



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Sean Dilweg, Commissioner

Wisconsin.gov

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Notice of Adoption and Filing of Examination Report

Take notice that the proposed report of the market conduct examination of the

AVIVA LIFE AND ANNUITY COMPANY
611 5TH AVENUE
DES MOINES IA 50309-1603

dated September 26, 2008, and served upon the company on September 11, 2009, has been adopted as the final report, and has been placed on file as an official public record of this Office.

Dated at Madison, Wisconsin, this 16th day of March, 2010.

A handwritten signature in black ink, appearing to read 'Sean Dilweg', written in a cursive style.

Sean Dilweg
Commissioner of Insurance

**STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF INSURANCE**

MARKET CONDUCT EXAMINATION

OF

**AVIVA LIFE AND ANNUITY COMPANY
DES MOINES, IOWA**

SEPTEMBER 15-26, 2008

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September 26, 2008

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Honorable Sean Dilweg
Commissioner of Insurance
Madison, WI 53702

Commissioner:

Pursuant to your instructions and authorization, a targeted market conduct examination was conducted September 15 to September 26, 2008 of:

AVIVA LIFE AND ANNUITY COMPANY
Des Moines, Iowa

and the following report of the examination is respectfully submitted.

I. INTRODUCTION

The company was originally incorporated in 1896 as a mutual company under the title Central Life Assurance Society of the United States. It was reorganized as a stock company in 1902, and in 1919 the company was mutualized and the word (Mutual) was added to its title. Its name was shortened to Central Life Assurance Society (Mutual) in 1924 and to Central Life Assurance Company in 1950. The name was changed to American Mutual Life in 1994 following the merger with American Mutual Life Insurance Company. The name was then changed to AmerUs Life Insurance Company on June 30, 1996 upon completion of its mutual holding company restructuring. In November of 2006, the AmerUs Group was acquired by Aviva plc. Aviva plc (Aviva) is the world's fifth-largest insurance group and the biggest in the United Kingdom. Aviva is the leading provider of life and pension products in Europe and is

actively growing its long-term savings businesses in the Asian markets, Australia, and the United States.

Aviva's presence in the U.S. significantly increased with the completion of the acquisition of the AmerUs Group and its life insurance operating companies: AmerUs Life Insurance Company, American Investors Life Insurance Company, Indianapolis Life Insurance Company, and Bankers Life Insurance Company of New York. The name of AmerUs Life Insurance Company was changed to Aviva Life and Annuity Company November 1, 2007. The operations of the former AmerUs Group are currently being integrated with Aviva's existing operations in the U.S. – Aviva Life Insurance Company and Aviva Life Insurance Company of New York. Aviva's U.S. operation has been renamed Aviva USA and will operate under the Aviva brand. The company's management and U.S. operations will be headquartered in Des Moines, IA. Aviva USA and its operating subsidiaries are wholly-owned and controlled by Aviva. The strategy going forward is to grow its U.S. operations by leveraging the knowledge, relationships, products and expertise of both the former AmerUs Group and its established franchise. Full integration of Aviva USA is expected to be completed by the middle of 2008.

Aviva Life and Annuity Company was licensed in the District of Columbia and all states, except New York, in both 2006 and 2007.

The following table summarizes the total direct national premium written in 2007 and 2006 as compared to the total direct premium written in Wisconsin:

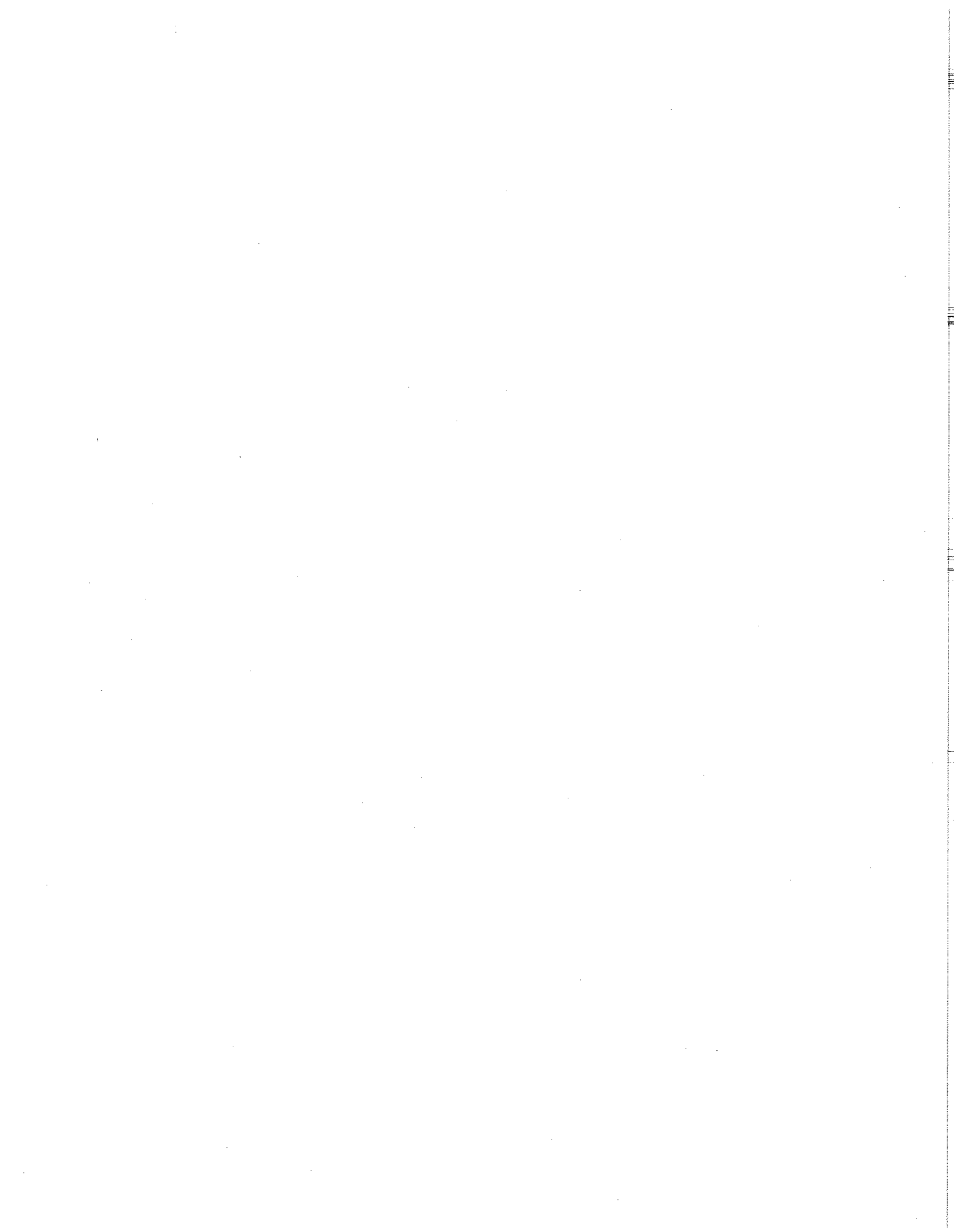
National Direct Business to Wisconsin Direct Business Summary

2007					
	Life Insurance Premiums	Annuity Considerations	A&H Insurance Premiums	Deposit Type Funds	Other Considerations
Wisconsin	\$ 18,250,358	\$ 54,251,826	\$ 43,823	\$ 6,057,076	\$0
National	\$ 411,479,311	\$1,733,442,334	\$ 791,783	\$ 120,776,235	\$0
<i>Wisconsin As a % of National</i>	4.44%	3.13%	5.53%	5.02%	0%

2006	Life Insurance Premiums	Annuity Considerations	A&H Insurance Premiums	Deposit Type Funds	Other Considerations
Wisconsin	\$ 20,201,599	\$ 34,029,861	\$ 47,738	\$ 7,322,494	\$0
National	\$ 423,297,037	\$1,297,114,741	\$ 859,659	\$ 118,190,184	\$0
<i>Wisconsin As a % of National</i>	4.77%	2.62%	5.55%	6.20%	0%

Although Aviva Life and Annuity Company (then known as AmerUs Life Insurance Company) wrote a larger percentage of national business in life insurance premiums in both 2006 and 2007, the company had a larger dollar amount of premiums (especially in 2007) in annuity considerations. In 2005, AmerUs Life Insurance Company ranked as the 20th writer of life insurance business in the state of Wisconsin (by premium dollars) and held a 1.1% share of the market. In 2006, the company ranked as the 22nd writer of life insurance business in Wisconsin and still held a 1.1% share of the market. In 2007, now known as Aviva Life and Annuity Company, the company ranked as the 25th writer of life insurance business in Wisconsin and held a 0.9% share of the market. For annuities, in 2005 AmerUs Life ranked as the 34th writer of annuities in the state of Wisconsin (by premium dollars) and held a 0.7% share of the market. In 2006, the company ranked as the 37th writer of annuities in Wisconsin and still held a 0.7% share of the market. In 2007, now known as Aviva Life and Annuity Company, the company moved up to the 28th writer of annuities in Wisconsin and held a 1.0% share of the market.

The following tables summarize the company's Wisconsin premium written and benefits paid in for 2007 and 2006 broken down by line of business:



Wisconsin Life Insurance Business

2007	Ordinary	Credit Life	Group	Industrial
Direct Premiums & Annuity Considerations				
Life Insurance	\$18,250,358	\$0	\$ 0	\$0
Annuity Considerations	\$54,196,571	\$0	\$ 55,255	\$0
Deposit Type Funds	\$ 6,057,076	\$0	\$ 0	\$0
Other Considerations	\$ 0	\$0	\$ 0	\$0
Direct Claims & Benefits Paid				
Death Benefits	\$ 8,221,183	\$0	\$ 11,029	\$0
Annuity Benefits	\$ 712,260	\$0	\$ 676,816	\$0
All Others	\$17,427,063	\$0	\$4,812,680	\$0
2006				
	Ordinary	Credit Life	Group	Industrial
Direct Premiums & Annuity Considerations				
Life Insurance	\$20,201,599	\$0	\$ 0	\$0
Annuity Considerations	\$33,743,910	\$0	\$ 285,951	\$0
Deposit Type Funds	\$ 7,322,494	\$0	\$ 0	\$0
Other Considerations	\$ 0	\$0	\$ 0	\$0
Direct Claims & Benefits Paid				
Death Benefits	\$ 7,459,150	\$0	\$ 0	\$0
Annuity Benefits	\$ 986,673	\$0	\$1,538,511	\$0
All Others	\$21,881,100	\$0	\$4,076,450	\$0

The Wisconsin Office of the Commissioner of Insurance (OCI) received 15 complaints against the company from July 1, 2006 through June 30, 2008. A complaint is defined as "a written communication received by the Commissioner's Office that indicates dissatisfaction with an insurance company or agent." The following table categorizes the complaints received against the company by type of policy and complaint reason. There may be more than one type of coverage and/or reason for each complaint and the table includes complaints from the six month period before the period of review. It is also worth noting that eight of the eleven complaints shown in the "other" category involved complaints with a reason code of unsuitability and misrepresentation.

Complaints Received

As of May 31, 2008

Reason Type	Total		Underwriting		Marketing & Sales		Claims		Policyholder Service		Other	
	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
Life		%		%		%		%		%		%
Individual Life	2	50%		%		%		%		%	2	100%
Group Life		%		%		%		%		%		%
Individual Annuity	2	50%		%	1	50%		%		%	1	50%
Group Annuity		%		%		%		%		%		%
Credit Life		%		%		%		%		%		%
All Others		%		%		%		%		%		%
Total	4	100%			1	25%					3	75%

2007

Reason Type	Total		Underwriting		Marketing & Sales		Claims		Policyholder Service		Other	
	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
Life		%		%		%		%		%		%
Individual Life	5	71%		%	1	20%		%	2	40%	2	40%
Group Life		%		%		%		%		%		%
Individual Annuity	2	29%		%		%		%		%	2	100%
Group Annuity		%		%		%		%		%		%
Credit Life		%		%		%		%		%		%
All Others		%		%		%		%		%		%
Total	7	100%			1	14%			2	29%	4	57%

2006

Reason Type	Total		Underwriting		Marketing & Sales		Claims		Policyholder Service		Other	
	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
Life		%		%		%		%		%		%
Individual Life	4	57%		%		%	1	25%	2	50%	1	25%
Group Life		%		%		%		%		%		%
Individual Annuity	3	43%		%		%		%		%	3	100%
Group Annuity		%		%		%		%		%		%
Credit Life		%		%		%		%		%		%
All Others		%		%		%		%		%		%
Total	7	100%					1	14%	2	29%	4	57%

II. PURPOSE AND SCOPE

A targeted examination was conducted to determine whether the company's practices and procedures comply with the Wisconsin insurance statutes and rules. The examination focused on the period from July 1, 2006 through June 30, 2008. In addition, the examination included a review of any subsequent events deemed important by the examiner-in-charge during the examination.

Legislation, which went into effect on November 1, 2004, pertaining to the suitability of annuity sales required that the sale of an individual annuity to a person age 65 and older be suitable for the consumer based on the person's financial situation and needs. The law, s. 628.347, Wis. Stat., was amended effective October 1, 2008, to apply to the sale of an individual annuity to a person of any age. The law requires an insurer to establish and maintain a system to supervise the recommendations of its insurance producers. Aviva Life and Annuity Company's primary market is the sale of annuities, and with the recent acquisition by Aviva plc with the intention of becoming a major company in the sale of annuities, the Market Regulation Bureau selected this company to be examined to verify that the company has established such a system.

The Market Regulation Bureau determined that an onsite examination of the company should be conducted as many of the complaints on both life and annuity policies alleged policyholder service issues, misrepresentation, and unsuitability. The examination focused on determining whether the company has sufficient oversight and supervisory control over the company's appointed agents, as required by s. 628.347, Wis. Stat., to ensure that annuity sales to consumers are appropriate and suitable for their needs.

The examination covered individual life and annuity business in Wisconsin and included a review of company operations and management, marketing, sales and advertising, policy forms, policyholder service and complaints, producer licensing, and underwriting which

includes new business, replacement business, and suitability. In addition, the examination reviewed new business files for the period of review for the top ten writing agents of annuities.

The report is prepared on an exception basis and comments on those areas of the company's operations where adverse findings were noted.

III. CURRENT EXAMINATION FINDINGS

Producer Licensing

The examiners reviewed the company's responses to the Producer Licensing interrogatories, its producer appointment and termination procedures, and 100 agent files that included 50 active and 50 terminated agents, to determine if the company's practices and procedures related to the appointment and termination of its agents comply with Wisconsin insurance statutes and rules. The agent files and data lists provided by the company were also compared to the records maintained by OCI.

The Agency Services Department is responsible for the management of agent contracts, agent appointments, and agent terminations with the state of Wisconsin. The company only recruits General Agents (GA) and Independent Marketing Organizations (IMO). Each GA or IMO handles recruitment of individual agents, and forwards appropriate agent contracts to the company for processing.

Aviva indicated that training for new and existing agents is not mandatory except for federally required Anti-Money Laundering training. However, the company does require agents to follow the policies and guidelines as outlined on the agent web portal on the company's website. The company offers both new and existing agents the opportunity to attend 6-8 hours of traditional classroom training in both the Topeka, KS and the Des Moines, IA offices. In addition, agents can attend regularly scheduled web training classes that are offered by the company each month. The main areas of the agent training include: Aviva History, Forms and Website, Annuity Product and Industry Overview, Compliance Review (including suitability), Deferred Compensation Program (for agents), Understanding Life Insurance Products, Understanding Annuity Products, Aviva Brand and Advertising Strategies, and How to use Illustration software and the e-App System. In addition, Aviva may provide supplemental in-person training, but it is also not mandatory.

Section Ins 6.80 (5), Wis. Adm. Code requires nondomestic insurers to retain company records regarding company operations for three years. The company stated that its practice is to keep agent records forever. The company also stated that it contracts with a third party vendor for agent appointments and terminations. However, the company indicated that it does not monitor the vendor for compliance with s. Ins 6.80 (5), Wis. Adm. Code.

- 1. Recommendation:** It is recommended that the company obtain an annual certification or other appropriate written acknowledgement from any third party vendor responsible for agent appointments and terminations for purposes of verifying the vendor's compliance with s. Ins 6.80 (5), Wis. Adm. Code with respect to company records maintained by such vendor..

The company stated that it does not request the return of indicia in cases of non-immediate terminations where the agent has resigned, was terminated for lack of production, or was terminated at the request of hierarchy.

- 2. Recommendation:** It is recommended that the company develop, document, and implement a process and procedure that requests the return of indicia from all terminated agents pursuant to s. Ins 6.57 (2), Wis. Adm. Code.

The examiners reviewed the company agent files and found 66 agents that had represented the company during the period of review, but the company had not notified OCI of the agent appointments. Seven of the agents had written a total of 57 policies in the state, with 34 of those by just one agent. The company indicated that it is not its practice to accept business from agents who are not licensed and/or appointed, but it appears that there were several situations where this was allowed to happen. The examiners also found 21 agents whose notification of appointment with OCI was not within 15 days of the execution of the agent contract. Section Ins 6.57 (1), Wis. Adm. Code requires the company to submit the agent appointment application to OCI within 15 days after the earlier of the date the agent contract is executed or the first insurance application is submitted.

- 3. Recommendation:** It is recommended that the company develop, document, and implement a procedure to ensure it submits agent applications for appointments to OCI within 15 days after the earlier of the date the agent contract is executed or the agent submits his or her first insurance application to the company, pursuant to s. Ins 6.57 (1), Wis. Adm. Code.

Section Ins 6.57 (2), Wis. Adm. Code requires the notice of termination of appointment of the agent shall be filed with OCI prior to or within 30 calendar days of the termination date. The examiners reviewed the company agent files and found two agent records in which the company had not notified OCI of the termination of appointment prior to or within 30 days.

- 4. Recommendation:** It is recommended that the company develop and implement a procedure to ensure that the notification of termination of appointment of agents is filed prior to or within 30 days of the termination date with the Office of the Commissioner of Insurance as required by s. Ins 6.57(2), Wis. Adm. Code.

The examiners also found 36 agent files that contained no indication that termination letters were sent to the agents prior to or within 15 days of notice to the Office of the Commissioner of Insurance as required by s. Ins 6.57 (2), Wis. Adm. Code. The company responded that it was the company's practice to maintain copies of agent termination letters, however the company's practice was not adhered to.

The examiners also found eight agent files in which the company had notified OCI of the agent termination, but company records had not been updated to properly show the termination. Seven of the eight agents were terminated by the company before the exam period, and the other agent was appointed effective May 7, 2008, just before the end of the exam period. The company did not indicate any business was written by any of these eight agents. The company also acknowledged that it is the company's policy to maintain documentation of the reason for termination of an agent, however in 27 cases the company did not follow its own policy.

- 5. Recommendation:** It is recommended that the company develop, document, and implement a procedure to accurately maintain agent appointment and termination records, including ensuring that copies of agent termination letters and reasons for terminations are kept in the agent files, in compliance with s. Ins 6.80(5), Wis. Adm. Code.

The examiners found five agent files that did not contain a copy of the agent contract. However, when asked, the company provided copies of each agent's contract. The company did not have a written procedure to ensure a copy of the agent contract is kept in the agent's file.

6. **Recommendation:** It is recommended that the company develop, document and implement a procedure to ensure a copy of the signed agent's contract is kept in the agent file to verify the date of contract, and in order to comply with s. Ins 6.57 (1), Wis. Adm. Code with regard to appointment of insurance agents by insurers.

Company Operations and Management

The examiners reviewed the company's response to the company Operations and Management interrogatories. Aviva Life and Annuity Company (formerly known as AmerUs) became an Insurance Marketplace Standards Association (IMSA) member in 2002 and re-certified membership in 2005. The Company is currently in the process of renewing its membership again in 2008.

The examiners reviewed seven internal audit reports completed between July of 2007 and March of 2008. No significant findings were noted in the examiners' review of the audit reports. During the first part of the period under review, the internal audit function (Group Audit) for Aviva was handled through a combination of in-house staff and co-sourcing with PricewaterhouseCoopers (PwC). After acquisition of AmerUs Group in November of 2006, responsibilities for the internal audit function of Aviva Life and Annuity Company was transferred to AmerUs Group and was complete by July 1, 2007. At that time, the internal audit function for AmerUs Group was being provided by the outside firm of KPMG through a co-sourcing arrangement, but with no in-house staff. In September of 2007, Aviva Group Audit hired a Director to oversee the internal audit operations for North America. The decision was subsequently made to completely in-source the internal audit function for the U.S., and a Senior Manager was hired to manage that function in November of 2007. Effort began in early 2008 to

hire the remainder of the internal staff, a majority of whom were hired by May 1, 2008. Up until that point, KPMG continued to provide resources as needed.

Aviva's Legal and Compliance divisions work in tandem to conduct business practice reviews of agencies contracted to do business with the company. Attorneys in the Legal Department have conducted reviews of certain insurance agencies for the purpose of evaluating potential litigation risk. Agencies are selected for review and in-person meetings are conducted with key agency staff and principals. Typically, these reviews are conducted with the assistance of outside counsel. The company stated that there are no specific guidelines used in this process by the Legal Department or outside counsel. These reviews are not conducted in the ordinary course of business of the company and are performed at the direction of the Legal Department based on various considerations. The company did not identify the specific agencies reviewed, but stated that none of them have a principal place of business in the state of Wisconsin.

Marketing, Sales, and Advertising

The examiners reviewed the company's response to the Marketing, Sales, and Advertising interrogatories. The Sales and Distribution and the Compliance departments are responsible for marketing, sales, and advertising for Aviva. The Sales and Marketing section supports the sale of life and annuity product lines through independent marketing organizations (IMOs) and independent agents. An IMO is any person or entity that sells products on behalf of the company other than an independent agent that acts solely on his or her own behalf. The Agent Advertising section reviews agent-created material for compliance and creates pre-approved materials. The Marketing and Agent Support section trains and oversees the agents, provides advertising guidelines, best practices development, and provides corporate compliance. Marketing and Agent Support also oversees suitability, privacy, and record retention. The Quality Assurance and Monitoring section monitors results, prioritizes risks, and

manages market conduct exams. The Legislative and Regulatory Affairs section provides industry leadership and support, analyzes and communicates new legislation, and manages regulatory relationships. The Customer Resolution Team creates and manages company guidelines on complaint handling, resolves grievances, and establishes metrics and scorecard for trending and business process improvement.

The company does not provide leads to its independent agents, or use the services of lead card vendors. The company communicates product information primarily through email and direct mail to the agents and IMOs. The company devotes a section of its website specifically for the use of its agents. This secured portion of Aviva's website is available to all Aviva USA agents and their staff. The site provides tools to help agents manage their business, market to prospects, and serve existing clients. Agents can also gain access to information related to all of their Aviva USA agent contracts just by logging on.

Advertising files are stored in the company's online database. Upon submission the advertisement is assigned a distinctive number. Each advertisement is stored with all revised and final versions and all communications between the submitter and reviewer regarding changes. Hard copies of advertising files are also stored in a file cabinet at the home office. The company allows agents to create and use their own advertising material after the material has been approved by the Agent Advertising section. Agent advertising files have been currently maintained since 2000.

The company stated it is challenging to locate, verify, and monitor agent websites that may be in existence among all of the individual independent producers throughout the company's distribution systems. However, within its agent monitoring process, the company routinely requests advertising and marketing material in use by an agent in order to validate compliance with the company's advertising submission requirement. Particularly when an agent is referred to Agent Monitoring due to the discovery of unapproved advertising, the agent is not only reminded of his or her responsibility to submit advertising for approval, the company

determines if the agent maintains a website and then performs a review. The company also performs business practice reviews that include searching the Internet via keywords such as, "senior advisor", "safe money", "guarantee returns", "equity harvesting", "reverse mortgages", etc. to discover problematic websites and unapproved internet advertising. However, these reviews only appear to be done when an agent is referred to Agent Monitoring due to the discovery of unapproved advertising. The company gives general information about advertising guidelines to the agents during agent compliance training. New agents are given a "welcome kit" that contains the Aviva advertising guidelines. The company states it does not maintain a list of agents who the company is aware have constructed their own websites.

The company researches and reviews all new federal and state laws and regulations, determines if applicable to the company, and initiates projects to ensure that such laws and regulations are handled in a timely manner to ensure compliance. The company subscribes to OdenTrack, a web-based software application designed to assist with organizing and tracking regulatory implementation. Issues that require further attention are identified through the ODEN Subscription Service, but may also be identified through the American Council of Life Insurers (ACLI) legislative updates service, notices or publications from the National Association of Insurance Commissioners (NAIC), state insurance department letters, notices and bulletins, trade organizations, the company's complaint resolution process, internal and external exams, and audits and news sources. Once a law or regulation is found to be applicable to the company, the Regulatory Compliance Analyst (RCA) will track and disseminate this information to the appropriate areas of the company.

A sample of 50 advertisements for both life and annuity products was chosen for review with 12 advertisements chosen from 2006, 25 chosen from 2007 and 13 chosen from 2008.

Examiners found 15 advertisements that did not contain a unique form number. Section Ins 2.16 (28), Wis. Adm. Code requires that an advertisement other than an institutional

advertisement be identified by a unique form number. The company indicated that the individual in Compliance that was conducting the advertising reviews at that time did not require that form numbers be included on the final advertisement, but Compliance has since implemented a form number and Bates stamp process for all approval pieces.

7. **Recommendation:** It is recommended that the company develop, document and implement a procedure that requires an advertisement which is mass-produced to be identified by a unique form number pursuant to s. Ins 2.16 (28), Wis. Adm. Code.

None of the advertisements had attached, a notation indicating the manner and extent of distribution of each advertisement and/or the form number of any policy, amendment, rider, or endorsement form advertised. Section Ins 2.16 (30), Wis. Adm. Code requires such a notation on each advertisement. The company indicated that its online system did not capture this information during the period of review.

8. **Recommendation:** It is recommended that the company develop, document and implement a process and procedure to ensure that a notation is attached to each advertisement in the advertising file, indicating the manner and extent of distribution of each advertisement and the form number of any policy, amendment, rider, or endorsement from advertised pursuant to s. Ins 2.16 (30), Wis. Adm. Code.

Policy Forms

The examiners reviewed the company's response to the Policy Forms interrogatories. The Product Compliance and Development department is responsible for managing the product development and regulatory filings for all life and annuity products offered by Aviva Life and Annuity Company.

When new policy forms are released for sale, the Product Compliance and Development department sends electronic notification to all necessary personnel in the company noting the effective date of the release. The electronic notification sent by Product Compliance and Development is delivered only to the appropriate personnel within the company, including (but not limited to) New Business staff, Marketing staff, IT staff, and

Compliance staff. This notification is not delivered to any agents. However, this information is communicated to agents, primarily through the company's agent website. New forms are added and removed from the online form system based upon the agreed upon implementation date, and any obsolete forms are deleted and no longer available to agents. The company also communicates with agents via e-mail and physical mailing of marketing kits to agents. Because the company uses an electronic document management system (Calligo/Documerge), the company does not maintain hard-copy policy forms. As a result, no out-of-date policy forms are required to be destroyed once they are no longer available for sale. Each policy form's status as either active or inactive is controlled by the AS400/Ingenium License Table systems.

The examiners also reviewed the top ten policy forms (all flexible premium deferred annuity policies) issued during the two year period of review. Eight of the ten policies are indexed annuity policies. The surrender charge period for the top ten policy forms ranges from 5 years to 15 years with five of the ten policies having a surrender charge period of 10 to 15 years, including the top four policies issued. Maximum surrender charge rates range from 8% to 19% for the top ten policy forms with 1,500 (77.88%) of the 1,926 total policies issued during the period of review having a maximum surrender charge rate of more than 10% in the first policy year. The Company ceased marketing all annuity products with surrender charge periods exceeding 12 years in October of 2007. The examiners also noted that the top four policies include a premium bonus in the policy, and these top four policies accounted for 1,447 (75.13%) of the 1,926 total policies issued during the period of review. The premium bonus included in these top policies ranges from .50% to 10% on any payments made into the annuity during the first policy year. Also reviewed by the examiners were 11 (out of a total of 201) policy forms listed for the period of review that were deemed approved by OCI. There were no exceptions noted in the policy form review.

Policyholder Service and Complaints

The examiners reviewed the company's response to the Policyholder Service and Complaints interrogatories. In December 2006, complaint handling in Des Moines, IA was transferred from the Administration area to the Complaint Resolution Team (CRT) within the Compliance Department. Effective July 1, 2007, complaint handling in Topeka, KS was transferred from the Legal Department to the CRT in Des Moines. Since that time, the handling of all consumer complaints, received from OCI and complaints made directly to the company, has been centralized with the CRT. The complaint handling processes are the same for complaints received from OCI and those complaints received directly from an insured.

The Agent Monitoring Program was established beginning in 2007, fully implemented in 2008, and identifies complaints as a trigger for agent review by the Agent and Marketing Support division of the Compliance department. The complaint log used to track all complaints can be queried by agent name to identify complaints involving a particular agent. Specific situations, such as the receipt of one serious complaint or two general complaints within a year, or a significant replacement ratio will prompt an agent review. In addition, referrals from Sales & Distribution, Administration, or the Compliance Suitability Review Team may also initiate the monitoring of an agent.

Complaints alleging suitability concerns are recorded in the Complaint Log and are handled by the Complaint Resolution Team according to the Complaint Handling Policy. The company's Policy Statement in its Complaint Handling Policy indicates that "Aviva USA is committed to handling all complaints in a thorough, fair, expeditious, and courteous manner in accordance with applicable statutes, rules, and regulations." The company also indicated that it treats all complaints on a case-by-case basis, regardless of the nature of the complaint, and does not have a specific reference to suitability complaints in its complaint handling policy.

The examiners reviewed all 42 complaints recorded on the company's complaint log during the period of review. These 42 complaints included 16 received from OCI and 26

complaints that were filed directly with the company. The examiners noted a minor discrepancy between the number of complaints the company reported and what OCI records indicated for the number of complaints reported during the period of review due to one complaint being on the OCI log that was only a request for information to the company, and two complaints on the company's complaint log that were not on the OCI log due to the incorrect company name being selected on the OCI complaint system.

As part of the company complaint file review, the examiners found one file that only consisted of a copy of the policy owner's complaint, and indicated that this complaint was still open. It appears that this file was actually closed, but a system upgrade prevented the log from reflecting the correct status. Another file appeared as closed on the log, but was actually still open. Another file was also shown as closed on the log, but the file did not contain a final letter of resolution. Three other complaints were shown as closed on the log, but the final letter of resolution was not produced until after additional inquiry by the examiners. In addition, the examiners found one complaint file where the policy number was not listed for the policy owner and two complaint files that appeared to be duplicates of one another. An insurer's records with regard to insurance company operations must be maintained, and be available to the commissioner pursuant to s. Ins 6.80 (5), Wis. Adm. Code.

9. **Recommendation:** It is recommended that all complaint files in the company complaint log contain complete documentation, including applicable policy numbers and final resolution letters to accurately reflect when and how each complaint was resolved. The complaint log should also accurately reflect the current status of each complaint to ensure the company is in compliance with its own complaint handling procedures and s. Ins 6.80 (5), Wis. Adm. Code.

Underwriting

New Business

The examiners reviewed the company's response to the New Business and Underwriting interrogatories. The New Business Department in Topeka, KS is responsible for

all annuity new business processing with the exception of the Advantage annuities. Advantage annuities and all life insurance new business for the company is processed in Des Moines, IA. In Topeka, applications, along with all accompanying paperwork, are received in Aviva's Imaging Department and scanned and indexed. New Business works the business from the scanned images by creating worklists based on the dates documents are received. For each application, New Business enters the data into the administration system, reviews the answers on the application and accompanying paperwork, and reviews the forms received to ensure that the correct forms were received. New business also assigns policy dates based on when the application and premium are received, and issues policies. The Policy Issue Unit in New Business binds the policy, prepares the policy packet for mailing to the writing agent for delivery, and tracks outstanding delivery requirements. The New Business department also handles reissues, not taken policies, and other miscellaneous administrative duties related to processing of new business.

Also reviewed by the examiners within these interrogatories were questions about the suitability of annuity sales and what procedures and standards the company has to comply with the current requirements of s. 628.347, Wis. Stat. regarding the suitability of annuity sales to individuals. These findings and recommendations will be reviewed in detail in a separate suitability subsection at the end of the Underwriting section of this report.

The company does not currently allow agents to submit annuity business electronically. However, the Des Moines, IA office does allow agents to submit life new business electronically by accessing the Life Portraits System Software (LPSS). The electronic system identifies information regarding the applicant and begins an interview process which answers the questions on the life application. During the interview, the system identifies other processes simultaneously and completes the necessary forms requirements, such as for replacement, medical questionnaires, and other disclosures. The applicant's signature is obtained using an electronic signature pad and each form requires review and signatory sign off

by both applicant/owner and writing agent. Upon completion of the signature, the writing agent transmits an encrypted file through the internet to the home office for underwriting and evaluation. Upon receipt, the home office assigns a policy number and returns the information to the writing agent immediately. A new business staff member will report replacement activity and be accountable for notification, processing, and will ensure the policy file is in good order.

The company does not allow consumers to apply for coverage online and submit applications electronically. The company plans to explore electronic options for the submission of business, but has no current plans to market directly to consumers. Any plans to pursue electronic submission of business include business submitted through agents and not directly from consumers.

The examiners reviewed 25 new business life files and 25 new business annuity files for the period of review. The examiners found three new business annuity files in which one or both of the replacement questions on the application indicated that the annuity did not involve a replacement when a review of the file showed that it did involve a replacement. The examiners also found two different new business annuity files in which a notification of replacement was not sent to the company whose policy was being replaced. The company indicated that one of the two files was not identified as a replacement due to new business processor error. For the other file, a copy of the replacement form was in the file, but since there was no note in the file that notice was sent to the company whose policy was being replaced, the company could not confirm that proper notice was sent.

10. Recommendation: It is recommended that the company establish and implement a procedure to ensure it is in compliance with its own company procedures and s. Ins 2.07 (5)(a)1, Wis. Adm. Code which requires the company to secure with or as part of each application the statements required by sub. (4)(a) as to whether the new insurance or annuity will replace existing insurance or annuity on the same life; s. Ins 2.07 (5) (a) 4a, Wis. Adm. Code which requires the insurer to secure with each application in which replacement is involved a properly completed Notice (replacement form); and s. Ins 2.07 (5) (a) 4b, Wis. Adm. Code which requires the company to mail a notice of possible replacement to the company being replaced within 5 days of receipt of the application.

The examiners also had questions about the suitability of the annuity sale for seven of the new business annuity files that they reviewed. These findings and recommendations will be reviewed in detail in a separate suitability subsection at the end of the Underwriting section of this report.

The examiners also reviewed at least five new business annuity files for each of the top ten annuity writers during the period of review. They reviewed a total of 136 new business annuity files during this part of the examination. The examiners found that in nearly 50% of one agent's new business files (in 6 of the 14 files reviewed), between 9 and 19 months after the annuity was issued, 10% of the annuity was withdrawn to pay for a new annuity at a different company. The company responded that it does not review the free withdrawals taken by policy owners, and that since the policy owners were requesting the transfer, the free withdrawals were not questioned. The company also stated that this type of situation does not prompt further review of an agent.

11. Recommendation: It is recommended that the company further enhance the written policies and procedures implemented by the company pursuant to s. 628.347, Wis. Stat., by developing, documenting and implementing a process to monitor an agent's new annuity sales when a high percentage of an agent's new business, as determined by the company, is identified as involving a replacement. The company should take into consideration the percentage of withdrawals or surrenders from an agents' existing annuity business with the company, when reviewing an agent as part of the company's agent monitoring program.

The examiners also found that for one of the top ten writing agents reviewed, all of the files provided by the company were actually written by another agent. The company stated that Aviva allows "agent of record" changes when both agents agree. When the original writing agent's career changed, by mutual agreement between the agents, the second agent assumed the agent of record role going forward from that date. Once the system was changed to reflect that the second agent was the agent of record, the original agent's name was no longer on the system as the writing agent.

12. Recommendation: It is recommended that the company modify its system to keep a record of the original writing agent when the agent of record is changed in order that the correct information is available to the commissioner as required by s. Ins 6.80 (5), Wis. Adm. Code.

During the review of the top ten writing agents the examiners found no replacement letters sent to the replaced company in any of the files that involved replacement. The company stated that it sends a generic replacement notice to the company being replaced, along with transfer paperwork and the replacement form. The company does not keep a copy of the generic notice in every replacement file, but the company does note that the replacement and transfer paperwork was sent and the date it was sent. This information is noted in the application file, and is triggered by an entry in the replacement log by the New Business processor. The examiners found three files in which the agent replacement question was left blank on the application. The examiners also found eight files in which the date the replacement notice was sent was not noted. The company was unable to verify whether the replacement notice was sent within five days of the receipt of the application. In addition, the examiners found ten files in which the company took longer than five days to send notification of a replacement to the new company. A recommendation for similar findings during the review of new business files is covered under recommendation #10 discussed on page 20 of this report.

The examiners also had suitability questions on 28 of the new business annuity files for the top ten annuity writers of new annuity business for the period of review. These findings and recommendations will be reviewed in detail in a separate suitability subsection at the end of the Underwriting section of this report.

Underwriting

Replacement

The examiners reviewed the company's response to the Replacement interrogatories. The company defines external replacement as any transaction where a client

applies for an individual life insurance policy or annuity with Aviva Life and Annuity Company and the client owns an existing life insurance policy or annuity with another company that will be canceled, exchanged, lapsed, surrendered, changed to reduce or eliminate benefits, and/or reduced in value or face amount in order to purchase the new policy or annuity. An internal replacement is when the existing life insurance policy or annuity that the client owns is with Aviva Life and Annuity Company, including applications for a face amount increase on an existing policy.

The company indicated that the total number of internal annuity replacements for the period of July 1, 2006 through December 31, 2006 was 64, which is 17.1% of the company's total business in Wisconsin for that period. Of the 64 policies issued, 39 (61%) were 1035 exchanges. The total number of internal annuity replacements for 2007 was 64, which is 7.6% of the company's total business in Wisconsin for that year. Of the 64 policies issued, 39 (61%) were 1035 exchanges. The total number of internal annuity replacements for the period January 1, 2008 through June 30, 2008 was 12 policies, which is 1.7% of the company's total business in Wisconsin. Of the 12 policies issued, 5 (42%) were 1035 exchanges.

The company indicated that the total number of internal life replacements for the period of July 1, 2006 through December 31, 2006 was 59, which is 20.5% of the company's total business in Wisconsin for that period. Of the 59 policies issued, 56 (95%) were 1035 exchanges. The total number of internal life insurance replacements for 2007 was 161, which is 31.8% of the company's total business in Wisconsin for that year. Of the 161 policies issued, 131 (81%) were 1035 exchanges. The total number of internal life insurance replacements for the period January 1, 2008 through June 30, 2008 was 82 policies, which is 37.3% of the company's total business in Wisconsin. Of the 82 policies issued, 62 (76%) were 1035 exchanges. The company did not provide an explanation for the high number of internal replacements, even though the company states it does not encourage or condone the

systematic or deliberate replacement of existing life insurance or annuity policies and contracts per the company's Replacement of Life Insurance and Annuities guide for agents.

The company indicated that the total number of external annuity replacements for the period of July 1, 2006 through December 31, 2006 was 133, which is 35.5% of the company's total business in Wisconsin for that period. Of the 133 policies issued, 57 (43%) were 1035 exchanges. The total number of external annuity replacements for 2007 was 337, which is 40.1% of the company's total business in Wisconsin for that year. Of the 337 policies issued, 191 (57%) were 1035 exchanges. The total number of external annuity replacements for the period January 1, 2008 through June 30, 2008 was 286 policies, which is 40.3% of the company's total business in Wisconsin. Of the 286 policies issued, 174 (61%) were 1035 exchanges.

The company indicated that the total number of external life replacements for the period of July 1, 2006 through December 31, 2006 was 42, which is 14.7% of the company's total business in Wisconsin for that period. Of the 42 policies issued, 28 (67%) were 1035 exchanges. The total number of external life insurance replacements for 2007 was 126, which is 24.9% of the company's total business in Wisconsin for that year. Of the 126 policies issued, 77 (61%) were 1035 exchanges. The total number of external life insurance replacements for the period January 1, 2008 through June 30, 2008 was 48 policies, which is 21.8% of the company's total business in Wisconsin. Of the 48 policies issued, 30 (62.5%) were 1035 exchanges.

The company does not provide specific replacement training to its agents, however, the company's position on suitability is reviewed in the in-person training sessions provided by the company for all new agents as indicated on page 8 on this report. Again, this training is not mandatory. The company expects agents to offer products that meet the needs and objectives of the consumer as expressed, including replacements. Agents are expected, pursuant to the terms of their contracts, to comply with all state laws and regulations involving replacements.

They are also expected to read the company's guide and position on replacements and comply with such. In determining whether a replacement is appropriate, agents are expected to compare and contrast benefits and limitations of the new contract against the benefits and limitations of the existing contract. Factors considered when conducting this analysis include, but are not limited to, surrender charges, guaranteed and non-guaranteed values, death benefits, withdrawal amounts and limitations, tax implications, administrative costs, financial status, income needs, reinstatement of any limitations or exclusions, and other alternatives to replacement such as keeping an existing annuity in force and purchasing a new contract to meet any additional needs.

The examiners reviewed 26 life replacement files and 26 annuity replacement files for the period of review. They found four life files in which the face amount of the new policy was not accurately shown on the replacement form, four life files in which the replaced company's policy number was not accurately shown on the replacement form, three life files and three annuity files in which a replacement notice wasn't sent within five days to the replaced company, and five annuity files in which a replacement notice wasn't sent at all to the replaced company. A recommendation for similar findings during the review of new business files is covered under recommendation #10 discussed on page 20 of this report.

The examiners also had suitability questions on two of the replacement annuity files reviewed for the period of review. These findings and recommendations will be reviewed in detail in a separate suitability subsection at the end of the Underwriting section of this report.

The following chart provides information on the annuity policies issued by Aviva Life and Annuity Company in Wisconsin during the period of review:

	July 1, 2006 - June 30, 2007				July 1, 2007 - June 30, 2008			
Policies issued	694				1,232			
	Replace		Not		Replace		Not	
Number of above that involved replacement	354		340		543		689	
	Under 65		Age 65 & Over		Under 65		Age 65 & Over	
Policies issued to under age 65	279		415		572		660	
	Replace	Not	Replace	Not	Replace	Not	Replace	Not
Number of above that involved replacement	105	174	249	166	205	367	338	322
	Under 75		Age 75 & Over		Under 75		Age 75 & Over	
Policies issued to age 75 and over	517		177		983		249	
	Replace	Not	Replace	Not	Replace	Not	Replace	Not
Number of above that involved replacement	235	282	119	58	404	579	110	139

According to the data provided by the company, 1,926 annuity policies were issued during the period of review. From the first to the second year of the period of review, the number of annuity policies issued to people of all ages increased by 538 (77.52%). Of the total 1,926 policies issued during the period of review, 1,075 (55.82%) were issued to individuals age 65 and older. The company issued 426 (22.12%) of the total 1,926 policies to individuals age 75 and older. In the first year, the company issued 415 (59.80%) policies to individuals age 65 and older. The company issued 660 policies to individuals age 65 and older in the second year, but the percentage of policies issued to those age 65 and older dropped to 53.57% of those issued. In addition, policies issued to individuals age 75 and older also decreased from 25.50% of all policies issued the first year to 20.21% the second year.

Replacement was involved in a total of 897 (46.57%) of the 1,926 policies issued to individuals of all ages during the entire period of review. Of the policies issued to individuals age 65 and older, 587 (54.60%) policies involved replacement. During the entire period of

review, the company issued 229 (53.76%) policies that involved replacement to individuals age 75 and older. Although the actual number of policies which involved replacements increased from 354 the first year to 543 the second year, the percentage of new policies involving replacement went down from 51.01% to 44.07% out of the total number of policies sold to all ages during the period of review. In the first year, replacement was involved in 249 (60.00%) policies issued to those 65 and older. Once again the actual number of policies involving replacement increased to 338 policies issued to those age 65 and older the second year, but the percentage of transactions involving replacements went down to 51.21%. In the group age 75 and older, the number of policies and percentage involving replacement decreased from 119 (67.23%) to 110 (44.18%) from the first year to the second year during the period of review.

Underwriting

Suitability

In response to questions in the New Business interrogatories, the company described its procedures for complying with s. 628.347, Wis. Stat. with regards to the suitability of annuity sales to consumers. The company stated that while the primary responsibility for ensuring recommendations are suitable rests with the writing agent who is present at the time such recommendations are made, the company is responsible for and has developed a suitability review process for monitoring the recommendations made by its agents. This process includes the random and targeted review of selected applications to determine if an agent:

- 1) has made a reasonable effort to obtain information from the consumer concerning the consumer's financial status, tax status, investment objectives and any other information deemed reasonable, and
- 2) appeared to have reasonable grounds for believing that any recommendation made was suitable for the consumer based on the information obtained.

The company's suitability review process includes tasks performed by both the New Business Department (NB) and the Compliance Department Suitability Review Team (SRT). The SRT is made up of eight associates and a manager who are a permanent part of the Aviva USA Compliance Department. Five of the associates are primarily responsible for reviewing the annuity files for American Investors Life Insurance Company, Inc. (AIL) and three associates are primarily responsible for reviewing the annuity files for Aviva Life and Annuity Company. The suitability review process for all annuity applications includes a review by the New Business team of the application and all supporting documentation, including the required suitability form, for completeness and any "red flag" issues. The suitability form, titled Customer Identification and Suitability Confirmation Worksheet, contains information obtained from the consumer concerning the consumer's financial status (such as annual income, available liquid assets, and net worth), tax status, investment objectives (including the reason for purchasing the annuity), and investment history (such as previous experience with various financial products including annuities). The form requires the signature of both the applicant and agent confirming that the decision to purchase the annuity was based on the agent's recommendation, and that based on the financial information that was provided by the applicant, the purchase is suitable for the applicant's needs and/or financial objectives. The Suitability Review Team performs an in-depth review of a percentage of new business annuity applications received by the company. There are three ways these files are chosen for review by the SRT: (1) obvious "red flags" as identified by the New Business team, (2) a random selection of applications from the new business work queue, and (3) targeted selection and review of new and in-force business based on referrals from the Agent Monitoring Program as discussed in the Policyholder Service and Complaints section on page 17 of this report, the Legal Division, an insurance department, or as selected by the SRT based on criteria designed to target specific files with specific characteristics.

According to Aviva's Suitability Policy Addendum A, obvious "Red Flag" indicators used to aid New Business in identifying potential suitability concerns on the annuity application and all supporting documentation, including the suitability form include:

- 1) files where the amount of the annuity applied for constitutes most, if not all, of the applicant's stated net worth.
- 2) files where the owner's confirmation and the agent's confirmation do not agree.
- 3) files where the question that asks the client if he or she has sufficient liquid assets or other sources of income for living expenses and emergencies other than the funds that are being used to purchase the annuity is marked "No".
- 4) any other files where the new business team detects something unusual or out of the ordinary and determines that assistance from the SRT is needed.

This "Red Flag" process is done through both manual and computerized processes to help the SRT identify incomplete, missing, or inconsistent information in the annuity file.

All applications received are potentially subject to review by the SRT, including replacement applications. Replacement applications are not subject to targeted review solely because of their status as replacement applications. However, given the volume of applications reviewed monthly by the SRT and the process by which applications are selected for review, the company believes that replacement applications are adequately represented in the pool of applications reviewed by the SRT.

Once a file is selected for review by the SRT, the entire application file is reviewed, including all of the documentation supporting the recommendation to purchase the new policy. There are no predetermined criteria used or established for conducting the review. Each file is reviewed based on its own set of facts and circumstances. The SRT will make a determination as to whether or not the agent appeared to have a reasonable basis for making the recommendation. In reviewing files to determine if the agent appeared to have a reasonable basis for making the recommendation, the SRT considers all information available such as age,

status and nature of current investments, financial status, tax status, financial objectives, and provisions of the annuity contract.

The company's written Suitability Policy, developed in August of 2007 and updated in February of 2008, states that currently the SRT conducts a review of approximately 40 to 50% of all new annuity applications each month, including 100% of the files referred to the SRT by the New Business Department, 100% of all files where the age of the applicant is 75 or older, and 100% of all files that have been targeted for review by Compliance, Legal and/or other sources. The company indicated that the SRT has been reviewing all annuity applications where the age of the applicant is 75 or older since September of 2007. Monthly reports on the outcomes of the reviews performed by the SRT are sent to Senior Management including the Senior Vice President of Compliance and the General Counsel of Aviva.

During the period July 1, 2006 through December 31, 2006, the Aviva Suitability Review Team reviewed 22.5% (2,403) of all annuity applications (10,690) the company received nationally. During 2007, the SRT reviewed 29.8% (7,588) of all annuity applications (25,504) received nationally. From January 1, 2008 through June 30, 2008, the SRT reviewed 43.2% (7,027) of all annuity applications (16,270) received nationally. For comparison, during those same time periods, the SRT reviewed 25.6% (96), 31.3% (263), and 48.2% (342) of the annuity applications submitted in Wisconsin. By period, these reviews resulted in 9, 62, and 20 applications being declined by the SRT nationally, and 31, 133, and 159 policies that were "not taken" nationally. By period, 0, 4, and 6 applications were declined by the SRT in Wisconsin, and 2, 0, and 2 were policies "not taken" in Wisconsin. For the 10 declined applications in Wisconsin during the exam period, all 10 were declined for non-resident solicitation guideline violations, and not on the basis that the sales were unsuitable.

Included in the total number of annuity applications reviewed by the SRT as indicated above, were 233 targeted reviews during the exam period on Wisconsin business. Examples of targeted reviews include reviews of all applications involving applicants age 75 or

older, and reviews of all of an individual agent's new business per the request of the Agent Monitoring team to help determine if there is a trend or potential business practice that needs to be addressed. Of the 233 targeted reviews conducted on Wisconsin business, nine were conducted from July 1, 2006 through December 31, 2006, 101 were conducted in 2007, and 124 were conducted from January 1, 2008 through June 30, 2008. The SRT does not specifically record whether the targeted reviews were initiated by a referral from Agent Monitoring, the legal department, or an insurance department; however, the company confirmed with Agent Monitoring that it did not initiate any reviews with respect to Wisconsin agents or policies during the exam period. These targeted reviews resulted in seven of the applications being declined. One application remained pending at the time of the examiner's review. All other applications were accepted. Again, the company indicated that the declined applications were declined for non-resident solicitation guideline violations, and not on the basis that the sale was unsuitable.

The Suitability Review Team may make a consumer call as part of the suitability review that may be the result of a random selection for calls or from the decision that a call was needed based upon the review of the application file and the information on the suitability form. The SRT uses a script and maintains a record of the customer's answers to each of the questions asked during the call in the Customer Call Database. The examiners reviewed the script used by the SRT when making these calls. Questions asked of the customer include questions as to whether the annuity contract has been received from the agent, whether the customer was aware that the contract purchased was a deferred annuity, and if the customer was aware that the contract has several interest crediting strategies and how the annuity was allocated in those strategies. Additional questions include a customer's familiarity with the free withdrawal options provided in the contract, familiarity with the withdrawal charges in the contract, and understanding of the minimum guaranteed contract value. The remaining questions ask whether the customer was satisfied with the agent's explanation of the policy,

whether the agent was courteous, and whether the customer has any questions about the contract. The SRT prepares monthly reports that breakdown the outcomes of the calls, but they do not record specific breakdowns by state nor do the reports include metrics on the number of calls made before or after the policy was issued. The company's suitability policy allows for calls to be made after the policy is issued, however the calls made by the SRT are primarily all done before the policy is issued. The company has kept a record of calls to consumers that occurred since September 2006. Although the number of calls made from September 2006 through May 2007 averaged less than 6 calls per month, the number of calls made from June 2007 through June 2008 greatly increased to an average of just over 43 per month over the last 13 months of the period of review. The company did not state whether the SRT has a goal for the number of calls that should be made per month.

The company has not contracted with a third party to establish or maintain a system of supervision for its agents' recommendations. However, Aviva has contracted with LIMRA International to participate in the LIMRA Customer Assurance Program (CAP) survey. The LIMRA CAP survey is a customer service survey that includes a suitability element that provides an additional component to the company's already established suitability monitoring program. The company finalized the contract with LIMRA International in September of 2007, and new customers who purchased policies in November and December of 2007 were the first to participate in the CAP survey.

As previously mentioned, the examiners reviewed 25 new business annuity files, 25 new business life files, 136 new business annuity files from the top ten annuity writers, 26 replacement annuity files, and 26 replacement life files as part of the exam. During their review, questions of suitability came up for seven new business annuity files, 28 new business annuity files from the top ten annuity writers, and two replacement annuity files. Exceptions were written in each case asking the company to review the file and comment on the suitability of each sale, particularly if the Suitability Review Team had not reviewed the file in question. For

each exception, the company responded that "in accordance with s. 628.347 (3), Wis. Stat., the SRT is designed to assist in detecting and preventing violations of Wisconsin law concerning the suitability of annuity sales. In this capacity, the SRT determines whether the agent had a reasonable basis to make the recommendation to the client in accordance with s. 628.347 (2) (d), and not whether the sale itself is suitable." For each of the files where the examiners questioned the suitability of the sale, the company stated that the SRT's review of the information contained in the file at the time of issue determined that the agent appeared to have a reasonable basis to make the recommendation to the client, and therefore, the company approved the issuance of the contract.

Information on the agent web portal on the company's website includes a written Suitability Guide for Agents that explains the company's suitability requirements and provides guidance to agents for determining suitability when making a recommendation to purchase an annuity to a consumer. In addition, the company has developed a Company Position on Suitability which contains directions and recommendations to agents. Although the company states that agents must comply with the Company's Position on Suitability and use the suitability form prescribed by the company on all sales, as discussed previously in the Producer Licensing section on page 8 of this report, training, including suitability training for new and existing agents is not mandatory, and not all agents may actually access the agent web portal on the company's website to review the Company Position on Suitability or the Suitability Guide for Agents.

13. Recommendation: It is recommended that the company further enhance the written policies and procedures implemented by the company pursuant to s. 628.347, Wis. Stat., by further developing and documenting guidelines for the Suitability Review Team (SRT). The guidelines should be modified to provide additional guidance to the SRT by providing criteria to be considered when reviewing files and determining whether the agent had reasonable grounds for believing that the recommendation was suitable for the consumer on the basis of facts disclosed by the consumer.

14. Recommendation: It is recommended that the company develop, document, and implement a process and procedure to ensure that all of its agents are provided with the company's Position on Suitability and the Suitability Guide For

Agents to ensure compliance with s. 628.347 (3) (a), Wis. Stat. with regards to suitability of annuity sales.

IV. CONCLUSION

This was Wisconsin's first on-site targeted market conduct examination of the company now known as Aviva Life and Annuity Company. The examiners made a total of 14 recommendations relating to the company's need for additional procedures in the areas of producer licensing; marketing, sales, and advertising; policyholder service and complaints; underwriting - new business; and underwriting - suitability.

The examiners found inadequacies with the company's current procedures for appointing and terminating agents that caused numerous errors to occur during the period of review including failure to monitor its third party vendor that handles agent appointments and terminations for compliance with regard to maintaining agent records. Deficiencies included an absence of procedures ensuring all terminated agents are provided a written notice requesting the return of indicia, significant time difference between the date that some agents were contracted with the company and the date those agents were appointed with the company, agents who the company had accepted business from that had not yet been appointed to do business in Wisconsin, agents who did not receive a termination letter from the company, agent terminations that were not timely communicated to OCI, and agents who did not have a copy of their agent contract in their file with the company. The company must develop and implement a process to better comply with its own agent appointment and termination procedures as well as those required by Wisconsin insurance regulations.

The company needs to develop, document and implement procedures to ensure all company advertisements are compliant with s. Ins 2.16 (28) & (30), Wis. Adm. Code, with regards to form numbers and maintaining company advertising files.

The company needs to revise its Complaint Handling Policy to ensure that all complaint files in the company complaint log contain documentation, including final resolution letters, and when and how each complaint was resolved. This includes the accurate reflection

in the complaint log of the current status of the complaint pursuant to s. Ins 6.80 (5), Wis. Adm. Code with regard to retention of records. In addition, the Complaint Resolution Team needs to implement a procedure to ensure it more consistently complies with its own company Complaint Handling Policy.

There were many instances during the company file review where the examiners found non-compliance issues with regard to replacement regulations. The company needs to establish and implement a procedure to ensure it more consistently complies with its own company procedures, and with s. Ins 2.07, Wis. Adm. Code with regard to replacement of life insurance and annuities. In particular, there were issues with indicating if replacement was part of the transaction, proper completion of the Wisconsin replacement form, and proper and timely notification of the possible replacement to the company being replaced.

In addition, the company needs to develop and implement a procedure to monitor the frequency of replacement business written by individual agents, as well as the frequency of withdrawals involving policies written by individual agents for potential suitability issues.

The company needs to modify its systems to maintain a record of the actual writing agent when the agent of record is changed in order to comply with s. 601.42, Wis. Stat. regarding the proper maintaining of data.

Although the company states that agents must follow the company's policies and guidelines including the Company Position on Suitability and the Suitability Guide for Agents that are included on the agent web portal on the company's website, and offers agents both traditional classroom and web-based training, the training, including suitability training for new and existing agents, is not mandatory. In addition, not all agents may access the agent web portal on the company's website to review the Company Position on Suitability or the Suitability Guide for Agents. The company needs to better ensure that all of its agents are provided with the company's Position on Suitability and the Suitability Guide For Agents to ensure compliance with s. 628.347 (3) (a), Wis. Stat. with regards to suitability of annuity sales. Also, the company

needs to develop and document a set of established criteria and suitability standards that can provide guidance to the Suitability Review Team when reviewing files and determining whether the agent had reasonable grounds for believing that the recommendation was suitable for the consumer on the basis of facts disclosed by the consumer.

V. SUMMARY OF RECOMMENDATIONS

Producer Licensing

- Page 9 1. It is recommended that the company obtain an annual certification or other appropriate written acknowledgement form any third party vendor responsible for agent appointments and terminations for purposes of verifying the vendor's compliance with s. Ins 6.80 (5), Wis. Adm. Code with respect to company records maintained by such vendor..
- Page 9 2. It is recommended that the company develop, document, and implement a process and procedure that requests the return of indicia from all terminated agents pursuant to s. Ins 6.57 (2), Wis. Adm. Code.
- Page 9 3. It is recommended that the company develop, document, and implement a procedure to ensure it submits agent applications for appointments to OCI within 15 days after the earlier of the date the agent contract is executed or the agent submits his or her first insurance application to the company, pursuant to s. Ins 6.57 (1), Wis. Adm. Code.
- Page 10 4. It is recommended that the company develop and implement a process to ensure that the notification of termination of appointment of agents is filed prior to or within 30 days of the termination date with the Office of the Commissioner of Insurance as required by s. Ins 6.57(2), Wis. Adm. Code.
- Page 10 5. It is recommended that the company develop, document, and implement a procedure to accurately maintain agent appointment and termination records, including ensuring that copies of agent termination letters and reasons for terminations are kept in the agent files, in compliance with s. Ins 6.80(5), Wis. Adm. Code.
- Page 11 6. It is recommended that the company develop, document and implement a procedure to ensure a copy of the signed agent's contract is kept in the agent file to verify the date of contract, and in order to comply with s. Ins 6.57 (1), Wis. Adm. Code with regard to appointment of insurance agents by insurers.

Marketing, Sales, and Advertising

- Page 15 7. It is recommended that the company develop, document and implement a procedure that requires an advertisement which is mass-produced to be identified by a unique form number pursuant to s. Ins 2.16 (28), Wis. Adm. Code.
- Page 15 8. It is recommended that the company develop, document and implement a process and procedure to ensure that a notation is attached to each advertisement in the advertising file, indicating the manner and extent of distribution of each advertisement and the form number of any policy, amendment, rider, or endorsement from advertised pursuant to s. Ins 2.16 (30), Wis. Adm. Code.

Policyholder Service & Complaints

- Page 18 9. It is recommended that all complaint files in the company complaint log contain complete documentation, including applicable policy numbers and final resolution letters to accurately reflect when and how each complaint was resolved. The complaint log should also accurately reflect the current status of each complaint to ensure the company is in compliance with its own complaint handling procedures and s. Ins 6.80 (5), Wis. Adm. Code.

Underwriting – New Business

- Page 20 10. It is recommended that the company establish and implement a procedure to ensure it is in compliance with its own company procedures and s. Ins 2.07 (5)(a)1, Wis. Adm. Code which requires the company to secure with or as part of each application the statements required by sub. (4)(a) as to whether the new insurance or annuity will replace existing insurance or annuity on the same life; s. Ins 2.07 (5) (a) 4a, Wis. Adm. Code which requires the insurer to secure with each application in which replacement is involved a properly completed Notice (replacement form); and s. Ins 2.07 (5) (a) 4b, Wis. Adm. Code which requires the company to mail a notice of possible replacement to the company being replaced within 5 days of receipt of the application.

- Page 21 11. It is recommended that the company further enhance the written policies and procedures implemented by the company pursuant to s. 628.347, Wis. Stat., by developing, documenting and implementing a process to monitor an agent's new annuity sales when a high percentage of an agent's new business, as determined by the company, is identified as involving a replacement. The company should take into consideration the percentage of withdrawals or surrenders from an agent's existing annuity business with the company, when reviewing an agent as part of the company's agent monitoring program.

- Page 22 12. It is recommended that the company modify its system to keep a record of the original writing agent when the agent of record is changed in order that the correct information is available to the commissioner as required by s. Ins 6.80 (5), Wis. Adm. Code.

Underwriting – Suitability

- Page 33 13. It is recommended that the company further enhance the written policies and procedures implemented by the company pursuant to s. 628.347, Wis. Stat., by further developing and documenting guidelines for the Suitability Review Team (SRT). The guidelines should be modified to provide additional guidance to the SRT by providing criteria to be considered when reviewing files and determining whether the agent had reasonable grounds for believing that the recommendation was suitable for the consumer on the basis of facts disclosed by the consumer.

- Page 33 14. It is recommended that the company develop, document, and implement a process and procedure to ensure that all of its agents are provided with the company's Position on Suitability and the Suitability Guide For Agents to

ensure compliance with s. 628.347 (3) (a), Wis. Stat. with regards to suitability of annuity sales.

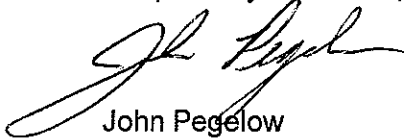
VI. ACKNOWLEDGEMENT

The courtesy and cooperation extended to the examiners during the course of the examination by the officers and employees of the company is acknowledged.

In addition, to the undersigned, the following representatives of the Office of the Commissioner of Insurance, state of Wisconsin, participated in the examination.

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Respectfully submitted,



John Pegelow
Examiner-in-Charge