

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
NINTH FLOOR STATE OFFICE BUILDING  
333 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801  
PHONE: (907) 465-2515 • FAX: (907) 465-3422  
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2 STATE OF ALASKA  
3 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
4 DIVISION OF INSURANCE

5 In the Matter of )  
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6 **Guggenheim Life and Annuity Co.**  
7 **& EquiTrust Life Insurance Co.**  
8 Financial Examinations FE 16-02 &  
9 FE 16-03 )  
10 Market Conduct Examinations MCE )  
11 15-04 & MCE 15-05 )

) OAH Case No. 17-0277-INS  
) Case No. H 18-06

10 **STIPULATED AGREEMENT AND ORDER**

11 The Division of Insurance (Division), Guggenheim Life and Annuity Company  
12 (GLAC), and EquiTrust Life Insurance Company (ELIC) stipulate and agree to the  
13 following:

14 **BACKGROUND:**

15 A. GLAC, NAIC Company Code 83607, is an Alaska authorized life health  
16 insurer, domiciled in Delaware.

17 B. ELIC, NAIC Company Code 62510, is an Alaska authorized life/health  
18 insurer, domiciled in Illinois.

19 C. On June 25, 2015, the Division called targeted market conduct  
20 examinations of GLAC and ELIC (the Companies) covering the period from January 1,  
21 2010 through June 30, 2015. The exams were called to review transactions and activities  
22 related to 25 "private placement variable universal life" (PPVUL) policies owned by  
23 various Alaska limited liability companies issued through GLAC and ELIC on the lives  
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Stipulated Agreement and Order

Case No. H 18-06

OAH Case No. 17-0277-INS

ITMO: Guggenheim Life and Annuity Co., EquiTrust Life Ins. Co

Page 1 of 12

1  
2 of "key-persons" employed by GLAC, ELIC, and certain other related insurance  
3 companies for the years 2010 through June 30, 2015. On June 20, 2016, the Division  
4 called limited scope financial examinations of the Companies to assist in the examination  
5 of financial transactions related to the 25 PPVUL policies. These exams paralleled and  
6 were part of the limited market conduct exams. After the exam review period, the  
7 Companies transferred or moved 14 of the subject policies to another state. Currently,  
8 there are 10 PPVUL policies still in force in Alaska.

9  
10 D. On December 3, 2016, the Division issued a preliminary report, to which  
11 the Companies responded on January 20, 2017, challenging the examiner's findings.

12 E. On March 3, 2017, the Division issued the Final Report (Report) on the  
13 Market Conduct Examinations (MCE 15-04 & 15-05) and the Financial Examinations (FE  
14 16-02 & 16-03) of GLAC and ELIC.

15  
16 F. On March 3, 2017, Director Wing-Heier issued an order approving the  
17 Report on MCE 15-04, MCE 15-05, FE 16-02, and FE 16-03.

18  
19 G. On March 13, 2017, the Companies filed a timely Demand for OAH  
20 Hearing on the Order Approving the Report on MCE 15-04, MCE 15-05, FE 16-02, and  
21 FE 16-03. By operation of statute (AS 21.06.190), the above demand for hearing  
22 automatically stayed the effectiveness of the Order Approving the Report.

23 H. The Companies dispute the findings and recommendations contained in the  
24 Report, deny that they have violated any applicable statute, rule, or regulation, and deny  
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1  
2 that they are liable for any taxes, fines, or penalties in connection with the issues raised in  
3 the Report or that were the subject of the examinations.

4 I. In consideration of the mutual covenants and promises contained herein,  
5 and other good and valuable consideration, the receipt and sufficiency of which are hereby  
6 acknowledged, the parties now agree and stipulate that the issues raised in MCE 15-04,  
7 MCE 15-05, FE 16-02, and FE 16-03 will be resolved by the following terms of  
8 agreement.

9  
10 **TERMS OF AGREEMENT:**

11 I. The Companies shall pay \$16,550,000 in additional premium tax to the  
12 State of Alaska, which was derived as a negotiated amount representing the difference  
13 between the standard statutory premium tax rate and the graded premium tax amount  
14 afforded to certain policies. The Companies shall make such payment no later than 10  
15 days after the Director signs the order approving this Stipulated Agreement. In addition:

16  
17 a. the Companies shall provide the Division a narrative description of  
18 their current governance processes for premium tax reporting compliance. The  
19 governance processes must reasonably address the Alaska Insurance Code and how the  
20 processes assure compliance with the Alaska Insurance Code. In the event there is no  
21 governance process for premium tax reporting, GLAC and ELIC shall establish the  
22 process and submit the process within 90 days after the Director signs the order approving  
23 this Agreement; and  
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1  
2 b. the Companies shall provide the Division with a list of individuals  
3 currently responsible for premium tax compliance in the State of Alaska, including their  
4 titles and reporting responsibilities.

5 2. The Companies agree to terminate, move, or rewrite in another state, within  
6 90 days after the Director signs the order approving this Stipulated Agreement, the 10  
7 PPVUL policies that remain in force in Alaska of those that were subjects of the Report;  
8 and in addition:

9  
10 a. during the 90 day period between the Director signing the order  
11 approving this Stipulated Agreement and the terminating, moving, or rewriting of the 10  
12 subject policies, the Companies agree that there will be no additional policy loans,  
13 withdrawals, or premium deposits made on the subject policies;

14  
15 b. the Companies agree that there will be no surrenders under the 10  
16 subject policies, except for purposes of rewriting or moving any policy to another state or  
17 as a voluntary act by the policyholder. In either event, the Companies shall provide the  
18 Division with prompt notice of each surrender including the date, amount, and recipient(s)  
19 of the surrender; and

20  
21 c. the Division agrees that death claims may be paid, if any arise in  
22 the 90 day period, involving any of the 10 subject policies.

23 3. Except as provided for in this Stipulated Agreement and Order, the  
24 Division agrees not to pursue regulatory enforcement of the remaining issue areas raised  
25 in the Report or of the Division's contention that the Companies should have been  
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considered commercially domiciled insurers in Alaska in certain years between 2010 and 2017 (the "commercial domicile issue").

4. The Companies will retain their certificates of authority and agree to cooperate with the Division to ensure compliance with the Alaska Insurance Code, regulations, and insurance company statutory accounting principles.

5. The Companies agree they will seek and obtain approval, either through the Division or the interstate compact, as appropriate, prior to selling or issuing any new life insurance or annuity products in Alaska. The Companies also agree to seek and obtain the approval of the Division prior to selling or issuing any new PPVUL products or policies in Alaska. Any products or policies already approved for sale in Alaska, either by the Division or through the interstate compact, will not have to be approved again.

6. The Companies shall, to the extent applicable to their respective activities in Alaska, (i) maintain policies, procedures, and controls to ensure proper underwriting of policies before issuance; (ii) maintain specific records of underwriting steps and documentation used to determine insurability; (iii) maintain and follow reasonable policies and procedures to ensure all applications are complete before issuing a policy; and (iv) comply with all applicable law for issuing certain policy types in Alaska.

7. ELIC shall cease using forms from filing ETL-FPVUL-2000 (04-12) and ETL-FPVUL-2000 (02-12) until the forms have been refiled with, and approved by, the Division.

1  
2 8. The Division agrees to withdraw the order approving the Report within 10  
3 days after the Director signs the order approving this Stipulated Agreement.

4 9. The Companies agree to withdraw the Demand for Hearing within 10 days  
5 after the Director signs the order approving this Stipulated Agreement and acknowledge  
6 that by doing so the Companies are expressly waiving any right to a hearing on the  
7 examinations or the Report under AS 21.06.180.

8  
9 10. The Division agrees that by withdrawing the order approving the Report,  
10 the Report is treated as a preliminary or non-final report and is confidential under AS  
11 21.06.150(d), but subject to disclosure under AS 21.06.060(e).

12  
13 11. Upon payment in full of the additional premium tax, the Division agrees to  
14 fully and finally release and forever discharge the Companies, their parent and subsidiary  
15 companies, affiliates, and each of the foregoing's present and former directors, officers,  
16 and employees (the "Released Parties") from any and all regulatory actions, proceedings,  
17 suits, arbitrations, claims, demands, actions, rights, obligations, charges, and causes of  
18 action of any kind the Division has standing to bring against the Companies arising out of  
19 the facts, claims, recommendations, or circumstances raised in or relating to the subject  
20 examinations, the Report, the 25 PPVUL policies referenced in the Report, or the  
21 commercial domicile issue, including but not limited to any and all fines, penalties,  
22 interest, costs, fees, expenses, declaratory relief, injunctive relief, or damages of any kind.  
23 The Division agrees to refrain from filing or taking any administrative or civil action  
24 against the Released Parties within the Division's authority relating to the subject  
25 examinations, the Report, the 25 PPVUL policies referenced in the Report, or the  
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1 commercial domicile issue. This paragraph and this Stipulated Agreement are not intended  
2 and may not be construed to limit the Division's authority:

3  
4 a. to investigate, examine, and take appropriate action as to matters  
5 outside the scope of the subject examinations and this Stipulated Agreement; and

6  
7 b. to suspend, revoke, or non-renew the Companies' certificates of  
8 authorities based on like action taken by their states of domicile, pursuant to AS  
9 21.09.140(a)(3), or to take appropriate action under AS 21 based on an order of  
10 impairment or insolvency issued by their states of domicile, even if the state of domicile's  
11 action is based in whole or in part on the facts, claims, recommendations, circumstances  
12 raised in or relating to the subject examinations, the Report, the 25 PPVUL policies  
13 referenced in the Report, or the commercial domicile issue.

14  
15 12. Except as provided herein, nothing in this Stipulated Agreement may be  
16 construed to waive or limit any authority the Division may have to regulate the Companies  
17 in the future or to seek remedies for a violation of law or regulation.

18  
19 13. The Companies agree to fully and finally release and forever discharge the  
20 Division, as well as its present and former employees, directors, and agents, from any and  
21 all suits, arbitrations, claims, demands, actions, rights, obligations, charges, and causes of  
22 action of any kind that the Companies have standing to bring against the Division arising  
23 out of the facts, claims, recommendations, or circumstances raised in or relating to the  
24 subject examinations, the Report, the 25 PPVUL policies referenced in the Report, or the  
25 commercial domicile issue, including but not limited to costs, fees, expenses, or damages  
26 of any kind. The foregoing release is not intended and shall not be construed as a waiver

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2 of any immunities granted to the director, employees, or agents of the Division by statute  
3 or any other law or as a of release Risk & Regulatory Consulting, LLC, in the event of  
4 any unauthorized use of work papers, data, or documents obtained or generated through  
5 the subject examination or Report.

6  
7 14. By signing this Stipulated Agreement, the Companies understand that any  
8 failure to comply with the terms hereof may be grounds to revoke, suspend, or non-renew  
9 the Companies' certificates of authority in the State of Alaska, consistent with the  
10 Division's authority under AS 21.09.150. The Companies expressly do not waive their  
11 right to a hearing under such circumstances, consistent with AS 21.09.150 and other  
12 applicable law.

13  
14 15. The Division agrees that it will not issue a press release announcing this  
15 Agreement. The Companies understand and acknowledge that this Stipulated Agreement  
16 after the Director signs the order approving it is a public document and subject to  
17 disclosure and inspection consistent with the insurance code and Alaska's Public Records  
18 statutes, (AS 40.25.100 - 40.25.295).

19  
20 16. The parties acknowledge this Agreement is a compromise and final  
21 settlement of a dispute over the proper interpretation and application of the Alaska  
22 premium tax statute and certain other Alaska statutes, rules, and regulations, and that this  
23 Agreement is not to be construed as an admission that the Companies engaged in any  
24 wrongful, tortious, or unlawful activity.



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17. This document contains the entire agreement between the parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the parties' successors and assigns.

18. The parties shall cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

19. The Companies understand that this Agreement is not binding on the parties unless and until the Director signs the order approving this Agreement.

20. This Stipulated Agreement and any disputes or conflicts that may arise in connection with the interpretation or enforcement of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Alaska.

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DATED: 10/5/2018

DIVISION OF INSURANCE

By: Anna Latham  
Anna Latham  
Deputy Director of the Division of  
Insurance

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Wilkerson  
Assistant Attorney General  
Counsel for Division of Insurance  
Alaska Bar No. 9306043

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DATED: \_\_\_\_\_

DIVISION OF INSURANCE

By: \_\_\_\_\_

Anna Latham  
Deputy Director of the Division of  
Insurance

DATED: 10/5/18

By: 


Daniel Wilkerson  
Assistant Attorney General  
Counsel for Division of Insurance  
Alaska Bar No. 9306043

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DATED: 10/04/2018

GUGGENHEIM LIFE AND ANNUITY  
COMPANY

By:   
Stephen M. Coons  
Secretary

DATED: \_\_\_\_\_

EQUITRUST LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Paul Miller  
Chief Operating Officer and  
Corporate Secretary

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DATED:

GUGGENHEIM LIFE AND ANNUITY  
COMPANY

By: Stephen M. Coons  
Secretary

DATED: *October 4, 2018*

EQUITRUST LIFE INSURANCE  
COMPANY

By: *Paul A. Miller*  
Paul Miller  
Chief Operating Officer and  
Corporate Secretary

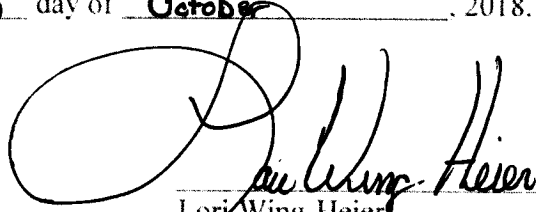
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**ORDER**

**IT IS ORDERED** that this Stipulated Agreement and Order is adopted in full resolution of the issues in the case and shall constitute the final order in this matter.

DATED this 8<sup>th</sup> day of October, 2018.

  
Lori Wing-Heier  
Director of Insurance