beneficiary at the time of death. The examiners recommend the Company recalculate interest on the impacted policies and send additional payments to comply with 8 V.S.A. § 3665. The examiners further recommend (page 23) the Company pay interest according to 8 V.S.A. § 3665 when certificate holders reside in Vermont, not beneficiaries.

In its Response (page 10), the Company notes that it did recalculate interest to come into compliance with 8 V.S.A. § 3665, on "certain" claims, "[a]s noted in the Report[.]" However, the Report only references (at page 22) the Company's agreement to recalculate the underpaid claims from the New England Mutual Life Insurance Company claims, and is silent as to the Company's treatment of the individual claim #2779737 or the group life claims.

Upon consideration, the Department adopts this portion of the Report and the examiners' recommendations. As noted above, the Response does not address the Company's procedures to ensure that benefits are calculated based on the law of the state of residence of the policyholder (not the beneficiary) at the time the policy was issued. The Company shall certify in writing, within 30 days of the expiration of the appeal deadline of this Order, that it has revised its procedures to provide for payment as outlined above. Additionally, the Company shall provide the Department with a written audit of the interest payments on policy proceeds for the past 10 years,[5] within 90 days of the date of this Order. For each claim, the Company shall report the date of death, the date the proof of loss was received, the amount of insurance at the time of death, the amount paid to beneficiaries, the date payment was made, the amount that should have been paid had interest been calculated in accordance with 8 V.S.A. § 3665, the policy number, and the claim number. The audit shall be provided both in hardcopy and

[5] This coincides with the time period since Met Life acquired New England Mutual.

electronically in the form of an Excel spreadsheet. Upon approval, the Company shall refund all underpaid interest owing that exceeded $25.00 at the time benefits were paid.

The 115 noted violations of 8 V.S.A. § 3665 warrant a fine of $1,150.

15. In the **"POLICY LOAN INTEREST"** section of the Report (page 24), the examiners note a potential violation of 8 V.S.A. § 3731(7), wherein the Company may charge the maximum allowable interest rate on a loan, and then also credit a lesser rate of interest to the loaned portion of the accumulated cash value, than it does for the unloaned value. Effectively, the examiners note, this exceeds the maximum interest rate allowable under the statute. The examiners recommend the Company credit any persons who paid a total effective rate in excess of the maximum rate allowed by statute with the excess charge. The examiners further recommend the Company revise its procedures to prevent exceeding the statutory maximum interest rate.

In its Response (pages 10 – 11), the Company asserts the interest rates charged do not violate the law and are, in fact, used in most states with laws analogous to that of Vermont. Further, the Company notes the Department approved the forms in question and that such forms plainly disclose that the interest rate, coupled with the decreased credited rate on the loaned portion of the accumulated cash value, may be more than the statutory maximum, but that the credited rate never drops below the guaranteed rate.[6] Moreover, the Company asserts that it maintains a difference of no greater than 2% between the interest and credited rates (i.e., the credited rate on the loaned portion of the accumulated cash value will not be reduced below 6%), even where the credited rate

[6] "Interest rate" refers to the amount charged on policy loans; "credited rate" refers to the amount of interest paid by the Company on the accumulated cash value of the policy; "guaranteed rate" refers to the minimum credited rate promised by the Company in the policy.

must be increased in order to maintain this 2% spread. However, the Company could not produce written guidelines which establish this methodology.

The Company's methodology for calculating policy loan interest rates, and the accompanying alterations to the interest rate credited to the loaned portion of the accumulated cash value, must be set forth in writing, to ensure that the interest rates are applied uniformly and to facilitate the auditing of such rates by regulators. The Company shall provide the Department with a written procedure for the calculation of interest rates on loans and credit rates on the unloaned accumulation value, within 30 days of the expiration of the appeal deadline of this Order, for the Department's approval. The Department does not adopt this section of the Report, and reserves ruling on this issue pending the Company's submission of the written guidelines.

16. In the **"PRODUCER LICENSING"** section of the Report (page 25), the examiners note one instance of a producer selling a product for which he was not licensed. The examiners further note two instances where the Company terminated agents, but failed to conform to the requirements of 8 V.S.A. § 4807. The examiners recommend the Company take steps to prevent further producer licensing violations and to assure agents writing variable products are properly licensed.

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

Upon consideration, the Department adopts this portion of the Report and the examiners' recommendation with the following clarification. The Company shall provide, in writing, an explanation of what steps it takes to ensure compliance with Vermont's producer licensing laws. Further, the Company will provide a written description of the procedures employed to ensure that producers, when terminated, are

terminated in compliance with 8 V.S.A. § 4813m.[7] These materials shall be provided to the Department for approval within 30 days of the expiration of the appeal deadline of this Order. The three violations warrant the imposition of a $1,000 fine.

17. In the **"REPLACEMENTS"** section of the Report (pages 26 – 27), the examiners reviewed a sample of 55 out of 245 files. Of the sampled 55, 22 files contained a document entitled "Acknowledgement and Certification Regarding Sales Illustration" and/or "Computer Screen Illustration Certification" which required the signature of both the applicant and the producer and certified that no hard copy of the sales illustration had been left with the applicant at the time of the sale, but would be provided no later than at the time of policy delivery. The examiners note this is a violation of former Regulation I-88-2 § 6(B)(3)[8] which required a producer leave the applicant with an original or copy of the written or printed communications used for presentation with the applicant. The examiners also note one violation of Regulation I-88-3 § 9(C) (requiring a notice of replacement).

The examiners also note the Company conducted an audit which discovered violations of the replacement regulation, all of which were corrected voluntarily by the Company. The examiners recommend the Company revise its procedures to comply with the applicable statutes and regulations.

In its Response, the Company denies that it violated Regulation I-88-2 § 6(B)(3) because those regulations only pertain to "written or printed" communications. Since the Company made its presentations on a computer, no "written or printed" communications were used and the Regulation has no application. The Company also notes that one of

[7] 8 V.S.A. § 4807 has been amended and functionally replaced by 8 V.S.A. § 4813m.
[8] The examiners erroneously cite to I-88-2 § 6(A)(3).

the 22 subject files did, in fact, contain a sales illustration that was provided to the customer.

The Department rejects the Company's assertion that a presentation made on a computer does not constitute a "written or printed" communication. To assert that an illustration is not "written or printed" within the meaning of the Regulation because it is displayed initially on a computer screen strains the meaning of these terms as they are commonly understood and certainly violates the spirit of the Regulation. The purpose of this type of regulation (which is common among states) is to provide the prospective customer with an opportunity to review the illustration and sales materials after the pressure of the sales agent has been removed and to further allow the customer time to digest what are often complicated and somewhat confusing numbers. Indeed, the Company defended its miscalculation of the target premiums (*supra* at p. 5) by asserting that the illustrations were the more valuable tool for customers to compare policies.

The Department adopts this portion of the Report and further adopts the examiners recommendation, subject to the following additional clarifications. The Company shall comply with Regulation I-2001-03 (Vermont's current replacement regulation), including written copies of presentations made on a computer.

This matter warrants a $2,200 penalty, consisting of a $100 penalty for each of the 21 violations discovered by the examiners relating to the sales illustration violation and a $100 fine for the one violation of I-88-2 § 9(C).

18. In the **"CONSUMER COMPLAINTS"** section of Report (pages 28 – 29), the examiners reviewed 50 files that had been the subject of complaints during the exam period (this constituted 63% of the total complaints received). Twenty-two percent of the

files involved consumer misunderstanding about the Company's "Accelerated Payment Arrangement" option ("AP arrangement"), which allows the customer to use dividends to pay premiums after the policy has been in force for a period of time. The examiners note that it appears the complaining customers indicated they were led to believe their policies would be fully paid up when they would be eligible for the AP arrangement. The examiners indicate that such a high percentage of complaints on this one issue indicates the likelihood the product is being sold in a misleading fashion. The examiners recommend the Company discontinue the AP arrangement in Vermont.

In response, the Company asserts that the total number of complaints must be looked at in relation to the number of policies issued during the subject period. According to the Company, during the exam period, 1,155 policies were issued.[9] Thus, the Company infers that the total number of complaints concerning the Accelerated Payment arrangement was six per year. The Company also notes the complaints concerned policies issued outside of the exam period, thus decreasing the AP complaints per policy issued ratio even further. The Company opines increased media attention may have motivated more customers to complain about their life insurance.

Upon consideration, the Department is not prepared to conclude the AP arrangement is being marketed in a misleading fashion, and does not adopt this portion of the examiners recommendation. However, the complaint activity surrounding this product feature does indicate the possibility of some repeated miscommunication between customers and the Company. Accordingly, the Company shall provide the Department with copies of all marketing materials referring to the AP arrangement used

[9] The Department notes the Company does not expressly state that all policies were eligible for the Accelerated Payment Arrangement.

in Vermont from December 31, 1997 until the date of this Order. If marketing materials have been discontinued, the Company must provide the Department with copies, but should indicate the dates of use. The Department will review such materials to ensure that it is not misleading. If it is determined such materials are misleading or potentially misleading, the Department shall issue an Order pursuant to Regulation I-71-3.

ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, **IT IS THEREFORE ORDERED** by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that the 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 (which is incorporated herein by reference) shall be and hereby is adopted with the following modifications and clarifications:

19. As discussed in Paragraph 7 above, the Department adopts the **"MULTIDISTRICT LITIGATION"** section of the Report, which does not include any recommendations.

20. As discussed in Paragraph 8 above, the Department adopts the **"FINES, PENALTIES & FORFEITURES"** section of the Report; the Company shall implement procedures to come into compliance with Bulletin 30, and 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.

20. As discussed in Paragraph 9 above, the Department does not adopt the **"SALES AND MARKETING – 'Target Premium Issue'"** section of the report.

21. As discussed in Paragraph 10 above, discussing the **"SUITABILITY – Questionable Suitability Cases"** and **"SUITABILITY – Written standards of Suitability"** sections, the Department adopts the Report as modified herein. The Company shall amend its PPS application to include a section for other sources of funding for the PPS, and shall develop a formal plan for supervising the suitability of each sale for the individual client, within 30 days of the expiration of the appeal deadline of this Order, for the Department's approval.

22. As discussed in Paragraph 11 above, discussing the **"SUITABILITY OF ANNUITY PURCHASES"** section, the Department does not adopt the Report, except as to the uncontested violations of former Regulation I-88-2 and 8 V.S.A. § 3565(b), which warrant the imposition of a $2,000 penalty.

23. As discussed in Paragraph 12 above, the Department adopts the **"UNDERWRITING"** section of the Report, but does not adopt the recommendations therein.

24. As discussed in Paragraph 13 above, the Department adopts the **"POLICY FORM FILINGS"** section of the Report, but does not adopt the recommendations therein.

25. As discussed in Paragraph 14 above, the Department adopts the **"CLAIMS PROCESSING AND PROCEDURES"** section of the Report. The Company shall certify in writing, within 30 days of the expiration of the appeal deadline of this Order, that it has revised its procedures to provide for payment of benefits under the laws of the

days of the date of this Order, and shall pay a $1,150.00 penalty. Upon approval, the Company shall refund all underpaid interest owing that exceeded $25.00 at the time benefits were paid.

26. As discussed in Paragraph 15 above, the Department does not adopt the **"POLICY LOAN INTEREST"** section of the Report, nor the recommendations. Instead, the Company shall have 30 days from the expiration of the appeal deadline of this order within which to submit written procedures for approval.

27. As discussed in Paragraph 16 above, the Department adopts the **"PRODUCER LICENSING"** section as modified herein. The Company shall provide, in writing, an explanation of what steps it takes to ensure compliance with Vermont's producer licensing laws and a description of the procedures employed to ensure that producers are terminated in compliance with 8 V.S.A. § 4813m, within 30 days of the expiration of the appeal deadline of this Order.

28. As discussed in Paragraph 17 above, the Department adopts the **"REPLACEMENTS"** section of the Report. The Company shall comply with Regulation I-2001-03, including written copies of presentations made on a computer, and shall pay a $2,200.00 penalty.

29. As discussed in paragraph 18 above, the Department does not adopt the **"CONSUMER COMPLAINTS"** section of the Report. However, the Company shall provide the Department with copies of all marketing materials referring to the AP

arrangement used in Vermont from December 31, 1997 until the date of this Order, within 30 days of the appeal deadline of this Order.

30. All penalties described above shall be paid to the Department no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.

PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY (30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.

Dated at Montpelier, Vermont this 30th day of June, 2006.

Department of Banking, Insurance,
Securities and Health Care Administration

By: John P. Crowley

John P. Crowley, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration