

**A**

**TARGETED MARKET CONDUCT EXAMINATION OF**

**AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY**

**NAIC #92738**

**As Of**

**December 31, 2009**





Department of  
Insurance

John Kasich, Governor  
Mary Taylor, Director

50 West Town Street  
Third Floor – Suite 300  
Columbus, OH 43215  
(614) 644-2658  
www.insurance.ohio.gov

Honorable Mary Taylor  
Director  
Ohio Department of Insurance  
50 West Town Street Suite 300  
Columbus, Ohio 43215

Director:

Pursuant to your instructions and in accordance with the powers vested under Title 39 of the Ohio Revised Code, a targeted market conduct examination was conducted on the Ohio business of the following:

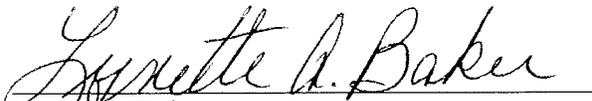
American Equity Investment Life Insurance Company NAIC# 92738

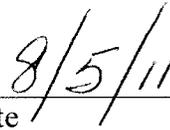
The examination and risk assessment was conducted at the Company's statutory home office at:

6000 Westown Parkway  
West Des Moines, Iowa 50266-5921

A report of the examination is enclosed.

Respectfully submitted,

  
Lynette Baker  
Chief, Market Conduct Division

  
Date

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## **FOREWORD**

This examination and risk assessment was conducted under authority provided under Ohio Revised Code (“R.C.”) 3901.011.

## **EXECUTIVE SUMMARY**

This examination is a targeted market conduct examination of American Equity Investment Life Insurance Company (“Company”) by the State of Ohio as it relates to the Company’s suitability compliance program for its fixed and equity indexed individual annuity products for the period of January 1, 2003 through December 31, 2009 (the file review was conducted on annuities issued, replaced, or surrendered, during the period of March 1, 2007 through December 31, 2009). The examination began October 4, 2010 and concluded October 15, 2010.

The examination did not reveal any significant areas of concern and the Company explained that their suitability procedures continue to evolve.

## **SCOPE OF EXAMINATION**

The basic business areas included as part of the examination included:

- A. Compliance Procedures
- B. Suitability of New Business and Replacements
- C. Disclosures
- D. Marketing and Sales
- E. Complaint Handling

Each business area has standards that were measured during the examination. Some of the standards have specific statutory guidance; others have specific company guidelines or contractual guidelines.

The focus of the examination was on the procedures and methods used by the Company to achieve compliance with applicable Ohio statutes and rules involving the issuance of fixed and equity indexed individual annuity products. This included an analysis of how the Company communicates its instructions and philosophy with its employees, agency force, and national marketing organizations.

This examination report is a report by test, rather than a report by exception, and all standards and tests are described and the findings indicated.

## **METHODOLOGY**

This examination is based on the standards and tests for a market conduct examination of a life and annuity insurer found in Chapters XVI and XIX of the NAIC Market Regulation Handbook and on applicable Ohio statutes and rules.

Some of the standards were measured using a single type of review, while others used a combination or all types of review. The types of review used in this examination fall into two general categories: Generic and Sample.

A “Generic” review indicates that a standard was tested through analysis of general data gathered by the examiners, or provided by the Company in response to interrogatories or personnel interviews conducted by the examiners.

A “Sample” review indicates that a standard was tested through direct review of a random sample of files selected using automated sampling software.

Each standard is accompanied by a comment describing the purpose or reason for the standard. Findings are indicated and any examiner comments or observations are noted.

## COMPANY OPERATIONS

American Equity Investment Life Insurance Company is a stock life insurance company and a wholly-owned subsidiary of American Equity Investment Life Holding Company domiciled in Iowa and admitted to do business in forty-nine states and the District of Columbia.

### 2009 Annuity Considerations

Ohio Individual Ordinary	National Individual Ordinary
\$171,693,390	\$3,666,198,920

### FILE REVIEW METHODOLOGY:

The findings are based on the standards for a market conduct examination of a life and annuity insurer according to applicable Ohio statutes and rules, including Ohio Administrative Code ("OAC") 3901-6-13 and 3901-6-14.

### NEW BUSINESS AND REPLACEMENTS REVIEW FINDINGS

#### Standard 5: Marketing and Sales

The insurer has suitability standards for its products as required by Ohio Administrative Code 3901-6-13.

#### Standard 3: Marketing and Sales

The insurer's rules pertaining to insurer requirements in connection with replacements are in compliance with Ohio Administrative Code 3901-6-05.

#### Standard 11: Marketing and Sales

The insurer has procedures in place to educate and monitor insurance agents/producers and to provide full disclosure to consumers regarding all sales of products involving annuity products, and all sales are in compliance with Ohio Administrative Code 3901-6-14 (E)(4)&(5) and Ohio Revised Code 3901.21(A).

### Procedure Review

**Methodology:** The examiners reviewed compliance procedure manuals and interviewed Company personnel to determine how new business and replacements are reviewed and processed.

### **Examiner Observations:**

The examiners reviewed the Company's compliance policies and procedures and interviewed Company personnel regarding the suitability guidelines the Company has established to determine if an individual qualifies for the purchase or exchange of an annuity policy. The

Company explained they use the most restrictive state statutes and regulations regarding annuity suitability, annuity disclosures, and replacement of annuity policies and apply them across the board to all the states where annuity policies are written. In addition, the Company explained that their suitability review and procedures continue to evolve.

### **Company Guidelines on Suitability**

It is the intent of American Equity Investment Life Insurance Company (“the Company”) to comply with all laws, regulations and Company guidelines that apply to the business of the Company and to, wherever possible, prevent noncompliant activity and acts. Failure to comply with state and federal laws and regulations could lead to penalties including fines, suspensions and possible loss of licenses. Failure to comply with these guidelines and other Company guidelines and state and federal laws and regulations could compromise the image and integrity of the Company. Employees and agents are expected to follow all guidelines, policies, procedures, laws and regulations with the understanding that not doing so may lead to disciplinary action, up to and including termination.

### **The Company’s Position of Suitability**

A recommendation for the purchase or exchange of an annuity should be suitable for the consumer. The recommendation should be based on information gathered by, or known to the agent at the time he or she makes the recommendation. Before making a recommendation to a consumer, the agent should make all reasonable efforts to obtain relevant information from the consumer regarding his or her insurance needs and financial objectives.

“Recommendation means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.” (NAIC Suitability in Annuity Transactions Model Regulation)

Relevant information that an agent must make a reasonable effort to obtain, includes, but may not be limited to:

- The consumer’s financial status;
- The consumer’s tax status;
- The consumer’s investment objectives; and
- Such other information used or considered to be reasonable in making a recommendation to the consumer.

The Company has developed and provides the necessary tools designed to assist the agent in gathering and analyzing relevant information. The Company recognizes that each individual’s financial situation, goals and needs may vary. To this end, the Company has developed guidance as to what may be suitable based on the information gathered.

The Company has developed and maintains a process for assuring that agents request and obtain the relevant information necessary to make a suitable recommendation to a consumer. The

Company has developed procedures for ensuring that relevant information gathered was used in determining and making a recommendation to consumers.

The Company has also developed and maintains a process for assuring that consumers receive certain information that will assist them in making a decision about purchasing a product. Such information will include:

- Annuity Buyer's Guide;
- Disclosure Statement;
- Replacement Form, if necessary;
- Other information as required by law or deemed appropriate by the Company.

This information will be given no later than at the time of application, unless otherwise specified or allowed by law or Company practice.

The Company has continually refined the suitability questionnaire and review processes to help ensure that based on the information provided the recommendation to purchase an annuity policy is suitable for the consumer.

The Company has created a **Suitability Committee**. Members of the Committee will consist of at least one person from each of the following business units:

- Annuity New Business
- Compliance
- Marketing
- Market Conduct

The Suitability Committee will meet on at least a quarterly basis to review information gathered in the monitoring process. This Committee makes recommendations to senior management on any changes needed in the Suitability Policy and Guidelines or processes; any action deemed necessary against an agent or agency, training recommendations, and an overall position the Company with respect to suitability standards.

The Company meets the statute requirements of Ohio Administrative Code 3901-6-13 by maintaining policies and procedures regarding suitability. Every annuity application must go through the application entry process that includes edits and new business parameters for identifying files for elevated review. The process for identifying files for elevated review was automated January 1, 2009.

The Company's New Business Suitability Department reviews all annuity applications for initial suitability and replacement verification. If any review issues are identified as "Yellow Light" or "Red Light" during the suitability review, a suitability worksheet is printed and attached to the application file that is given to the Suitability Team for an elevated review. Any annuity contract that reaches this level of review must be fully documented in the contract file, including the specific, objective criteria used in making the decision to issue the annuity contract.

If yellow light review issues are not resolved or the reviewer does not feel comfortable in making the decision to issue the annuity contract, the application file is either declined or moved to management for an elevated suitability review. Management Elevated Suitability Review will be handled by the Senior Vice President of New Business. As appropriate, questions indicated should be answered and the reason behind those answers documented. American Equity may contact the client directly to discuss the proposed transaction. The management reviewer either approves the application, modifies the offer, or declines the application. Any Annuity Contract that reaches this level of review must also be fully documented in the contract file, including the specific, objective criteria used in making the decision to issue the annuity contract.

The Company monitors compliance with suitability procedures and policies through tracking complaints, internal audits, customer surveys, persistency trends, early surrenders and free look analysis. No significant exceptions were noted during the policy level reviews and/or audits that were done by internal audit/corporate audit during 2009 and 2010.

The examiners reviewed the policy contracts as well as the sales and marketing materials used by the Company during the period effective March 1, 2007 through December 31, 2009. No issues were identified and this information met the statute requirements.

### **Record Keeping**

Suitability records are kept for at least as long as the surrender charge period, or 5 years after the contract census, whichever is longer required by law.

### **File Review:**

**Methodology:** The examiners reviewed a sample of 50 Ohio new business and replacement policies on fixed and indexed annuity contracts issued during the examination period.

### **Examiner Observations:**

The major focus of the new business and replacements involved the issue of annuity suitability and the Company's oversight of its products. During the course of the review, there were no instances of possible unsuitable sales.

### **Findings:**

New Business and Replacement files

Population	Sample	Yes	No	Standard	Compliance
7,658	50	50	0	90%	100%

The standard for compliance is 90%. The Company's performance was above this standard.

**Additional Exam Findings:**

During the new business and replacement file review, it was also noted that all disclosure documents included the minimum information that must be disclosed as required by Ohio Administrative Code 3901-6-14(E)(4).

**Unreported Replacements:**

**Examiner Observations:**

A review of the Company's replacement register and applications was conducted to check for any unreported replacements. There was one (1) policy where the "Important Notice: Replacement of Life Insurance or Annuities" indicated a John Hancock policy was being replaced, but the policy was not included on the replacement register. This policy would be considered a violation of Ohio Administrative Code 3901-6-05(G)(1). All of the remaining policies in the policy sample that were replacements were included in the replacement register.

**Use of senior-specific certifications and professional designations**

Ohio Administrative Code 3901-5-11 "Use of senior-specific certifications and professional designations in the marketing, solicitation, negotiation, sale or purchase of a life or health insurance policy or annuity" Section (E)(1) stipulates it is an unfair and deceptive trade practice under sections 3901.19 to 3901.26 of the Ohio Revised Code and a dishonest practice under division (B)(9) of section 3905.14 of the Ohio Revised Code for an insurance agent to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance agent has special certification or training in advising or providing services to seniors in connection with the marketing, negotiating, soliciting, selling, or purchase of a life or health insurance policy, or annuity product or in the provision of advice as to the value of or the advisability of purchasing of a life or health insurance policy or annuity product, either directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports related to a life or health insurance or annuity product.

Section (E)(2) of Ohio Administrative Code 3901-5-11 further stipulates the prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

- (a) Use of a certification or professional designation by an insurance agent who has not actually earned or is otherwise ineligible to use such certification or designation;
- (b) Use of a nonexistent or self-conferred certification or professional designation;
- (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance agent using the certification or designation does not have; or

- (d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
  - (i) Is primarily engaged in the business of instruction in sales or marketing;
  - (ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
  - (iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
  - (iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certification or designation.

**Examiner Observations:**

The Company has a list of acceptable producer designations that may be used by appointed producers. The designations have been reviewed by the Company and are allowed to be used in the promotion of their products. The list of designations was reviewed by the examiner and no problems were found.

## COMPLAINT HANDLING

**Standard: Complaint Handling**

The regulated entity takes adequate steps to finalize and dispose of the complaint in accordance with statutes, rules, regulations, and contract language.

**Examiner Observations:**

A review was conducted on all 19 complaints received during the period of January 1, 2009 through June 30, 2010 to assure complaints were handled in a timely manner and analyzed for any trends that might need attention while on-site at the company. The complaints were handled in a timely manner and there did not appear to be any trends in the complaints.

A complaint log is maintained as an ongoing report. All complaints are to be handled properly and promptly. The Company has a Best Practices committee that meets monthly and discusses various market conduct issues, complaints, industry updates, and related matters. The committee consists of individuals from the suitability team, compliance areas, operations, claims, client relations and corporate audit. The complaint log is distributed to the committee members for review. A verbal report is presented at the meeting identifying any trends or unusual items for discussion. The complaint log is also distributed to executive management upon request.

The Company has an inquiry/complaint handling policy statement that provides a good faith effort will be made to resolve complaints and disputes without resorting to civil litigation.

The Complaint Department staff consists of the Vice President of the Complaint Department, and five (5) employees who report to the Vice President of the Complaint Department. The Vice

President of the Complaint Department and his staff report to the Executive Vice President and Chief Operating Officer.

This concludes the report of the market conduct examination of the American Equity Investment Life Insurance Company. The examiners, Bob Baker and Rodney Beetch, would like to acknowledge the assistance and cooperation provided by the management and the employees of the Company.

  
\_\_\_\_\_  
Bob Baker  
Insurance Compliance Examiner

  
\_\_\_\_\_  
Date



August 3, 2011

[Rodney.beetch@Insurance.ohio.gov](mailto:Rodney.beetch@Insurance.ohio.gov)

Rodney E. Beetch  
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Ohio Department of Insurance  
50 West Town Street  
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Columbus, OH 43215-4186

RE: American Equity Investment Life Insurance Company (American Equity)  
Draft Report of Market Conduct

Dear Mr. Beetch:

We appreciate the opportunity to review the draft report of the Market Conduct Examination as of December 31, 2009.

We accept the report as written. As I mentioned earlier, we monitor and continually work at improving our review process. Examinations such as this assist us in these improvements.

Sincerely,

Brenda Westvold  
VP of Corporate Audit  
515-457-1787  
[bwestvold@american-equity.com](mailto:bwestvold@american-equity.com)

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People Service Future



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STANDARDS ASSOCIATION