



OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of	)	No. 10-55
	)	
The Financial Examination of	)	FINDINGS, CONCLUSIONS,
<b>WESTERN UNITED LIFE</b>	)	AND ORDER ADOPTING REPORT
<b>ASSURANCE COMPANY</b>	)	OF FINANCIAL EXAMINATION
	)	
A Domestic Insurer.	)	

**BACKGROUND**

An examination of the financial condition of **WESTERN UNITED LIFE ASSURANCE COMPANY** (the Company) as of December 31, 2008, was conducted by examiners of the Washington State Office of the Insurance Commissioner (OIC). The Company holds a Washington certificate of authority as a stock insurer. This examination was conducted in compliance with the laws and regulations of the state of Washington and in accordance with the procedures promulgated by the National Association of Insurance Commissioners and the OIC.

The examination report with the findings, instructions, and recommendations was transmitted to the Company for its comments on February 23, 2010. The Company's response to the report is attached to this order only for the purpose of a more convenient review of the response.

The Commissioner or a designee has considered the report, the relevant portions of the examiners' work papers, and the submissions by the Company.

Subject to the right of the Company to demand a hearing pursuant to Chapters 48.04 and 34.05 RCW, the Commissioner adopts the following findings, conclusions, and order.

**FINDINGS**

Findings in Examination Report. The Commissioner adopts as findings the findings of the examiners as contained in pages 1 through 19 of the report.

## CONCLUSIONS

It is appropriate and in accordance with law to adopt the attached examination report as the final report of the financial examination of **WESTERN UNITED LIFE ASSURANCE COMPANY** and to order the Company to take the actions described in the Instructions and Comments and Recommendations sections of the report. The Commissioner acknowledges that the Company may have implemented some of the Instructions and Comments and Recommendations prior to the date of this order. The Instructions and Comments and Recommendations in the report are appropriate responses to the matters found in the examination.

## ORDER

The examination report as filed, attached hereto as Exhibit A, and incorporated by reference, is hereby ADOPTED as the final examination report.

The Company is ordered as follows, these being the Instructions and Comments and Recommendations contained in the examination report on pages 1-8.

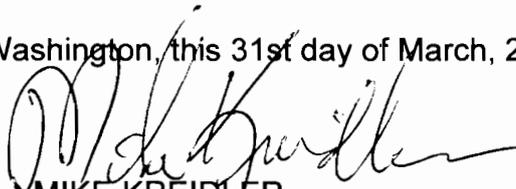
1. The Company is ordered to comply with RCW 48.05.250 by filing its financial statements in the general form and context approved by the NAIC and WAC 284-07-050(2) which requires adherence to the NAIC Annual Statement Instructions and the AP&P. Instruction 1, Examination Report, page 2.
2. The Company is ordered to comply with RCW 48.05.250 by filing a true statement of its financial condition, transactions and affairs and to comply with the NAIC Annual Statement Instructions and the AP&P, as required by WAC 284-07-050(2). The Company is also ordered to execute revised or amended custodial agreements that comply with the FCEH. Instruction 2, Examination Report, page 2.
3. The Company is ordered to amend its agreement with GLH to comply with RCW 48.31B.030(1)(a), RCW 48.05.073, SSAP 70, Paragraph 8, and SSAP Appendix A-440. Instruction 3, Examination Report, page 2.
4. The Company is ordered to comply with RCW 48.13.340 by obtaining BOD approval of investment transactions and recording authorization and approval in the minutes of such meetings. Instruction 4, Examination Report, page 2.

5. The Company is ordered to comply with RCW 48.05.073 which requires the filing of its financial statements in accordance with the NAIC AP&P; and with WAC 284-07-050(2) which requires adherence to the NAIC AP&P, SSAP 40, Paragraph 22. Instruction 5, Examination Report, page 3.
6. The Company is ordered to comply with RCW 48.05.073 which requires the filing of its financial statements in accordance with the NAIC AP&P; and with WAC 284-07-050(2) which requires adherence to the NAIC AP&P, SSAP 90, Paragraph 25. Instruction 6, Examination Report, page 3.
7. The Company is ordered to comply with RCW 48.05.073 which requires the filing of its financial statements in accordance with the NAIC AP&P; and with WAC 284-07-050(2) which requires adherence to the NAIC AP&P, SSAP No. 10, Paragraph 8. Instruction 7, Examination Report, page 3.
8. The Company is ordered to comply with RCW 48.05.073 which requires the filing of its financial statements in accordance with the NAIC AP&P; and with WAC 284-07-050(2) which requires adherence to the NAIC AP&P, SSAP 49, Paragraph 4. Instruction 8, Examination Report, page 3.
9. The Company is ordered to comply with RCW 48.74.040(2) and Actuarial Guidelines VIII and XXXIII by including in its reserve the present value of all future guaranteed benefits. The ultimate policy reserve held must be sufficient to fund the greatest present value of all potential integrated benefit streams, reflecting all guaranteed elective and non-elective benefits available to the contract owner. Instruction 9, Examination Report, page 4.
10. The Company is ordered to comply with RCW 48.74.025(3) by ensuring that the schedule of reserves and related items in the Opinion matches documentation in the Memorandum. The Company is also ordered to comply with RCW 48.74.025(1) and WAC 284-07-380(4) by not including an improper disclaimer or by qualifying the Opinion by reference to the Memorandum. The Company is also ordered to comply with WAC 284-07-390(2)(a)(vii) and ASOP No. 7 (4.3g) by documenting the expense assumptions in a manner that would allow one to evaluate the reasonableness of the actuary's work. Instruction 9, Examination Report, page 4.
11. The Company is ordered to comply with WAC 284-07-390(1)(b)(i), WAC 284-07-390(3)(a)(i), WAC 284-07-350, and ASOP No. 7, No. 22, and No. 23 when preparing its asset adequacy analysis. Instruction 9, Examination Report, page 5.

12. The Company is ordered to comply with WAC 284-18-920 by filing all information required in the holding company Form B filings. Instruction 10, Examination Report, page 5.
13. The Company is ordered to comply with RCW 48.31B.025 by disclosing all intercompany transactions greater than one-half of one percent of its admitted assets as of the 31<sup>st</sup> day of the previous December on its holding company Form B filing within fifteen days following the end of the month in which it learns of each change or addition. Instruction 11, Examination Report, page 6.
14. The Company is ordered to comply with RCW 48.12.020(4), 48.13.270(6), and 48.13.290(2) by investing only in allowed investments. Instruction 12, Examination Report, page 7.
15. WULA is ordered to comply with RCW 48.13.030(1) by not having at any time any combination of investments in securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. Instruction 13, Examination Report, page 7.
16. It is ordered that the Company consider developing and implementing a process to determine the effectiveness of its hedging transactions. Comments and Recommendations 1, Examination Report, page 7.
17. It is ordered that the Company consider enhancing its control over the reconciliation and review process of bank accounts. Comments and Recommendations 2, Examination Report, page 7.
18. It is ordered that the Company consider developing and implementing a conflict of interest policy for directors that encourages compliance with RCW 48.05.370. Comments and Recommendations 3, Examination Report, page 8.

IT IS FURTHER ORDERED THAT, the Company file with the Chief Examiner, within 90 days of the date of this order, a detailed report specifying how the Company has addressed each of the requirements of this order.

ENTERED at Olympia, Washington, this 31<sup>st</sup> day of March, 2010.

  
MIKE KREIDLER  
Insurance Commissioner

March 15, 2010

James T. Odiorne, CPA, JD  
Deputy Insurance Commissioner  
Company Supervision Division  
5000 Capitol Blvd.  
Tumwater, WA 98501

Via Email and Overnight Courier

Re: Western United Life Assurance Company – Response to Draft  
Financial Examination Report as of December 31, 2008

Dear Mr. Odiorne,

Western United Life Assurance Company (the “Company”) is providing the following responses to the instructions, comments and recommendations set forth in the draft Financial Examination Report of the Company as of December 31, 2008 (the “Report”) provided by the Washington Office of the Insurance Commissioner (the “OIC”). In addition, the Company is providing two factual edits to the Management and Control and Subsequent Events sections contained in the Report. Capitalized terms used in these responses and not otherwise defined herein have the meanings given them in the Report.

**Instruction No. 1.a. Annual Statement Errors.** The Company concurs that Schedule DA – Part 1 incorrectly reported par values for exempt money market funds and has made this correction in its 2009 Annual Statement.

**Instruction No. 1.b. Annual Statement Errors.** The Company concurs that novated policies should not be reported as “coinsured” and has made this correction commencing with its June 30, 2009 Quarterly Statement.

**Instruction No. 1.c. Annual Statement Errors.** The Company concurs that all of its affiliates should be reported on Schedule Y and has made this correction in its 2009 Annual Statement.

**Instruction No. 2. Custodial Agreement Deficiencies.** The Company concurs that its custodial agreements do not contain all of the provisions set forth in RCW 48.23.480 and the FCEH. The Company is currently working with the OIC and the related custodians to amend its agreements to comply with that statute and the FCEH. The Company wishes to inform the OIC that prior to December 31, 2008 Wachovia Trust Company National Association (“Wachovia”) and First Union Trust Company National Association (“First Union”) were both acquired by, and merged into, U.S. Bank Trust National Association (“US Bank”). The Company has three separate custodial agreements with US Bank, two of which were originally entered into with Wachovia and First Union. Because all three custodial agreements at December 31, 2008 were with US Bank, the Company listed US Bank only once on General Interrogatory No. 26.01. The Company will comply with the OIC’s request to separately list on General Interrogatory No. 26.01 US Bank three times, once for each custodial agreement.

**Instruction No. 3. Related Party Fees.** The Company acknowledges the comment of the OIC and wishes to inform the OIC that, as previously reported, on November 18, 2009 GLH

and Western terminated the management services agreement effective December 31, 2009. During 2009 GLH agreed to waive 25.6% of the fees due under that agreement.

**Instruction No. 4. Board Approval of Investment Transactions.** The Board of Directors had reviewed the investments at each of its Board meetings but had not specifically approved them. Commencing with the Board meetings in December 2009, the Board of Directors now reviews and specifically approves the investments of the Company.

**Instruction No. 5. Accounting for Forfeiture of Real Estate Deposit.** The Company concurs that the forfeited deposit should have been reported as income and has made this correction in its 2009 Annual Statement.

**Instruction No. 6. Real Estate Values.** The Company concurs that the fair value of two of its properties were not reduced by the estimated costs to sell as required by SSAP No. 90, Paragraph 25. These corrections are reflected in the Company's September 30, 2009 Quarterly Statement and its 2009 Annual Statement.

**Instruction No. 7. Interest on Federal Income Tax Receivable.** The Company concurs that interest related to the federal tax receivable should have been recognized as an asset at December 31, 2008 in accordance with SSAP 10, Paragraph 8. The interest on the receivable was received by the Company during 2009 and that payment is reflected in the Company's 2009 Annual Statement.

**Instruction No. 8. Policy Loan – Capitalization of Interest.** The Company concurs that policy loan interest which is 90 days past due should be capitalized as required by SSAP 49, Paragraph 4. These corrections are reflected in the Company's September 30, 2009 Quarterly Statement and its 2009 Annual Statement.

**Instruction No. 9.a. Actuarial Instructions - Reserve Calculation.** The Company concurs that the death benefit treatment in the CARVM calculation was inconsistent and created an immaterial understatement in reserves. The Company has corrected the reserve calculation to treat death benefits correctly and has quantified the impact of this reserve change as an increase in reserves of \$ 91,488 at December 31, 2009. The Company believes that the impact would have been very similar at December 31, 2008. The Company also concurs that, although many of our contracts have a calendar year free partial withdrawal benefit, the reserve calculation models this benefit as occurring on a policy year basis. The Company believes that the impact of correcting this would be immaterial, but is currently in discussions with its third-party software vendor to determine what would be needed to refine this part of the reserve calculation. The Company believes that CARVM requires the Company to check the present value of benefits only once each policy year at either the beginning or end of the year. The Company believes that checking the present value at the end of each policy year is sufficient and is in compliance with the CARVM guidelines and regulations.

**Instruction No. 9.b. Actuarial Instructions – Statement of Actuarial Opinion and Memorandum.** The Company concurs with Instruction No. 9.b. and has made the appropriate corrections in its 2009 Actuarial Opinion and Memorandum.

**Instruction No. 9.c. Actuarial Instructions – Asset Adequacy Analysis.** The Company concurs with Instruction No. 9.c. and has made the corresponding corrections in its 2009 Asset Adequacy Analysis.

**Instruction No. 10. Financial Statements – Ultimate Controlling Person.** The Company concurs with Instruction No. 10 and is separately providing those financial statements.

**Instruction No. 11.a. Holding Company Violations.** The Company concurs that not all of its affiliates were included in the Form B. The Company filed an Amendment No. 4 to Form B dated January 14, 2010 which included all affiliates.

**Instruction No. 11.b. Holding Company Violations.** The Company did report the acquisition of \$7.8 million of interests in the Global Secured Capital Fund L.P. (the “Delaware Fund”). The \$7.8 million acquisition of interests in the Delaware Fund occurred in two acquisitions: one in the amount of \$3.5 million occurred on June 6, 2008 which was reported in the Company’s Initial Registration Statement on Form B dated July 15, 2008; and the second in the amount of \$4.3 million occurred on July 1, 2008 which was reported in the Amendment No. 1 to Form B dated August 13, 2008.

The Company did not report on a Form B the acquisition of \$7.8 million in interests in the Global Secured Capital Fund (Cayman), Ltd. (the “Cayman Fund”) on June 6, 2008 or the subsequent redemption of \$4.3 million of those interests on August 1, 2008 because the Company did not believe that the Cayman Fund was an affiliate. As separately discussed with the OIC, the Cayman Fund is governed by a trust and a board which are independent of any affiliate of the Company. An affiliate of the Company does provide services to the Cayman Fund for which the affiliate receives fees but that affiliate reports to the independent board and the affiliate’s services may be terminated by that independent board. The Company believed that those facts were sufficient to conclude that the Cayman Fund was not an affiliate, as the Company’s affiliate did not possess, directly or indirectly, “the power to direct or cause the direction of the management and policies of”<sup>1</sup> the Cayman Fund but rather that power was possessed by an independent, non-affiliated board of directors. Although the Company continues to believe that the conclusion that the Cayman Fund is not an affiliate was a reasonable conclusion, commencing December 31, 2009, the Company has agreed to treat the Cayman Fund as an affiliate for all regulatory purposes.

**Instruction No. 12. Investments Designed to Evade a Prohibition of the Code.** The purpose of the investment by the Company in the notes issued by ABN Amro, N.V. (the “Notes”) was to provide a principal protected investment with an attractive yield. The Company made this investment in good faith for this sole purpose and not with an intent or design to evade the prohibitions contained in the Insurance Code of the State of Washington.

As separately discussed with the OIC, the Notes are A- rated general obligations of ABN Amro, N.V. (the “Issuer”). The return on the Notes is linked to the performance of an index (the “Index”) that includes five separate components, including an “equity component” linked to the performance of the Delaware Fund. Although the return of the equity component of the Notes is linked to the Delaware Fund, the performance of the equity component is determined on a strictly notional basis, and no actual investment in the Delaware Fund is required to be made with the proceeds of the issuance of the Notes. Further, the terms of the Notes make clear that: the Company, as holder of the Notes, has no legal or beneficial ownership interest in the Index, including the Delaware Fund; the Issuer has no obligation to hold interests in the Delaware Fund in respect of the Notes or to hedge itself in respect of the Notes in any way; and the

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<sup>1</sup> RCW 48.31B.005.

Company is completely exposed to the credit risk of the Issuer in respect of the return on the Notes. Moreover, the Issuer has the ability, in its discretion, to substitute another fund for the Delaware Fund in respect of the equity component of the Index with the Company's consent as the holder of the Notes. Because of the above-referenced factors, the Company reasonably concluded that the investment in the Notes was not a direct or indirect investment in the Delaware Fund and, therefore, not in violation of RCW 48.12.020(4).

Since the Company's acquisition of the Notes, the Issuer has called for a redemption of its shares in the Delaware Fund but that redemption has not yet been completed. Once the redemption is concluded, the Issuer, with the Company's consent, will determine to tie the equity component of the Index to another fund.

The Company, although it respectfully disagrees with the OIC's position, understands and will abide by that position. However, because the Notes are performing A- rated bonds which have the potential of providing the Company with an attractive yield, the Company respectfully requests that the OIC not order the Company to dispose of its investment in the Notes but rather direct the Company to not have the equity component of the Index tied to any fund which is affiliated with the Company. The Company further requests that, in the best interests of its policyholders, the Company be given adequate time to effectuate such disposal.

With respect to the Cayman Fund, it is a separate legal entity from the Delaware Fund and is managed by an independent non-affiliated board. Further, it does not hold any direct or indirect interest in the Company, the Delaware Fund itself or any of the assets held by the Delaware Fund. The assets of the Delaware Fund are held separate and apart from both an accounting and legal perspective from the Cayman Fund. The Delaware Fund, as a matter of course, since well before the Company became an affiliate of the Delaware Fund in June 2008, originated loans and subsequently sold them to the Cayman Fund. These season and sell transactions were entered into on arm's length commercial terms between the two funds. These transactions did not create any interest of the Cayman Fund in the Delaware Fund or any of its remaining assets. The Company invested in the Cayman Fund in good faith relying upon the balance sheet and assets held by the Cayman Fund at the time of the investment and not for the purpose of evading the prohibition contained in RCW 48.12.020(4) which prohibits an insurer from investing in any stock of such insurer through the ownership of an interest in another firm. As a result, the Company respectfully disagrees with the OIC that the Company's investment in the Cayman Fund is a prohibited investment under RCW 48.13.270(6) and subject to disposal. Nonetheless, the Company has submitted a redemption request to the Cayman Fund. The Company further respectfully requests that, in the best interests of its policyholders, it be given adequate time to effectuate the disposal of its interests in the Cayman Fund.

**Instruction No. 13. Investment Limit Exceeded.** RCW 48.13.030 limits the amount of an investment in any one entity to 4% of the insurer's assets (referred to herein as the "Investment Limitation"). The Company acquired \$30 million of the Notes on December 8, 2008. The Company's admitted assets at June 5, 2008 (the date on which it was acquired and its balance sheet restated) totaled \$797 million, 4% of which exceeded \$31 million. RCW 48.13.060 states that, for the purposes of Chapter 13 of the Washington Insurance Code, admitted assets means the amount of admitted assets as of the last day of the most recently concluded annual statement year. Relying upon that statute, and taking account of the June 5, 2008 restatement, the Company reasonably concluded that its investment in the Notes complied with the Investment Limitation. The Company has been informed by the OIC that the

Investment Limitation should be computed as of the date an investment is made and then as of each reporting period going forward. Going forward the Company will comply with the OIC's interpretation of the Investment Limitation.

At November 30, 2008 the Company had reported to the OIC admitted assets of \$719,004,355.00, 4% of which was \$28,760,174.20. Thus, when the Company made the investment in the Notes, the investment exceeded the Investment Limitation by \$1,239,825.80. The Company could not foresee on December 8, 2008 what admitted assets at December 31, 2008 would be. At December 31, 2008, due to the reduction in the Company's admitted assets and the increase in the book value of the asset during December 2008, the investment exceeded the Investment Limitation by \$1,478,823.

At December 31, 2009 the Company's investment in the Note was less than 4% of the Company's admitted assets at that date and, as a result, no portion of that investment is non-admitted and the entire \$30 million asset is recorded in the Company's 2009 Annual Statement.

**Comments and Recommendations.**

The Company appreciates the comments and recommendations contained in the Report. The Company will work towards compliance with those comments and recommendations. Towards that end, the Company has adopted a Conflict of Interest Policy for its directors.

**Edits.**

Under the **Management and Control** section, with respect to ownership, the Company respectfully requests that the report be revised to state that as of December 31, 2008 Mr. Brown was the ultimate controlling person.

Under the **Subsequent Events** section, under paragraph 1(c) of that section, the Company respectfully requests that the sentence be revised to reflect that DLB Capital LLC actually assigned its interests in Global Life Holdings, LLC ("Holdings") to Holdings on December 18, 2009 and, as a result, DLB Capital LLC was no longer a holder of any interest in Holdings as of that date.

The Company appreciates the work of the examiners in preparing this Report and would like to thank them for their courtesy and expertise.

Sincerely,



Dale Whitney  
 President  
 Western United Life Assurance Company

cc: Michael G. Watson, Chief Deputy Insurance Commissioner  
 Patrick H. McNaughton, Chief Examiner  
 Lynn Ciani, General Counsel  
 Todd Bareika, Chief Financial Officer