

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

In re: New England Life Insurance Co.)
Of Boston, Massachusetts)

) DOCKET NO. 07-027-I
)

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES Paulette J. Thabault, 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, which generally covers the period January 1, 2001 through December 31, 2003, subject to the modifications and amendments set forth below.

Preliminary Statement

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. New England Life Insurance Company (the "Company") is a wholly owned subsidiary of Metropolitan Life Insurance Company, and is organized under the laws of the State of Massachusetts.

3. On May 18, 2006 a final market conduct examination report was issued by Examiners James Montgomery III, Robbie Kriplean and Jennifer Greenway (collectively,

the "Examiners") entitled MARKET CONDUCT EXAMINATION REPORT OF THE NEW ENGLAND LIFE INSURANCE COMPANY OF BOSTON, MASSACHUSETTS AS OF DECEMBER 31, 2003 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 in the form of a letter to the Commissioner dated January 19, 2007 ("the Response"). The Company also discussed issues raised in the Report with the Department.

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

6. The Company has suggested various changes to the findings, conclusions and recommendations included in the Report. To the extent this Order does not expressly adopt an amendment or modification to the Report, it is adopted as written.

Findings of Fact and Conclusions of Law

7. The Examiners found and reported in Section I of the Report ("Section I") titled Production of Records that:

(i) the Company failed to provide complete file copies, or was unable to locate and reproduce complete files, for four replacement life insurance contracts out of 40 life insurance contracts selected from the list of all replacement life insurance contracts issued during the examination period;

(ii) the Company's list of all life insurance policies issued during the examination period erroneously included 50 disability income policies. The Company failed to produce a copy of a policy application for one of 50 life insurance policies selected for review;

(iii) of 54 sample claims files selected for review, the Examiners found that none contained complete documentation. Upon receipt and review of the additional information, the Examiners determined that 14 of the claims files pertained to policies not issued in Vermont, and three of the remaining 40 claim files pertained to policies issued by an affiliate of the Company.

The Examiners concluded that the Company's failures and errors violated Vermont Insurance Regulation 99-1, titled Record Retention, which requires an insurer to maintain its books, records, documents and other business records so that the insurer's claims, rating, underwriting, marketing and other records subject to examination by the Commissioner are readily available and accurately represented. The Examiners recommend that the Company's records retention practices be audited under the auspices of the Department and that the Company implement procedures to assure that records subject to examination by the Commissioner are readily available and accurately represented.

The Company does not contest the findings of the Examiners. The Company states that it has significantly enhanced its record retention and retrieval processes by implementing an imaging system for all transactional documents, providing training to all relevant Company employees on all aspects of the image documentation process, and

providing access to online materials and technical assistance. Accordingly, the Company contends that the audit recommended by the Examiners is unnecessary.

The findings of fact and conclusions of law regarding violations of Vermont Insurance Regulation 99-1 set forth in Section I of the Report are adopted, with the exception of the Examiners' findings with regards to claims under policies issued by New England Mutual Life Insurance Company, the Company's affiliate, which are not adopted as such claims are outside the scope of this examination of the Company. The Examiners recommendation that an audit be conducted is not adopted. The Department concludes that the Company has taken adequate remedial measures. The violations of Vermont Insurance Regulation 99-1 warrant an administrative penalty of \$1,000.00.

8. In section II of the Report ("Section II") titled Claims Procedures and Processing, the Examiners reviewed 37 claims files, many of which included more than one policy issued to the insured who was the subject of the claim. The Examiners found that the Company had failed to pay the statutorily required rate of interest in 13 of the 37 claim files reviewed. The Examiners concluded that the underpayments of interest in 12 of the 13 files violated 8 V.S.A. § 3665(c)(2), and the underpayment in the thirteenth file violated of 8 V.S.A. § 3665(d). The Examiners recommend that the Company perform an audit on those claims which are subject to Vermont statutes, for such time period as the Department deems appropriate, and that the Company make additional interest payments based on the statutory rate of interest from the date of the initial claim to the date of corrective action.

The Company does not contest the Examiners' findings with respect to the claims reviewed. The Company states that it has audited all claims files subject to Vermont

statutes for claims made during the time period of January 1, 2000 through December 31, 2003, and that it has made all payments with respect to such claims "as appropriate." The Examiners note that such payments were made without additional interest. The Company also states that revisions to its claims process have been implemented based upon guidance provided by the Department's Insurance Division.

The findings of fact and conclusions of law regarding violations of 8 V.S.A. § 3665(c)(2), (d) set forth in Section II of the Report are adopted. The Examiners' recommendations in Section II of the Report are adopted, as follows: the Company shall audit its claims files for the period January 1, 1997 through December 31, 2007 and the Company shall provide the Department with a spreadsheet in a form acceptable to the Department, in Excel spreadsheet format (electronically and in paper copy), fully documenting such audit. The Company shall complete the audit and submit the spreadsheet to the Department, for the Department's review and approval, within 30 days of the effective date of this Order. Payment of any and all deficiencies shall be made within 20 days of the Department's approval. The violations of 8 V.S.A. § 3665 warrant an administrative penalty of \$1,500.00.

9. The Examiners findings, conclusions and recommendations along with the Company's responses to section III of the Report ("Section III"), titled Replacements, is as follows:

(i) The Examiners, in section III, subsection (B) of the Report, titled Replacement Review, reviewed a sample of 53 files, comprising 37 life insurance contracts and 16 annuity contracts, from the 233 files in the Company's register of replacement contracts.

The Examiners found no violations of the Vermont Replacement Regulation¹ in the 16 annuity contracts reviewed. The Examiners found 22 violations of the Replacement Regulation in 5 of the 40 life insurance contract files reviewed, which violations included the use of a noncompliant replacement notice, the failure to produce a replacement notice, and the failure to produce an entire file. In 4 of the 5 files, the Company failed to provide the insured with the right to return the replacement contract within 30 days of issuance for a full refund (a "free look"), but the Company did provide a 10-day free look with respect to such contracts. The Examiners recommend that the Company be required to provide an additional 20-day free look period with respect to the affected policies. The policyholders should be allowed an opportunity to return their contracts and be given refunds as required by the regulation during this free look period.

The Company does not contest the Examiners' findings. The Company states that it has implemented a new Underwriting and Issue system, which incorporates a 30-day free look period for policies issued as a result of a replacement transaction in Vermont. The Company now includes an "Important Notice: Replacement of Life Insurance or Annuities" with its applications for life insurance, which it believes will remedy the replacement violations. The Company contends that an additional free look period is unnecessary and would, in fact, be detrimental to the affected policyholders.

The findings and conclusions of law by the Examiners regarding violations of the Replacement Regulation, as set forth in Section III (B) of the Report, are adopted. The Company shall audit its replacement files for the period January 1, 2001 through

¹ Vermont Insurance Regulation 88-2 applies to replacements made before March 1, 2002; Vermont Insurance Regulation I-2001-3 applies to replacements made on and after March 1, 2002. With respect to any remedial action required pursuant to this Order, reference herein to a specific section of the "Replacement Regulation" shall mean the applicable section of Regulation 2001-3.

December 31, 2003, and the Company shall provide the Department with a spreadsheet, in Excel spreadsheet format (electronically and in paper copy), fully documenting such audit. The Company shall prepare a written notice and disclosure to all replacement policyholders describing their right to a full refund after the 30-day free look period (taking into account the 10 days previously afforded), and shall file such notice and disclosure within thirty (30) days of the date of this Order for the Department's review and approval. The Company shall send a copy of such approved notice and disclosure to each affected policyholder within thirty (30) days of the date of the Department's approval of the form of notice and disclosure. The Company shall pay an administrative penalty of \$4,000.00.

(ii) In Section III, subsection (C) of the Report, titled Issued Life Review, the Examiners found 33 violations of the Replacement Regulation, in 16 of the sample of 50 life insurance contracts reviewed from the Company's register of all outstanding life insurance contracts issued during the examination period. The most common violation was the failure to include in the life insurance policy application an inquiry regarding existing life insurance policies in force. The Examiners recommend that the Company amend the application to comply with Section 4(C) of the Replacement Regulation, and recommend that the Company amend its procedures to comply with Section 4(D) of the Replacement Regulation.

The Company does not contest the Examiners' findings. The Company states that during the examination period it provided producers with information regarding the Replacement Regulation and has trained its producers to inquire about existing annuity contracts in addition to life insurance policies. The Company further states that since the

examination period, the Company has replaced its application form with a form that complies with Section 4(C) of the Replacement Regulation. The Company also states that it has enhanced its procedures to assure that the producer and the applicant are notified as necessary to comply with the requirements of Section 4(D) of the Replacement Regulation.

The findings and conclusions of law by the Examiners regarding violations of the Replacement Regulation, as set forth in Section III(C) of the Report, are adopted. The Department accepts the Company's remediation, and finds that an administrative penalty of \$1,000.00 is warranted for the past violations of Section 4(D) of the Replacement Regulation.

(iii) The Examiners found In Section III, subsection (D) of the Report, titled Violation of Regulation 2001-3 § 6(C), that the Company could not produce the form of notice required under the § 6(C) of the Regulation, regarding the effect of a release of policy values in the context of borrowing, surrender or withdrawal of policy values as part of a contract replacement, and the Company and had no procedure in place to ensure compliance with this provision of the Regulation.

The Company did not contest this finding. The Company states that it has enhanced its procedures to ensure compliance with Section 6(C) of Regulation 2001-3, including automatic generation of required notices for a proposed policy replacement.

The findings and conclusions of law by the Examiners regarding violations of the Replacement Regulation, as set forth in Section III (D) of the Report, are adopted. The Department accepts the Company's remediation, and finds that an administrative penalty

of \$1,000.00 is warranted for the past violations of Section 6(C) of the Replacement Regulation.

(iv) In Section III, subsection (E) of the Report, titled Replacement Notices Received, the Examiners reviewed a sample of 6 replacement notices received from replacing companies with respect to existing life insurance policies and 4 replacement notices received from replacing companies with respect to existing annuity contracts. The Replacement Regulation requires the existing insurer to timely: (a) furnish the policy owner with a policy summary or ledger statement and other specified information;² or (b) to notify the policy or contract owner of the right to receive information regarding the existing policy or contract value, including an in-force illustration or policy summary.³ The Examiners identified a violation of these provisions of the Replacement Regulation in 5 of the 6 replacement notices reviewed. The Examiners recommend that the Company modify its procedures to ensure that the notice required by Section 6(B) of the Replacement Regulation is timely sent.

The Company does not contest the Examiners' findings and conclusions. The Company states that it has enhanced its procedures to comply with Section 6(B) of the Replacement Regulation, including the automatic generation of the required notice in the event of a proposed policy replacement.

The findings and conclusions of law by the Examiners regarding violations of the Replacement Regulation, as set forth in Section III (E) of the Report, are adopted. An administrative penalty of \$500.00 is warranted.

² Per Regulation 88-2 § 8(B)(3), this requirement applies to replacements before March 1, 2002.

³ Per Regulation 2001-3 § 6(B), this requirement applies to replacements made on or after March 1, 2002.

(v) The Examiners, in Section III, subsection (F) of the Report, titled Sales Material, reviewed sales materials used by the Company as replacing insurer in connection with replacement of 5 life insurance policies. The Examiners found a violation of Regulation 2001-3 in 3 of the 5 policy files reviewed: (a) in the first file, the use of a replacement form that does not comply with Appendix A of Regulation 2001-3 and the failure to include a statement identifying any preprinted or electronically presented company-approved sales materials as required under Regulation 2001-3 § 3(E); (b) in the second file, failure to include evidence in the file that the Company notified the existing insurer within 5 business days as required under Regulation 2001-3 § 5(A)(2); and (c) in the third file, for a policy written in Vermont on an insured residing in Vermont, the file included a sales illustration used in Massachusetts. The Examiners recommend that the Company retain evidence of notification to existing insurers and retain the statement identifying any preprinted or electronically preserved Company-approved sales materials.

The Company does not contest the Examiners findings. The Company states that it has implemented an enhanced underwriting system process to provide all timely notifications required by Regulation 2001-3 § 5(A)(2) and to retain illustrations as required by Regulation 2001-3 § 3(E).

The findings and conclusions of law by the Examiners regarding violations of the Replacement Regulation, as set forth in Section III (F) of the Report, are adopted. The recommendation of the Examiners is adopted. An administrative penalty of \$500.00 is warranted.

(vi) The Examiners reported in Section III, subsection (G) of the Report, titled System to Review Replacements, that they requested that the Company demonstrate compliance with the provisions of Regulation 2001-3 § 4(A), which requires an insurer to maintain a system of supervision and control to ensure compliance with the requirements of the regulation, which system must include at least: (a) pursuant to Section 4(A)(2), the insurer providing the producer with a written statement of the insurer's position with respect to the acceptability of replacements, and providing the producer with guidance as to the appropriateness of such transactions; and (b) pursuant to Section 4(A)(3), a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with (a).

The Company responded that all replacements are reviewed by the managing partner and one of the Company's registered principals, that the Company has systems in place to detect replacement activity, and the Company relies primarily on the managing partner and the managing partner's staff to manage replacement activity at the agency level. The Company has a written guide that includes step-by-step procedures for the managing partner to follow when reviewing replacements for suitability, which includes the requirement that the managing partner sign the replacement form indicating that the managing partner has determined the replacement is suitable. The Company explained that to detect replacements, it relies on a completed Annuity Replacement and Transfer Disclosure and the Questionnaire and Disclosure forms to gather information about replacements, which must include the producer's justification of the replacement.

The Examiners also reviewed the annuity and life insurance sample files and the annuity and life insurance replacement files described in paragraphs 9(i) and 9(ii), above,

for compliance with Section 4(A)(3). Of this sample, the Examiners identified 33 files with one or more of the following "irregularities" in the Company's system of reviewing the appropriateness of each replacement transaction: (a) no annuity replacement and transfer disclosure form (the "Annuity Disclosure") or replacement questionnaire and disclosure form (the "Questionnaire") in the file; (b) no reason for replacement provided on the Annuity Disclosure or Questionnaire; (c) the managing partner did not sign the Annuity Disclosure or the Questionnaire; (d) the application was originally submitted without the managing partner's signature on the Annuity Disclosure or the Questionnaire, and was later signed by the managing partner and resubmitted to the Company; and (e) the applicant did not sign the Annuity Disclosure or the Questionnaire.

The Company responded by stating that it would remind its managing partners and sales personnel of the importance of accurately completing these forms, and that it has procedures in place to ensure the appropriateness of replacements. The Company states that, under these procedures, a replacement will not be approved without the managing partner's signature on the disclosures, and that the Company's underwriters will not proceed with a replacement without all required forms.

The Examiners made no recommendations with respect to these replacement issues. The Department adopts this section of the Report. The Company shall submit a written description to the Department within 30 days of the date of this Order, as to how the Company will review its procedure of reviewing the appropriateness of replacements in light of the irregularities found by the Examiners.

10. In Section IV of the Report, titled Complaints, the Examiners reviewed the files of the 8 complaints that the Company received from Vermont consumers during the

examination period. Two of the files showed indications of unreasonable delay in the Company's response. The Examiners also reviewed one complaint that resulted from an agent's use of a grossly misleading illustration in the 1994 sale of a policy; further review of other illustrations prepared by this agent during the same time period showed no apparent errors. The Examiners recommend that the Company improve its procedures to avoid further unnecessary delays in replying to complaints.

The Company acknowledges the delays in two of the eight complaint files, but contends that they are isolated incidents that will not recur. The Company states that it has made enhancements to its complaint handling procedures, including increasing the number of employees dedicated to reviewing and responding to complaints, streamlining procedures and providing additional training to customer relations personnel. The Company also states that it has installed a new electronic complaint recording and monitoring system.

The Department adopts this portion of the Report and finds that the Company's response adequately addresses the issue.

Order

IT IS THEREFORE ORDERED by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that the MARKET CONDUCT EXAMINATION REPORT OF THE NEW ENGLAND LIFE INSURANCE COMPANY OF BOSTON, MASSACHUSETTS AS OF DECEMBER 31, 2003 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 amendments:

11. The Department adopts Section (I) of the Report, but not the recommendation of the Examiners. The remediation suggested by the Company in the Response is accepted. The five violations of Vermont Insurance Regulation 99-1 warrant an administrative penalty of \$1,000.00

12. As discussed in Paragraph 8 above, the Department adopts the “**CLAIMS PROCEDURES AND PROCESSING**” section of the Report, as modified. The Company shall provide the Department with a spreadsheet in a form acceptable to the Department, in Excel spreadsheet format (electronically and in paper copy), of an audit of the past 10 years, for the Department’s approval, within 30 days of the effective date of this order. The Company shall pay any and all interest payment deficiencies within 20 days of the Department’s approval. The Department further finds that an administrative penalty of \$1,500.00 is warranted for the violations of 8 V.S.A. § 3665(c)(2) and 8 V.S.A. § 3665(d).

13. As discussed in Paragraph 9 above, the Department adopts the “**REPLACEMENTS**” section of the report. The Company, as discussed in Paragraph 9 (i), shall provide notices to affected policyholders within 30 days of the Department’s approval of the notice and disclosure, advising of the additional 20 days within which to return their policies for full refund, The Department further finds that an administrative penalty of \$4,000.00 is warranted for the violations of Regulation 2001-3.

14. As discussed in Paragraph 9 (ii) above, the Company shall pay an administrative penalty of \$1,000.00.

15. As discussed in Paragraph 9 (iii) above, the Company shall pay an administrative penalty of \$1,000.00.

16. As discussed in Paragraph 9 (iv) above, the Company shall pay an administrative penalty of \$500.00.

17. As discussed in Paragraph 9 (v) above, the Company shall pay an administrative penalty of \$500.00.

18. As discussed in Paragraph 9 (vi) above, the Company shall submit to the Department a written description of the review it will perform of its procedure of reviewing the appropriateness of replacements.

19. As discussed in Paragraph 10 above, discussing the “COMPLAINTS” section, the Department adopts the Report. The Department finds that the Company’s response adequately addresses the issue.

20. The Company, in total, shall pay **Nine Thousand- Five Hundred Dollars (\$9,500.00)** to the Vermont Department of Banking, Insurance, Securities and Health Care Administration for the herein above described violations. Payment shall be made 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 13th day of December, 2007.

Department of Banking, Insurance,
Securities and Health Care Administration

By: Paulette J. Thabault
Paulette J. Thabault, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration