STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
& HEALTH CARE ADMINISTRATION

In re:	Metropolitan Life Insurance Co., Metropolitan Insurance And Annuity Company, Metropolitan Tower Life Insurance Company, & Security First Life Insurance Company	DOCKET NO. 06-044-I

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES John P. Crowley, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, subject to the exceptions and qualifications discussed below.

FINDINGS OF FACT

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration ("the Department") is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. Metropolitan Life Insurance Company is a publicly traded stock company organized under the laws of the State of New York. Metropolitan Insurance and Annuity

Company merged into Metropolitan Tower Life Insurance Company in 2004. Metropolitan Tower Life Insurance Company is a wholly owned subsidiary of Metropolitan Life Insurance Company. Security First Life Insurance Company is a wholly owned subsidiary of Security First Group, Inc., which was acquired by Metropolitan Life Insurance Company in 1997. Unless stated otherwise, this Order shall refer to all four entities collectively as "the Company."

3. On May 30, 2003 a final market conduct examination report was issued by examiners James Montgomery III and Robbie Kriplean entitled REPORT OF EXAMINATION OF THE MARKET CONDUCT AFFAIRS OF METROPOLITAN LIFE INSURANCE COMPANY, METROPOLITAN INSURANCE AND ANNUITY COMPANY, METROPOLITAN TOWER LIFE INSURANCE COMPANY, SECURITY FIRST LIFE INSURANCE COMPANY BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION (hereinafter "the Report").

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of the Report. The Company submitted a formal response ("the Response"), discussed issues raised in the Report with the Department and provided additional information requested by the Department.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has fully considered the Report, the Company's Response, and additional information provided.

CONCLUSIONS OF LAW

6. The Company has suggested numerous changes to the Report. To the extent this Order does not expressly adopt changes suggested by the Company, those suggested

modifications are not adopted. Unless specified otherwise, the Department adopts the Report as it has been written.

7. In the **"MULTIDISTRICT LITIGATION"** section of the Report (page 7), the examiners discuss the resolution of several class action lawsuits which were pending during the course of the examination period.

The Company objects that the Department was fully apprised of the terms of the settlement and that the examiners note all claims involving Vermont claimants have been resolved. As such, the Company believes the litigation to be "a matter previously reviewed and closed by the Department" (Response at page 1) and asks this matter not be included in the Report. Vermont law does not require exclusion of issues that may have been the subject of previous review by the Department from examination reports. 8 V.S.A. § 3574(a). As such, the Department adopts this portion of the Report.

8. In the section of the report entitled **"FINES, PENALTIES & FORFEITURES"** (page 9), the examiners indicate the Company has not filed Bulletin 30 reports for 1998, 1999 and 2000. As such, the examiners recommend the Company establish procedures for filing the required reports. The examiners further outline various civil penalties paid by the Company to the United States Government and the State of Florida for sales and marketing practices.

The Company does not dispute that it has failed to file Bulletin 30 but notes that the action by the United States outlined in the report was not subject to such reporting because it did not involve a state insurance department. The Company correctly argues that Bulletin 30 only requires the reporting of actions involving state insurance

departments. Nevertheless, the action involving the Florida Department of Insurance required a Bulletin 30 report.

The Company objects to the examiners' discussion of the litigation for similar reasons noted above. Specifically, the Company notes that the Company entered into a stipulation in 1994 with the Department that involved similar issues. The Company notes the facts at issue in the subject litigation occurred prior to the subject examination period.

Upon consideration, the Department adopts the examiners' recommendation that the Company implement procedures to comply with Bulletin 30, but finds that no fine is warranted. The Company shall submit a signed written description of those procedures no later than 30 days after the appeal deadline of this Order, for the Department's approval. Further, as noted above, it is not improper for the examiners to discuss litigation that was pending or resolved during the examination period and this portion of the Report is adopted.

9. In the **"SALES AND MARKETING – 'Target' Premium Issue"** section (Report page 10 - 11), the examiners note that the Company understated its target premiums for universal life products for fifteen years (from 1983 to 1998). The examiners opine that the target premium is the "key competitive device used in the sale of universal life policies." (Report at page 10.) The examiners note that understating the target premium may have induced people to purchase the subject policies based on misleading information and that such misstatement was a violation of 8 V.S.A. § 4724 (2). The examiners recommend that the Company develop a compensation program with the Department.

In response, the Company disputes the definition of "target premium" and asserts "the 'target' premium is the minimum premium the company will permit to be shown on the specifications page for issuance of the policy. The amount is not intended as a device for comparison with other companies' products and is not, as alleged, the only figure available to compare similar policies." (Response at page 3, emphasis in original.) The Company explains that the policy is sold with an illustration[1] which shows that policy values based on both guaranteed interest rates and charges and current interest rates and charges. The Company asserts that the values contained in the illustration are used by the Company and by clients to compare products, not the target premium.[2] The Company concedes that minimum premium to carry coverage to maturity is important for comparison, but other factors are equally as important. The Company further notes that actions taken in other states where the Company made restitution based on target premiums involved different policy forms that contained representations which are not included on the Vermont forms. As such, the Company requests the Department not adopt this portion of the Report.

Upon consideration, the Department will not adopt this portion of the Report, nor the examiners' recommendation. The evidence provided in the Report, coupled with the information in the Company's Response, constitutes insufficient evidence to establish a violation of 8 V.S.A. § 4724(2). However, the Department does not condone the

[1] The Company also notes that after the policy has been issued, the policyholder is provided with a policy summary. However, the focus of the examiners' criticism is on the sale of the policy. Documents provided after the policy is issued are not relevant to this discussion.

[2] The Company asserts (at page 12) that it was not required to give written illustrations to prospective customers, which is addressed separately hereafter. If the Company were to continue the practice of relying solely on computer presentations, without providing the prospective customer with a written illustration, then the target premium would appear to be a customer's only basis for comparison, and the understatement of target premiums indeed might be deceptive.

miscalculation of the planned premium, for which the Company had to take corrective action, and this Order should not be read as an acceptance of that activity.

10. In the "**SUITABILITY – Questionable Suitability Cases**" (pages 12 – 13) and "**SUITABILITY – Written Standards of Suitability**" (pages 13 –14) sections of the Report (pages 12 – 19), the examiners discuss three complaints received by the Department involving sales of variable annuities to people in their eighties. Two of the three complaints resulted in sales being reversed. The examiners also note that the sales in question did not appear to comply with the Company's written suitability guidelines contained in "Manager's Guide to Appropriateness of Sale" (the "Guide"). The examiners recommend (page 19) that the Company change the application to include a question as to whether a penalty will be incurred on the part of the annuitant and, if so, the approximate amount of that penalty.

In its Response, the Company notes that the product sold in all three cases (the Preference Plus Account or "PPA"), has certain features that make it appropriate for older clients. The Company notes the PPA product has a death benefit that is guaranteed to equal the principal, even if the market value of the account has reduced the account balance below the principal contributions. The Company also notes the PPA allows the systematic withdrawal of up to 10% of the account balance without a withdrawal charge. As such, the Company asserts all three were suitable sales. The Company also notes that the PPA application is no longer in use, and the current product's[3] application includes a replacement and transfer disclosure form that requires the producer to identify charges and fees in justifying the suitability of the sale, on which the manager must also sign.

[3] The Preference Plus Account has been replaced with the Preference Plus Select annuity.

However, the Company does not discuss the suitability of the PPA to any of the three individuals discussed in the Report, other than to state that each invested in a Fixed Interest Account. (Response at page 7). While the PPA might not be *per se* unsuitable for elderly customers, based on the features discussed by the Company, the Company falls short of articulating the suitability of the policy for these individuals. When the Company receives complaints about sales, as occurred with these three accounts, the suitability of the sale should be investigated by a supervisor other than the manager responsible for approving the transaction, also using the Company's Guide to assess the suitability. In this way, complainants will be assured that the Company has applied its standards to their purchase.

Upon consideration, the Department adopts the examiners recommendation at the bottom of page 19 of the Report (*see also* Recommendation No. 4, on page 30 of the Report). The application for the new annuity product ("PPS") includes sections for annuity to annuity, life insurance to annuity, and mutual fund to annuity transactions. The Company shall amend its PPS application to include another, catch-all section for other sources of funding for the annuity (such as certificates of deposit, stocks or bonds), to ensure that the sales representative and the manager account for any other costs associated with the transaction in analyzing suitability.

Based on the Company's representations concerning the nature of the PPA product, it appears that sales of this product could be suitable for an elderly client in certain circumstances. From the information contained in the Report, it is impossible to tell if the subject sales were suitable, although two of the three sales were reversed.

These sales were handled by the Department through the formal complaint process and fully resolved. The Department declines to impose a penalty for these sales.

Nevertheless, the Company must develop a formal plan for supervising the suitability of each sale for the individual client, which plan should include a provision for the supervisor to sign off on the suitability of the sale. This compliance plan should include also a provision for investigating complaints, requiring a different supervisor than the one who approves the sale to check the suitability of the sale under the Company's standards. The Company shall provide the Department with a written compliance plan, within 30 days of the expiration of the appeal deadline of this Order, for the Department's approval.

11. In the **"SUITABILITY OF ANNUITY PURCHASES"** section of the Report (pages 14 – 19), the examiners compare annuity account asset allocation to customer's stated investment objectives. The examiners conclude the Company exposes certain customers to more risk than was appropriate in light of the stated investment objectives. The examiners also note that many files do not contain the suitability worksheet or asset allocation questionnaire. The examiners note two files violated Vermont's former replacement regulation (Regulation 88-2)[4] and that the Company failed to respond timely to an examiner inquiry in violation of 8 V.S.A. § 3565(b).

The examiners recommend (Report at page 19, numbers one and two, *see also* Recommendation Nos. 3A and B on page 30 of the Report) that the Company use "more objective means for assisting applicants with the choice of an investment objective" such as the numerical weighting methodology which the examiners employed to analyze the files. The examiners further recommend that the Company revise its procedures for

[4] Regulation I-2001-03 replaced I-88-2, effective March 1, 2002.

matching the investment risk category of investment allocations with the risk category of the investment objective selected by the applicant.

In response, the Company criticizes the examiners' methodology for comparing investment objectives with actual investment risk assumed. The Company notes that no such objective test is presently endorsed by the SEC, NASD nor NAIC, nor by Vermont law and thus, the objective test concept proposed by the examiners is inappropriate.

The Company does not address the issue of the two violations of Regulation 88-2, Vermont's former replacement regulation, nor does the Company address the violations of 8 V.S.A. § 3565(b).

Upon consideration, the Department agrees with the Company that a numerical methodology, such as employed by the examiners, is not a practical solution to ensuring investment choices are clearly analogous to stated investment goals. Further, the charts included in the exam, which purport to describe the most worrisome examples discovered by the examiners circumstances, do not appear particularly egregious. Because a client is allowed to choose only one investment objective, but in fact may be between two investment objectives, slight deviations from the investment objective numeric weight are to be expected. Although a serious deviation would be a problem, the examples in the Report do not appear sufficiently out of range as to constitute violations. The Department rejects this portion of the Report.

However, the two replacement regulation violations and the violation of 8 V.S.A. § 3565(b) warrant the imposition of a $2,000 penalty.

12. In the **"UNDERWRITING"** section of the Report (page 20), the examiners note two violations discovered from a sample of 55 life policies. The examiners recommend

that the Company revise its procedures to ensure compliance with 8 V.S.A. § 4724(20) and Vermont Regulation 77-2 § 5.

The Company does not respond to this portion of the Report.

Upon consideration, the Department adopts this portion of the Report, but does not adopt the examiners' recommendations, as the violations do not appear to be systemic or indicative of a lack of procedures. Under these circumstances, the two violations discovered by the examiners do not warrant the imposition of a fine.

13. In the **"POLICY FORM FILINGS"** section of the Report (page 21), the examiners note that of 50 long term care policies reviewed by the examiners, one file contained an application which did not appear to have been filed and approved by the Department. The examiners recommend the Company revise its procedures to insure policy forms are filed and approved prior to use.

In response, the Company notes that it cannot identify the form in question from the examination and requests the Department provide a copy of the form.

Upon consideration, the Department concludes that one document in fifty files which might not have been approved by the Department is insufficient to justify requiring the Company to revise its procedures, nor do these circumstances warrant the imposition of a fine. The Department adopts this portion of the Report, but does not adopt the examiners' recommendation.

14. In the **"CLAIMS PROCEDURES AND PROCESSING"** section of the Report (pages 22 – 23), the examiners note the company failed to calculate interest on policy proceeds in accordance with 8 V.S.A. § 3665. Further, the examiners note the Company pays interest on policy proceeds under group policies based on the law in the state of the