's Office for escheated property.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has policies and procedures in place to locate missing policyholders and claimants.
- Company policy requires that outstanding checks, including claim payments and premium refunds, be reported and escheated when the owner can not be found.
- The Company annually reports escheatable funds to the State Treasurer on May 1 as required by law.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed the Company's procedures for locating missing policyholders and claimants and escheatment of funds with Company personnel. RNA inquired whether the Company filed a report of its escheatable funds with the State Treasurer.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to have processes for locating missing policyholders and claimants, and appears to make reasonable efforts to locate such individuals. The Company appears to report unclaimed items and escheat them as required by Law.

Recommendations: None.

* * * * *

Standard V-8. The company provides each policy owner with an annual report of policy values in accordance with statute, rules and regulations and, upon request, an in-force illustration or contract policy summary.

Objective: This Standard addresses periodic disclosure to the policyholder of contract information.

Policy summary requirements are also addressed in Marketing and Sales Standard III-6 of this report.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company mails annual statements disclosing monthly benefits, automatic benefit increases, elimination periods, and premium changes to policyholders on their policy anniversary date.
- The Company has written service standards to ensure the timely processing of annual statements to policyholders.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed annual statement disclosure procedures with Company personnel, and reviewed examples of such disclosures.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to have adequate procedures for providing policyholders with timely annual statements in compliance with Company policies.

Recommendations: None.

* * * * *

Standard V-9. Unearned premiums are correctly calculated and returned to appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

M.G.L. c. 175, §§ 187C and 187D.

Objective: This Standard addresses the calculation and timely return of unearned premiums.

M.G.L. c. 175, § 187C requires that return premium be made in accordance with policy provisions upon cancellation. M.G.L. c. 175, § 187D precludes remittance of unearned premiums where the premium was not paid.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's policy administration systems automatically calculate the unearned premium on cancelled policies for return to policyholders.
- The Company has written service standards to ensure the timely processing of these transactions.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA discussed return premium calculation procedures with Company personnel, and obtained supporting documentation including written service standards. RNA selected five insured requested cancellations that occurred during the examination period to ensure that they were processed accurately, and unearned premium was returned timely.

Transaction Testing Results:

Findings: None.

Observations: Return premium for each of the cancellations tested was properly calculated and timely returned.

Recommendations: None.

* * * * *

Standard V-10. Whenever the company transfers the obligations of its contracts to another company pursuant to an assumption reinsurance agreement, the company has gained the prior approval of the insurance department and the company has sent the required notices to its affected policyholders.

No work performed. This Standard is not applicable as the Company did not enter into assumption reinsurance agreements during the examination period.

* * * * *

Standard V-11. Upon receipt of a request from policyholder for accelerated benefit payment, the company must disclose to the policyholder the effect of the request on the policy's cash value, accumulation account, death benefit, premium, policy loans and liens. Company must also advise that the request may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements.

No work performed. This Standard was not covered in the scope of this examination as it focused on individual disability income business, which does not provide for accelerated benefits.

* * * * *

VI. UNDERWRITING AND RATING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard VI-1. The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company's rating plan.

M.G.L. c. 175, § 108; M.G.L. c. 176D, § 3(7) and 211 CMR 42.06.

Objective: This Standard addresses whether the Company uses and charges proper premium rates.

M.G.L. c. 175, § 108 prohibits the issuance or delivery of any individual disability income policy until rates have been on file with the Division for 30 days, or until the Division has approved the policy within that period. Pursuant to M.G.L. c. 176D, §3(7), it is an unfair method of competition to unfairly discriminate between individuals of the same class and of the same risk in the amount of premium, fees, or rates charged for any accident or health insurance policy. Further, 211 CMR 42.06 requires that rates be filed with the Division.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has written underwriting policies and guidelines which are designed to assure reasonable consistency in classification and rating of new and renewal business.
- The Company determines rates and classes for individual disability income policies based on occupation, age, years of work experience, and health of the applicant. Premium surcharges are used to increase rates where claim risk is greater, such as for individuals in high risk occupations. A preferred rate discount is available for those applicants meeting certain underwriting criteria, such as individuals whose laboratory results meet strict underwriting criteria. In addition, multi-life discounts are also available for group or association members.
- The Company uses software to automatically compute all product rates based on applicant information and rating classifications assigned by the underwriter.
- The Company has a process to log and document Division approval of all product rates, to comply with provisions contained in statutory underwriting and rating requirements.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company personnel with responsibility for determining rate classes as part of the underwriting process. RNA selected 50 new business disability income sales from the examination period for testing. These sales included products for which actuarial rate setting documentation was filed with the Division. RNA further selected 10 of the disability income new business sales, re-rated the premiums charged and verified that the Company's rate classifications complied with statutory requirements. Related product filings were also reviewed for evidence that they were submitted to and approved by the Division.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to be charging premiums in accordance with rate information filed with the Division, and their rate classification process appears to comply with statutory requirements. Related product filings were also submitted to, and approved by, the Division.

Recommendations: None.

* * * * *

Standard VI-2. All mandated disclosures for individual insurance are documented and in accordance with applicable statutes, rules and regulations.

211 CMR 42.09.

This Standard addresses mandated disclosures for individual insurance policies which are required in accordance with statutes, regulations and Company policy. Requirements to provide policy summaries, disclosures and buyer's guides are included in Standard III-6 of this report.

* * * * *

Standard VI-3. All mandated disclosures for group insurance are documented and in accordance with applicable statutes, rules and regulations.

No work performed. This Standard was not covered in the scope of this examination, as it focused on individual business.

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Standard VI-4. All mandated disclosures for credit insurance are documented and in accordance with applicable statutes, rules and regulations.

No work performed. This Standard was not covered in the scope of this examination because the Company does not sell credit products in Massachusetts.

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Standard VI-5. The company does not permit illegal rebating, commission cutting or inducements.

M.G.L. c. 175, §§ 182, 183 and 184; M.G.L. c. 176D, § 3(8).

Objective: This Standard prohibits illegal rebating, commission cutting or inducements in Company correspondence to producers and in advertising/marketing materials.

Pursuant to M.G.L. c. 175, §§ 182, 183 and 184, no Company, or agent thereof may pay, allow, or offer to pay or allow, any valuable consideration or inducement not specified in the contract, or any other special favor. Similarly, under M.G.L. c. 176D, § 3(8), it is an unfair method of

competition to make or offer an insurance or annuity contract other than as expressed in the insurance contract, or to pay, allow or give, any premium rebate, valuable consideration or inducement not specified in the contract as inducement for such a contract.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has procedures to pay producers' commissions in accordance with home office approved written contracts.
- The producer contracts and home office policies and procedures are designed to comply with provisions contained in statutory underwriting and rating requirements, which prohibit special inducements and rebates.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed company personnel with responsibility for commission processing and producer contracting. RNA inspected producer contracts, new business materials, advertising materials, producer training materials and manuals for indications of rebating, commission cutting or inducements. RNA selected 10 new business disability income sales from the examination period to ensure that the related commission payments were in accordance with contractual terms and did not indicate any unusual activity.

Transaction Testing Results:

Findings: None.

Observations: Commission payments appear to be reasonable and did not indicate unusual activity. Further, it appears that the Company's processes for prohibiting illegal acts, including special inducements and rebates, are functioning in accordance with Company policies, procedures and statutes.

Recommendations: None.

* * * * *

Standard VI-6. All forms including contracts, riders, endorsement forms and certificates are filed with the department of insurance, if applicable.

M.G.L. c. 175, §§ 2B, 22, and 108; 211 CMR 42.06, and Division of Insurance Bulletin 2001-05.

Objective: This Standard addresses the required filing of all policy forms and endorsements.

Pursuant to M.G.L. c. 175, § 2B, no policy form of insurance may be delivered to more than 50 policyholders until it has been on file with the Division for 30 days, or the Division approves the form during that time. M.G.L. c. 175, § 22 sets forth unauthorized policy provisions, and M.G.L. c. 175, § 108 sets forth a 30 day filing requirement, and identifies mandated provisions for individual disability income insurance.

211 CMR 42.06 sets forth policy form and content requirements for individual disability income products. Division of Insurance Bulletin 2001-05 requires that form filings be accompanied by a fully-completed form-filing checklist.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company uses policy forms, rates, contract riders, and endorsement forms that are developed by teams from its actuarial, marketing, legal, compliance and information technology departments.
- The Company's written underwriting guidelines are designed to assure reasonable consistency in classification of risks.
- The Company documents Division approval of all such policy forms, contract riders, and endorsement forms to comply with statutory provisions.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for preparing and obtaining Division approval for policy forms, contracts, riders and endorsement forms. RNA selected 50 new business disability income sales from the examination period for testing, and verified the contract forms, riders, and endorsement forms for each sale were approved by the Division.

Transaction Testing Results:

Findings: None.

Observations: Based upon the testing performed, the Company utilized contract forms, riders, and endorsement forms approved by the Division.

Recommendations: None.

* * * * *

Standard VI-7. The company's underwriting practices are not to be unfairly discriminatory. The company adheres to applicable statutes, rules and regulations, and company guidelines in selection of risks.

M.G.L. c. 175, §§ 24A, 108A, 108C, 108G, and 108H; M.G.L. c. 176D, § 3(7).

Objective: This Standard addresses unfair discrimination in underwriting.

M.G.L. c. 175, §§ 24A, 108A, 108C, 108G, and 108H prohibit discrimination in the issuance of individual disability income insurance on the basis of gender, sexual orientation, against blind persons, individuals with DES exposure, domestic abuse victims, as well as on the basis of genetic tests. Pursuant to M.G.L. c. 176D, § 3(7), it is an unfair method of competition to unfairly discriminate between individuals of the same class and of the same risk in the amount of premium, fees, or rates charged for any accident or health insurance policy.

Controls Assessment: The following controls were noted as part of this Standard:

- Company policy prohibits unfair discrimination in underwriting in accordance with statutory requirements, and its written underwriting guidelines are designed to assure reasonable consistency in classification and rating of risks.
- The Company's underwriting procedures include at least one level of supervisory review of applications to ensure adherence to its underwriting guidelines.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for underwriting and classification of risks, and selected 50 new business disability income sales from the examination period for testing. RNA verified that the policy form for each sale was approved by underwriting with no evidence of discriminatory rates or contract provisions.

Transaction Testing Results:

Findings: None.

Observations: Based upon testing, the Company's underwriting and sales practices do not appear to be unfairly discriminatory, and the Company appears to adhere to statutes, rules and regulations.

Recommendations: None.

* * * * *

Standard VI-8. Producers are properly licensed and appointed (if required) for the jurisdiction where the application was taken.

Refer to Standards IV-1 and IV-2 in the Producer Licensing Section.

* * * * *

Standard VI-9. Policies and riders are issued or renewed accurately, timely and completely.

M.G.L. c. 175, § 108.

Objective: This Standard addresses whether the Company issues insurance policies timely and accurately.

M.G.L. c. 175, § 108 sets forth required provisions for individual disability income insurance policies. See Standard V-4 for testing of reinstatements and Standard VI-10 for testing of insurance applications rejected by the Company.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has written underwriting guidelines and procedures that require compliance with M.G.L. c. 175, § 108.
- All new business applications and supporting information submitted to the Company are reviewed by the new business department for accuracy and completeness. Once all the required information is received, insurance applications are considered “in good order” and are assigned to an underwriter for further review.
- Company underwriters review all insurance applications to ensure that they are complete and internally consistent, and to obtain additional information needed to make an underwriting decision.
- The Company established and monitors service standards to ensure that insurance policies and riders are issued timely and accurately.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for underwriting and policy issuance, and selected 50 new business disability income sales from the examination period for testing. RNA reviewed the insurance policies for each sale to ensure that they were issued reasonably timely, accurately and completely.

Transaction Testing Results:

Findings: None.

Observations: Based on the results of testing, it appears that contracts issued are reasonably timely, accurately, completely and in accordance with Company policies, procedures and statutory requirements.

Recommendations: None.

* * * * *

Standard VI-10. Rejections and declinations are not unfairly discriminatory.

M.G.L. c. 175, §§ 108A, C, G, and H; M.G.L. c. 175I, § 12; M.G.L. c. 176D, § 3(7).

Objective: This Standard addresses whether application denials are fair.

M.G.L. c. 175, §§ 108A, 108C, 108G, and 108H prohibit discrimination in the issuance of individual disability income insurance against blind persons, individuals with DES exposure, domestic abuse victims, as well as on the basis of genetic tests.

Pursuant to M.G.L. c. 176D, §3(7), it is an unfair method of competition to unfairly discriminate between individuals of the same class and of the same risk in the amount of premium, fees, or rates charged for any accident or health insurance policy. M.G.L. c. 175I, § 12 states that an adverse underwriting decision for disability income insurance applicants may not be based, in

whole or in part, on a previous adverse underwriting decision, on personal information received from certain insurance-support organizations or on sexual orientation.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company has written underwriting guidelines and policies that prohibit discrimination in accordance with statutory requirements.
- Based upon its underwriting guidelines, the Company may issue policies other than as applied for by adding an exclusion rider, elimination period modification, or rated premium.
- The Company's underwriting approval processes and procedures, producer communications and its training of home office underwriters are designed to prohibit unfair discrimination.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed individuals with responsibility for underwriting, policy issuance, policy application, and rejections. RNA selected 50 new business disability income sales from the examination period for testing. RNA reviewed the insurance policies for each sale, and noted whether the policy was issued other than as applied for. In addition, RNA selected 20 individual disability income applications rejected by the Company during the examination period to ensure that the reason for the rejection was in accordance with the Company's written underwriting guidelines. RNA verified that a written notice of reasons for an adverse decision was provided to the applicant in accordance with statutory requirements. Finally, RNA verified that the initial premium was returned to the applicant after an application rejection.

Transaction Testing Results:

Findings: None.

Observations: Based on the results of testing, it appears that the Company's processes to prohibit unfair discrimination in underwriting and selection of risks are functioning in accordance with Company policies, procedures and statutory requirements, and that written notice of reasons for adverse underwriting decisions was provided to applicants. The Company also appears to provide a timely return of initial premium to rejected applicants.

Recommendations: None.

* * * * *

Standard VI-11. Cancellation/non-renewal reasons comply with policy provisions and state laws and company guidelines.

M.G.L. c. 175, § 108 (3)(a)(2).

Objective: The Standard addresses whether the reasons for a cancellation or non-renewal are valid according to policy provisions and state laws.

M.G.L. c. 175, § 108 (3)(a)(2) requires that an individual disability income policy continue in-force subject to its policy terms by the timely payment of premium, and further requires that a policy be incontestable as to statements contained in the application after being in-force for two years. Insurance policies issued in Massachusetts are contestable after two years in-force when evidence of insurance fraud exists.

Controls Assessment: The Company does not have a contractual right to cancel any policy absent the conditions set forth above, but may in some cases rescind the policy. Refer to Standard VI-12.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA selected five disability income policy lapses for non-payment from the examination period to test for compliance with Company cancellation and non-renewal guidelines and statutory requirements.

Transaction Testing Results:

Findings: None.

Observations: Based upon review and testing, RNA noted no instances of improper coverage cancellation for reasons other than non-payment of premium.

Recommendations: None.

* * * * *

Standard VI-12. Rescission is not made for non-material misrepresentation.

M.G.L. c. 175, § 108 (3)(a)(2).

Objective: The Standard addresses whether (a) rescinded policies indicate a trend toward post-claim underwriting practices; (b) decisions to rescind are made in accordance with applicable statutes, rules and regulations; and (c) Company underwriting procedures meet incontestability standards.

M.G.L. c. 175, § 108 (3)(a)(2) requires that an individual disability income policy continue in-force subject to its policy terms by the timely payment of premium, and further requires that a policy be incontestable as to statements contained in the application after being in-force for two years. Insurance policies issued in Massachusetts are contestable after two years in-force when evidence of insurance fraud exists.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company does not have a contractual right to cancel insurance coverage absent the conditions set forth above, but may in some cases rescind the policy.
- The Company's underwriting process considers the risk of material misrepresentation by applicants, and attempts to corroborate information received including health status.

- Cases considered for rescission are reviewed by an underwriting supervisor and are also referred to the legal department for additional consultation.
- Rescissions are only made for material misrepresentations within the first two years after the policy is issued.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: Because grounds for rescission in Massachusetts are limited and such incidents are rare, RNA did not directly test the Company's rescission procedures, but looked for evidence of improper rescission in tests of complaints, lapses, declinations and claims.

Transaction Testing Results:

Findings: None.

Observations: Based upon review and testing, RNA noted no instances of improper rescission.

Recommendations: None.

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<p>Standard VI-13. Pertinent information on applications that form a part of the policy is complete and accurate.</p>
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Objective: This Standard addresses whether (a) the requested coverage is issued; (b) the Company verifies the accuracy of application information; (c) applicable non-forfeiture and dividend options are indicated on the application; (d) changes and supplements to applications are initialed by the applicant; and (e) supplemental applications are used where appropriate.

Controls Assessment: Refer to Standards III-6 and VI-9.

Controls Reliance: Refer to Standards III-6 and VI-9.

Transaction Testing Procedure: Refer to Standards III-6 and VI-9.

Transaction Testing Results: Refer to Standards III-6 and VI-9.

Recommendations: Refer to Standards III-6 and VI-9.

* * * * *

Standard VI-14. The company complies with the specific requirements for AIDS-related concerns in accordance with statutes, rules and regulations.

211 CMR 36.04-36.06 and 36.08.

Objective: This Standard addresses procedures to ensure that the Company does not use medical records indicating AIDS-related concerns to discriminate against applicants without medical evidence of disease.

211 CMR 36.04 sets forth prohibited practices with respect to AIDS-related testing and information. Pursuant to 211 CMR 36.05, an applicant must give prior written informed consent before an insurer may conduct an AIDS-related test. 211 CMR 36.06 specifies that the insurer notify the insured, or his/her designated physician, of a positive test result within 45 days after the blood sample is taken. 211 CMR 36.08 prohibits insurers from requesting any information about the applicant's, policyholder's or beneficiary's sexual orientation.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company's new business submission requirements address compliance with 211 CMR 36.04-36.06 and 211 CMR 36.08 in underwriting.
- The Company has a specific form that includes required Massachusetts disclosures found in 211 CMR 36.05, that is provided at the time an application is taken.
- The Company's procedures require the applicant to acknowledge in writing that he or she understands his or her rights regarding the tests for HIV status that are required for underwriting.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA selected 50 new business disability income sales from the examination period to verify that the Company obtained signed Massachusetts AIDS testing disclosure notices from the applicants. In testing of underwriting denials, RNA looked for evidence of unfair discrimination.

Transaction Testing Results:

Findings: None.

Observations: Based on testing results, it appears that the Company obtains the Massachusetts AIDS testing disclosure notice from applicants in accordance with Company policies, procedures and statutory requirements. RNA noted no evidence of unfair discrimination in the denial of coverage.

Recommendations: None.

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VII. CLAIMS

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures (b) the Company's response to various information requests, and (c) a review of several types of files at the Company.

Standard VII-1. The initial contact by the company with the claimant is within the required time frame.

M.G.L. c. 176D, § 3(9)(b) and M.G.L. c. 175, § 108.

Objective: The Standard addresses the timeliness of the Company's initial contact with the claimant.

Pursuant to M.G.L. c. 176D, § 3(9)(b), unfair claim settlement practices include failure to promptly address communications for insurance claims. M.G.L. c. 175, § 108, requires disability income claim forms to be sent to a claimant within 15 days of receiving a notice of claim.

Controls Assessment: The following controls were noted in review of all claims Standards:

- Written policies and procedures govern the Company's claims handling processes.
- The Company evaluates all disability income claims based on total and residual disability using the definitions in its policies and riders. The Company's policies state that total disability occurs when the insured can not perform the material and substantial duties of his or her occupation ("own occ"). After paying benefits for five years, policies for certain occupation classes change the definition of total disability to include the requirement that the insured not be working in any occupation ("modified own occ"). Residual disability is defined in the rider as the insured is at work and is not totally disabled under the terms of the policy, but because of sickness or injury, the insured's loss of income is at least 20% of their prior income.
- When a disability income claim is reported through an agent or the company's 800 phone number, the claim is registered in the Company's claim system and a claims examiner is assigned. The same day, the Company sends a claim form to the claimant with an explanatory letter, with a HIPAA/Privacy Disclosure form that must be signed by to claimant to allow the Company to communicate with the claimant's attending physician to obtain his or her statement. The Company's databases are researched to determine if multiple policies exist. The Company sends follow up letters to the claimant every 30 days until the completed claim form is received. If no claim form is received after 90 days, the Company gives final notice to the claimant that information must be submitted within 30 days or the claim will be closed, then closes the file.
- The Company notifies a claimant in writing that it has received a completed disability income claim form, it then orders medical records and appropriately investigates the claim. Although rare, any cases of suspected fraud are sent to the Company's law department and Special Investigations Unit ("SIU") for investigation. The Company electronically maintains claim documentation and history notes, and uses occupational experts when needed to conduct on-site visits to assess the extent of a claimant's disability.
- The Company's in-house, or contracted, financial experts assist in the adjudication of many business overhead expense and residual disability claims. The adjudication process

- requires substantial analytical review and financial analysis of the claimant's financial records.
- The Company makes the initial benefit payment once it receives all information necessary to adjudicate a claim and determines if benefits are due.
 - The Company's billing department processes waivers of premium benefits after the claims examiner notifies them such benefits are due.
 - The Company established and recently expanded a claim metric that it monitors to evaluate its compliance with Company claim processing goals and requirements.
 - The work of claim examiners is reviewed by supervisors to ensure compliance with Company policies and procedures.
 - The Company periodically surveys claimants to ask about their claim experience. It then compiles and analyzes the results as part of the Balanced Scorecard, and follows up as necessary on specific comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: RNA interviewed Company personnel to understand claims handling processes, and obtained supporting documentation. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment, from the examination period to verify that the Company's initial contact was timely.

Transaction Testing Results:

Findings: None.

Observations: The claim transactions tested were processed according to the Company's policies and procedures, and the Company's initial contact was timely. Based on the results of testing, it appears that the Company's processes for making initial contact with disability income claimants are functioning in accordance with its policies, procedures and statutory requirements.

Recommendations: None.

* * * * *

Standard VII-2. Investigations are conducted in a timely manner.

M.G.L. c. 176D, § 3(9)(c).

Objective: The Standard is concerned with the timeliness of the Company's claim investigations.

Pursuant to M.G.L. c. 176D, § 3(9)(c), unfair claims settlement practices include failure to adopt and implement reasonable standards for the prompt investigation of a claim.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand claim investigations, and obtained supporting documentation. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment from the examination period to verify that investigations are conducted in a timely manner.

Transaction Testing Results:

Findings: None.

Observations: The Company timely investigated the tested claims. Based on the results of testing, it appears that the Company's processes for timely investigating claims are functioning in accordance with its policies, procedures and statutory requirements.

Recommendations: None.

* * * * *

Standard VII-3. Claims are settled in a timely manner.

M.G.L. c. 176D, § 3(9)(f) and M.G.L. c. 175, § 108.

Objective: The Standard is concerned with the timeliness of the Company's claim settlements.

Pursuant to M.G.L. c. 176D, § 3(9)(f), unfair claims settlement practices include failure to effectuate prompt, fair and equitable claim settlements. Pursuant to M.G.L. c. 175, § 108, complete claims must be settled within 45 days of submission, or a notice must be sent to the claimant stating the reasons for non-payment.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand claim settlement practices, and obtained supporting documentation. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment during the examination period to verify that claim settlements were timely.

Transaction Testing Results:

Findings: None.

Observations: The settlement of the tested claims was timely. Based on the results of testing, it appears that the Company settles claims in a timely manner in compliance with Company policies, procedures and statutory requirements.

Recommendations: None.

* * * * *

Standard VII-4. The company responds to claim correspondence in a timely manner.

M.G.L. c. 176D, §§ 3(9)(b) and 3(9)(e).

Objective: The Standard addresses the timeliness of the Company's response to all claim correspondence.

Pursuant to M.G.L. c. 176D, §§ 3(9)(b) and 3(9)(e), respectively, unfair claim settlement practices include failure to promptly address communications for insurance claims, and failure to affirm or deny claim coverage within a reasonable time after the claimant has given proof of loss.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand its claim handling processes, and obtained documentation supporting such processes. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment during the examination period to verify that policyholder claim correspondence was answered timely.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that correspondence for the tested claims was answered timely. Based on the results of testing, it appears that the Company's claim handling processes are functioning in accordance with its policies and procedures, and are in compliance with statutory and regulatory requirements.

Recommendations: None.

* * * * *

Standard VII-5. Claim files are adequately documented.

Objective: The Standard addresses the adequacy of information maintained in the Company's claim records.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand claims handling processes, and obtained documentation supporting such processes. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment during the examination period, to verify that claim files were adequately documented.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that files for the tested claims were adequately documented according to the Company's policies and procedures. Based on the results of testing, it appears that the Company's processes for documenting claim files are functioning in accordance with their policies and procedures.

Recommendations: None.

* * * * *

Standard VII-6. Claim files are handled in accordance with policy provisions and state law.

M.G.L. c. 176D, §§ 3(9)(d) and 3(9)(f); M.G.L. c. 175, § 110F.

Objective: This Standard addresses whether appropriate claim amounts including applicable interest have been paid to the appropriate beneficiary/payee.

Pursuant to M.G.L. c. 176D, §§ 3(9)(d) and 3(9)(f), respectively, unfair claim settlement practices include refusal to pay claims without conducting a reasonable investigation, and failure to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear. M.G.L. c. 175, § 110F requires that benefits due under a disability policy not be reduced by an increase in Federal social security benefits once payment of benefits has commenced.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand claim correspondence, documentation and handling. RNA selected 25 paid disability income claims, and 24 reported disability income claims closed without payment during the examination period, to verify that claim files were adequately handled and documented.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that tested claims were adequately handled. The adjudication of residual disability claims requires substantial analytical review and financial analysis of claimants' financial records. Effective March 16, 2006, the Company created a Financial Services Unit, which includes financial experts, and began requiring the participation of a financial expert in the adjudication of such claims. Based on the results of testing, it appears that the Company's claim handling processes are functioning in accordance with their policies and procedures, and are in compliance with statutory and regulatory requirements.

Recommendations: None.

* * * * *

Standard VII-7. Company claim forms are appropriate for the type of product.

Objective: The Standard addresses the use of claim forms that are appropriate for the policy.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand the claim forms it uses, and obtained documentation supporting such use. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment during the examination period, to verify that claim forms were appropriate for the policies.

Transaction Testing Results:

Findings: None.

Observations: RNA noted that that claim forms for the tested claims were appropriate and used in accordance with the Company's policies and procedures.

Recommendations: None.

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Standard VII-8. Claim files are reserved in accordance with the company's established procedures.

No work performed. All required activity for this Standard is included in the scope of the ongoing statutory financial examination of the Company.

* * * * *

Standard VII-9. Denied and closed-without-payment claims are handled in accordance with policy provisions and state law.

M.G.L. c. 176D, §§ 3(9)(d), 3(9)(h) and 3(9)(n).

Objective: The Standard is concerned with the adequacy of the Company's decision-making and documentation of denied and closed-without-payment claims.

Pursuant to M.G.L. c. 176D, § 3(9)(d), unfair claim settlement practices include refusal to pay claims without conducting a reasonable investigation. Pursuant to M.G.L. c. 176D, § 3(9)(h), unfair claims settlement practices include attempting to settle a claim for an amount less than a reasonable person would have believed he was entitled to receive. Finally, M.G.L. c. 176D, § 3(9)(n) considers failure to provide a reasonable and prompt explanation of the basis for denying a claim an unfair claim settlement practice.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand its claim denial processes, and obtained documentation supporting such processes. RNA selected 24 reported disability income claims that were closed without payment during the examination period to evaluate whether full or partial claim denials were handled in accordance with policy provisions and statutory requirements. Thirteen (13) of the selected claims were claim denials.

Transaction Testing Results:

Findings: None.

Observations: Full or partial denials for the tested claims appeared to be handled in accordance with policy provisions and statutory requirements. The results of testing indicate that the Company's processes for denying claims are functioning in accordance with its policies, procedures and statutory requirements.

Recommendations: None.

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Standard VII-10. Cancelled benefit checks and drafts reflect appropriate claim handling practices.

Objective: The Standard addresses the Company's procedures for issuing claim checks.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand its claim payment processes, and obtained documentation supporting such processes. The Company does not generally require a release when a claim is settled.

Transaction Testing Results:

Findings: None.

Observations: Based upon review of claim payment processes, claim handling procedures appear appropriate.

Recommendations: None.

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Standard VII-11. Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

M.G.L. c. 176D, §§ 3(9)(g) and 3(9)(h).

Objective: The Standard addresses whether the Company's claim handling practices force claimants to (a) institute litigation for the claim payment, or (b) accept a settlement that is substantially less than what the policy contract provides for.

Pursuant to M.G.L. c. 176D, §§ 3(9)(g) and 3(9)(h), unfair claim settlement practices include compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered, and attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand the claim handling process, and obtained supporting documentation. RNA selected 25 paid disability income claims, and 24 reported disability income claims that were closed without payment during the examination period, to review the Company's claim handling practices.

Transaction Testing Results:

Findings: None.

Observations: RNA noted no instances in the tested claims where a claimant was forced to institute litigation to receive claim payments, or forced to accept less than amount due under the policy. The results of testing appear to show that the Company's claim payment processes do not require claimants to institute litigation to receive claim payments, or to accept less than the amount due under the policy.

Recommendations: None.

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Standard VII-12. The company provides the required disclosure material to policyholders at the time an accelerated benefit payment is requested.

No work performed. This Standard does not apply to disability income policies.

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Standard VII-13. The company does not discriminate among insureds with differing qualifying events covered under the policy, or among insureds with similar qualifying events covered under the policy.

Objective: The Standard is concerned with whether the Company's claim handling practices discriminate against claimants with similar qualifying events covered under its policies.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: RNA interviewed Company personnel to understand the claim handling process, and obtained supporting documentation. RNA selected 25 paid disability income claims, and 24 reported disability income claims closed without payment during the examination period, to verify that the Company does not unfairly discriminate against claimants.

Transaction Testing Results:

Findings: None.

Observations: RNA noted no evidence in the tested claims that the Company unfairly discriminates against claimants. Testing indicates that the Company's claim handling practices do not discriminate against claimants with similar qualifying events covered under its policies.

Recommendations: None.

* * * * *

SUMMARY

Based upon the procedures performed in this comprehensive examination, RNA has reviewed and tested Company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating, and claims as set forth in the *NAIC Market Conduct Examiner's Handbook*, the market conduct examination standards of the Division, and the Commonwealth of Massachusetts insurance laws, regulations and bulletins. We have made recommendations to address various concerns in several of the above areas.

FOR INFORMATION PURPOSES ONLY

ACKNOWLEDGEMENT

This is to certify that the undersigned is duly qualified and that, in conjunction with Rudmose & Noller Advisors, LLC, applied certain agreed-upon procedures to the corporate records of the Company in order for the Division of Insurance of the Commonwealth of Massachusetts to perform a comprehensive market conduct examination (“comprehensive examination”) of the Company.

The undersigned’s participation in this comprehensive examination as the Examiner-In-Charge encompassed responsibility for the coordination and direction of the examination performed, which was in accordance with, and substantially complied with, those standards established by the National Association of Insurance Commissioners (“NAIC”) and the *NAIC Market Conduct Examiners’ Handbook*. This participation consisted of involvement in the planning (development, supervision and review of agreed-upon procedures), administration and preparation of the comprehensive examination report. In addition to the undersigned, Dorothy K. Raymond of the Division’s Market Conduct Section participated in this examination and in the preparation of the report.

The cooperation and assistance of the officers and employees of the Company extended to all examiners during the course of the examination is hereby acknowledged.

Matthew C. Regan, III
Director of Market Conduct &
Examiner-In-Charge
Commonwealth of Massachusetts
Division of Insurance
Boston, Massachusetts