

REPORT ON EXAMINATION

OF THE

UNITED STATES BRANCH OF TOKIO MARINE & NICHIDO FIRE INSURANCE CO, LTD.
OF TOKYO, JAPAN

AS OF

DECEMBER 31, 2004

DATE OF REPORT

FEBRUARY 27, 2008

EXAMINER

ANNIE LAU

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

February 27, 2008

Honorable Eric R. Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 22398 dated August 9, 2005 attached hereto, I have made an examination into the condition and affairs of the United States Branch of Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan as of December 31, 2004, and submit the following report thereon.

Wherever the designations "the Branch" or "TMNF" appear herein without qualification, they should be understood to indicate the United States Branch of Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at the Branch's administrative office located at 230 Park Avenue, New York, NY 10169.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 2000. This examination covered the four-year period from January 1, 2001 through December 31, 2004. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a complete verification of assets and liabilities as of December 31, 2004. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Branch's independent public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners ("NAIC"):

- History of Company
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Growth of Company
- Business in force by states
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

A review was also made to ascertain what action was taken by the Branch with regard to comments and recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters, which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

2. DESCRIPTION OF COMPANY

The Tokio Marine and Fire Insurance Company, Limited of Tokyo, Japan (“TMF Japan” or “The Company”) was established in 1879 and was reorganized in 1944 under the laws of Japan. The Company started its branch office operations in the United States in 1911. Such operations were maintained until the outbreak of World War II, at which time the Company suspended its United States operations. The Company resumed its operations under the laws of the State of New York in December 1955.

The United States Branch of The Tokio Marine and Fire Insurance Company, Limited of Tokyo, Japan operates as a branch of its foreign parent and is the lead company of the parent’s United States property and casualty segment.

In 2002, The Tokio Marine and Fire Insurance Company, Limited of Tokyo, Japan and The Nichido Fire and Marine Insurance Company, Limited of Tokyo, Japan (“Nichido Japan”) integrated their management and business under a new publicly traded Japanese holding company called Millea Holdings, Inc. (“Millea”). In October 2004, TMF Japan finalized the merger with Nichido Japan. TMF Japan became the surviving entity and was renamed as Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan (“the Home Office”). In turn, the Branch under examination was renamed as The United States Branch of Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan (“TMNF” or “the Branch”).

A. Management

From December 30, 1955 to December 31, 1976, the Branch was managed by Appleton and Cox, Inc. In 1976, TMF Japan formed Tokio Marine Management, Inc. (“TMM”) under New York laws as the wholly owned subsidiary of the United States Branch of TMF Japan. TMF Japan, by the power of attorney, appointed TMM as its attorney and the United States manager effective January 1, 1977. The power of attorney authorizes TMM to conduct for TMF Japan all the business affairs of its United States Branch and the insurance business which TMF Japan shall be authorized to transact under the laws and authority of the United States or of any states, territories or districts thereof.

The TMM board of directors meets an average of four times a year. At December 31, 2004, TMM board of directors was comprised of the following eight members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
B. Steven Goldstein New York, NY	Senior Vice President, Secretary, General Counsel and Chief Compliance Officer, Tokio Marine Management, Inc.
Hayato Isogai Koshigaya-shi, Saitama, Japan	General Manager, International Department, Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan
Yoshifumi Kobayashi New York, NY	Senior Vice President, Tokio Marine Management, Inc.
Lawrence J. Moloney Sea Girt, NJ	Senior Vice President, Treasurer, Controller and Chief Financial Officer, Tokio Marine Management, Inc.
Fumiaki Namekawa Kashiwa-shi, Chiba, Japan	General Manager, Corporate Accounting Department, Tokio Marine & Nichido Fire Insurance Company, Ltd. of Tokyo, Japan
Hiroshi Narimatsu New York, NY	Chairman, President and Chief Executive Officer, Tokio Marine Management, Inc.
Masashi Oba Darien, CT	Corporate Planning Officer, Tokio Marine Management, Inc.
David Pieffer Bel Air, MD	Senior Vice President, Tokio Marine Management, Inc.

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member has an acceptable record of attendance.

As of December 31, 2004, the principal officers of TMM were as follows:

<u>Name</u>	<u>Title</u>
Hiroshi Narimatsu	Chairman, President and Chief Executive Officer
B. Steven Goldstein	Senior Vice President, Secretary, General Counsel and Chief Compliance Officer
Lawrence Moloney	Senior Vice President, Treasurer, Controller and Chief Financial Officer

B. Territory and Plan of Operation

As of December 31, 2004, the Branch was licensed to write business in all fifty states as well as the District of Columbia and the Commonwealth of Puerto Rico.

As of the examination date, the Branch was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
3(i)	Accident & health
4	Fire
5	Miscellaneous property damage
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

The Branch was also licensed to transact such workers' compensation insurance as may be incident to coverages contemplated under paragraph 20 and 21 of Section 1113(a) of the New York Insurance Law, including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69 Congress as amended; 33 USC Section 901 et seq. as amended), provided that the authority conferred by this license shall be limited to the writing of contracts issued for delivery in the United States, insuring risks of policyholders within the United States.

The Branch was also licensed to do within New York State the business of special risk insurance pursuant to Article 63 of the New York Insurance Law.

Based on the lines of business for which the Branch is licensed and pursuant to the requirements of Articles 13 and 63 of the New York Insurance Law, the Branch is required to maintain a minimum surplus to policyholders in the amount of \$4,300,000.

The Branch writes both property and casualty lines for commercial and personal lines business. Premiums are generated mostly from casualty lines including workers' compensation, commercial auto, commercial multiple peril, other liability-occurrence for major international entities. The Branch markets its business as a direct writer through general agents and brokers.

The following schedule shows the direct premiums written by the Branch both in total and in New York State for the period under examination:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total United States</u>	<u>Premiums Written in New York State as a Percentage of United States Premiums</u>
2001	\$27,877,824	\$274,342,770	10.16%
2002	\$34,192,311	\$332,633,047	10.28%
2003	\$35,399,823	\$404,046,194	8.76%
2004	\$34,235,978	\$436,104,082	7.85%

C. Reinsurance

Assumed Reinsurance

Assumed reinsurance accounted for 5.6% of the Branch's gross premium written at December 31, 2004. The Branch's assumed reinsurance business has decreased about 50% since the last examination. The Branch's assumed reinsurance program consists mainly of multi-line coverage assumed on a quota share and facultative basis with both authorized and unauthorized cedants. The Branch also assumes business from various mandatory pools. The Branch utilizes reinsurance accounting as defined in Statement of Statutory Accounting Principle ("SSAP") No. 62 of the NAIC Accounting Practices and Procedures Manual for all of its assumed reinsurance business.

Upon the sale of Houston General Insurance Company ("HG") to Commercial Union plc, the Branch entered into the 100% quota share reinsurance agreement with Houston General Insurance Company whereby the Branch accepted 100% of HG's net liability under policies in-force as of January 1, 1998. As of December 31, 2004, the Branch assumed minimal premiums from HG since that company is currently running off its book of business.

Ceded Reinsurance

The Branch has structured its ceded reinsurance program to limit its maximum exposure to any one risk as follows:

Property Lines

The Branch has two layers of property excess of loss coverage. The first layer covers \$59 million excess of \$1 million on any one risk and is subject to unlimited free reinstatements. The second layer covers \$120 million excess of \$60 million on any one risk and is subject to an annual aggregate of \$360 million on all losses.

Casualty Lines

The Branch entered into a casualty excess of loss agreement that covers casualty business for \$29 million excess of \$1 million per each loss occurrence for 12 months commencing April 1, 2003. The contract shall remain in force for an indefinite period. With respect to workers' compensation policies, the contract covers \$25 million excess of \$5 million per occurrence.

Sunrise Clause

The contract contains a "sunrise clause", which provides that the reinsurer is also liable for claims made on and after April 1, 2003 for casualty losses that occurred during the following periods:

<u>Time Period</u>	<u>Limits</u>
January 1, 1986 to December 31, 1986	95% of \$19 million excess of \$1 million
January 1, 1987 to December 31, 1987	95% of \$18 million excess of \$2 million
January 1, 1988 to December 31, 1988	\$20 million excess of \$2 million
January 1, 1989 to December 31, 1989	\$20 million excess of \$2 million
January 1, 1990 to December 31, 1990	\$19 million excess of \$5 million
January 1, 1991 to December 31, 1991	\$19 million excess of \$5 million

The sunrise clause does not cover losses that occurred prior to January 1, 1987 under the commercial general liability policies written on a claims-made basis. As of December 31, 2004, no losses were ceded under the sunrise clause.

The contract is subject to a maximum annual aggregate of \$87 million, which covers losses reported on a prospective basis and claims-made basis under the sunrise clause. The contract is subject to two free reinstatements.

Catastrophe

The Branch has a catastrophe excess of loss coverage that covers \$495 million excess of \$5 million for each loss occurrence for policies classified as property, automobile physical damage and workers' compensation. The contract is subject to unlimited free reinstatements.

Marine Lines

The Branch entered into two marine excess of loss reinsurance agreements effective April 1, 2003, for an indefinite period. The first layer covers \$21,222,222 excess of \$1 million per occurrence and is subject to unlimited reinstatements. The second layer covers \$77,777,778 excess of \$22,222,222 per occurrence and is subject to an aggregate limit of \$233,333,334 for all losses during the contract period.

Facultative

The Branch also has an obligatory master facultative agreement ("Cover 1000" and "Cover 2000") in effect for marine and non-marine business. The Branch receives 23.5% ceding commissions on marine business and 30% ceding commission on non-marine business.

The aforementioned excess of loss and facultative reinsurance agreements are 100% ceded to an unauthorized affiliated reinsurer, Tokio Marine Europe Insurance Limited ("TMEI").

The Branch cedes 100% of the boiler and machinery premiums to Hartford Steam Boiler Inspection and Insurance Company, an authorized reinsurer under a general facultative reinsurance agreement.

The Branch also participates in a fronting arrangement that cedes 100% of business underwritten by Global Aerospace, Inc. to Tokio Marine Global Re Limited, an unauthorized affiliated reinsurer.

Reinsurance agreements between the Branch and its affiliates were reviewed for compliance with Article 15 of the New York Insurance Law. It was noted that all affiliated reinsurance agreements subject to Article 15 of New York Insurance Law were filed with the Department pursuant to the provisions of Section 1505(d)(2) of the New York Insurance Law except one general facultative reinsurance agreement between TM Specialty Insurance Company ("TMS") and the Branch. It is recommended that the Branch submit all reinsurance agreements with related parties to the Department

in a timely manner in accordance with Section 1505(d)(2) of the New York Insurance Law. The Branch has subsequently filed the aforementioned agreement with the Department.

It is the Branch's policy to obtain the appropriate collateral for its cessions to unauthorized reinsurers. Letters of credit obtained by the Branch to take credit for cessions to unauthorized reinsurers were reviewed for compliance with Department Regulation 133. Two of the letters of credit issued by an unqualified bank were found to be unacceptable in accordance with the requirements set forth in Department Regulation 133. The letters of credit do not include the proper clauses set forth in Part 79.4 of Department Regulation 133. It is recommended that the Branch amend its letters of credit to include the proper required wording in order to take credit for unauthorized reinsurance in accordance with Department Regulation 133.

It was noted that the obligatory master facultative reinsurance agreement for Cover 1000 and Cover 2000 between TMNF and TMEI contains an improper clause for the "pass through" feature in the insolvency clause which states:

"where the Reinsurer [without] the consent of the direct insured or insureds has assumed such policy obligations of the Company as direct obligations of the Reinsurer to the payee under such policies and in substitution of the obligations of the Company to such payees."

The clause should say:

"where the Reinsurer with the consent of the direct insured or insureds has assumed such policy obligations of the Company as direct obligations of the Reinsurer to the payee under such policies and in substitution of the obligations of the Company to such payees."

It is recommended that the Branch amend its obligatory master facultative reinsurance agreement for Cover 1000 and Cover 2000 to include the proper insolvency clause and submit the agreement to the Department in accordance with Section 1505 of the New York Insurance Law. The Company subsequently submitted an amendment to the contract with the proper insolvency clause to the Department. The Department approved the amendment on May 23, 2006.

It was noted that the 95% quota share reinsurance agreement ("the quota share agreement") between the Branch and TPI and TMC allows arbitration to take place in a venue deemed by the panel to be in the best interest of the arbitration proceeding. According to the Department requirements, arbitration shall take place in the State of New York or in the home state of the ceding company.

Furthermore, the quota share agreement with TPI contains an excess of original policy limits clause without the New York limitation clause. Based on the Department review of case law, it has been established that it is against public policy for a New York insurer to be indemnified or to indemnify for acts of bad faith or fraud. The Branch should add the following required clause to the excess of original policy limits clause of the TPI quota share agreement:

“In no event shall coverage be provided to the extent that such coverage is not permitted under laws of the State of New York.”

It was noted that the excess of original policy limits clause in the 95% quota share agreement between TM Specialty Insurance Branch (“TMS”) and TMNF and the reinsurer’s extra contractual obligations section in the facultative reinsurance agreement between First Insurance Company of Hawaii and TMNF are also missing the required New York limitation clause.

It was noted that the reinsurance agreement between Hartford Steam Boiler Inspection and Insurance Company and TMNF does not specify the location for arbitration.

It is recommended that the Branch amend its reinsurance agreements to include the proper arbitration clause, extra contractual obligations clause and excess of original policy limits clause and submit the agreements to the Department in accordance with Section 1505 of the New York Insurance Law. The Company subsequently submitted an amendment to the contract with the proper arbitration clause, extra contractual obligations clause and excess of original policy limits clause to the Department. The Department approved the amendment on May 23, 2006.

All ceded reinsurance agreements, except the aforementioned reinsurance agreements, in effect as of the examination date were reviewed and found to contain the required clauses, including an insolvency clause, meeting the requirements of Section 1308 of the New York Insurance.

When writing off commuted balances and amounts recoverable from liquidated reinsurers, the Branch recorded the amounts written off through “other liabilities” and “miscellaneous expenses” rather than through the various underwriting accounts in which they were originally recorded.. This practice is contradictory to SSAP No. 62 paragraphs 56 and 60 of the NAIC Accounting Practices and Procedures Manual which states that uncollectible reinsurance balances and commuted balances shall be written off through the accounts, exhibits and schedules in which they were originally recorded.

It is recommended that the Branch write off uncollectible reinsurance balances and commuted balances through the accounts in which they were originally recorded in compliance with SSAP No. 62 paragraphs 56 and 60 of the NAIC Accounting Practices and Procedures Manual.

In 2005, the Branch established new procedures for writing off reinsurance recoverable on paid losses, case and IBNR reserves, and ceded balance payable. The Branch also eliminated the balances in the other liability account for the immaterial balances previously written off. The Branch has properly recorded the write-off amounts for reinsurance recoverable and payable for the 2005 annual statement.

Other than the aforementioned write-off practices, the examination review of the Schedule F data reported by the Branch in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by appropriate risk transfer analyses and an attestation from the Branch's Chief Executive Officer pursuant to Department Circular Letter No. 8 (2005). Additionally, examination review indicated that the Branch was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62.

During the period covered by this examination, the Branch commuted several assumed and ceded reinsurance agreements. These commutations resulted in a minimal gain to the Branch's surplus position as of December 31, 2004.

D. Holding Company System

In 2002, The Tokio Marine and Fire Insurance Company, Limited of Tokyo, Japan (“TMF Japan”) and The Nichido Fire and Marine Insurance Company, Limited of Tokyo, Japan (“Nichido Japan”) integrated their management and business under a new publicly traded Japanese holding corporation called Millea Holdings, Inc. (“Millea”). In October 2004, TMF Japan finalized the merger with Nichido Japan. TMF Japan became the surviving entity and was renamed as Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan (“the Home Office”). In turn, the Branch under examination was renamed as The United States Branch of Tokio Marine & Nichido Fire Insurance Co., Ltd. of Tokyo, Japan (“TMNF” or “the Branch”).

Prior to the merger, the Department has determined the Branch was exempt from the provisions of Article 15 of the New York Insurance Law. Upon the merger, the Branch is subject to the holding company act set forth in Article 15 of the New York Insurance Law and Department Regulation 52 effective April 1, 2002.

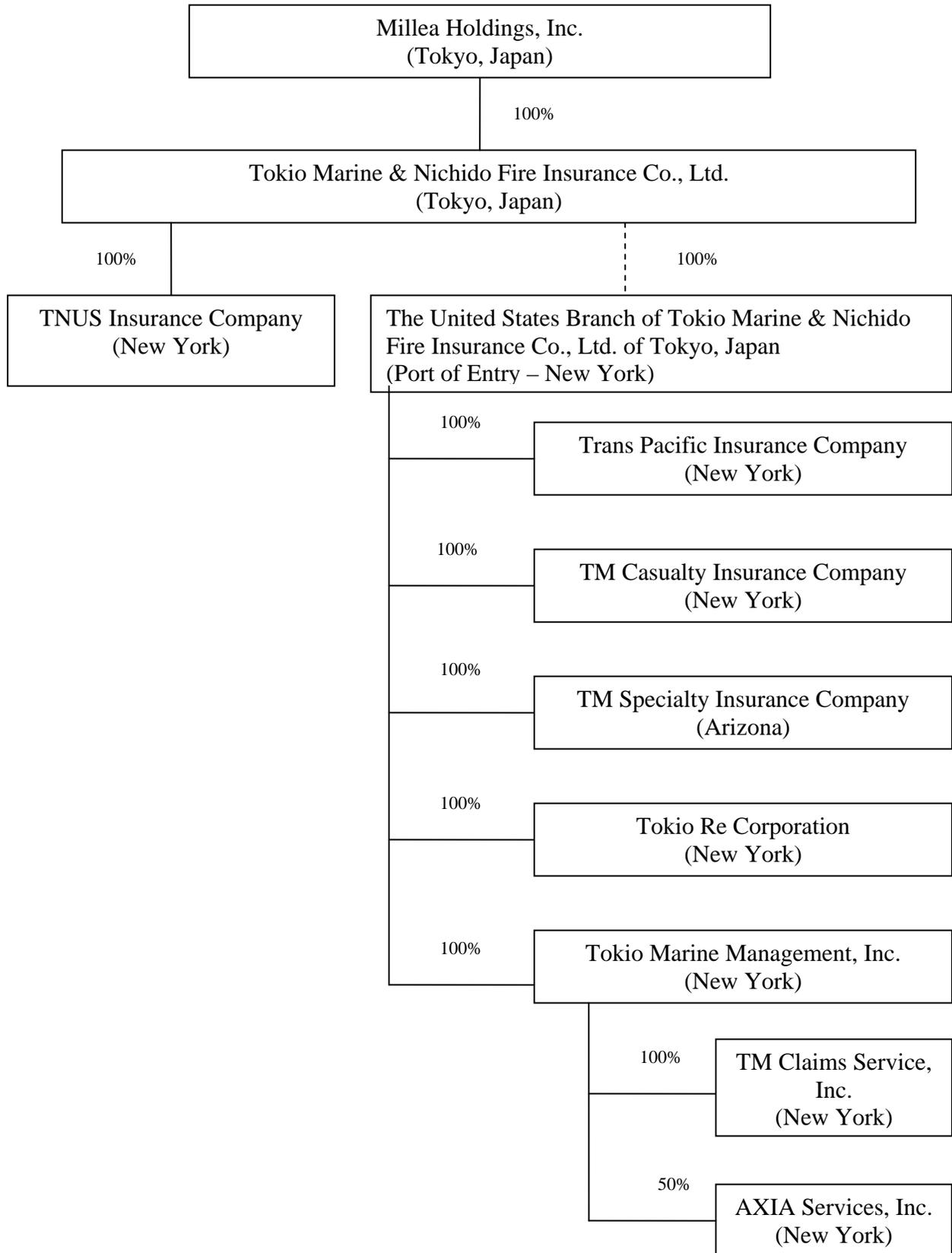
The Branch owned 100% of the following subsidiaries as of December 31, 2004:

- Trans Pacific Insurance Company (“TPI”), a New York domiciled insurer
- TM Casualty Insurance Company (“TMC”), a New York domiciled insurer
- TM Specialty Insurance Company (“TMS”), an Arizona domiciled insurer
- Tokio Re Corporation (“TRC”), a New York non-insurer
- Tokio Marine Management, Inc. (“TMM”), a New York non-insurer

Tokio Marine Management, Inc. in turn owned 50% of Axia Services, Inc. and 100% of TM Claims Service, Inc. as of December 31, 2004.

A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abridged chart of the holding company system at December 31, 2004:



At December 31, 2004, the Branch was a party to the following agreements with other members of its holding company system:

Management Agreements

TMF Japan, by the power of attorney, appointed TMM as its attorney and manager of its United States business effective January 1, 1977. Under the management agreement dated December 28, 1976, TMM accepted TMF Japan's appointment as its United States Manager for transaction of insurance business on behalf of TMF Japan as defined in the power of attorney, inclusive of underwriting, claims handling and other necessary functions. Since the management agreement was dated prior to the merger of TMF Japan and Nichido Japan, the management agreement was not subject to Section 1505 of the New York Insurance Law. The Branch executed an updated management agreement with TMM effective January 1, 2006. The Department approved the updated management agreement on January 26, 2006 in accordance with Section 1505 of the New York Insurance Law.

Reinsurance Management Agreement

TMF Japan appointed Tokio Re Corporation ("TRC"), a wholly owned subsidiary of the Branch, as its Deputy United States manager for transaction of reinsurance business on behalf of TMF Japan effective January 1, 1979, inclusive of underwriting and other necessary functions. The reinsurance management agreement was not subject to Article 15 of the New York Insurance Law.

Due to poor underwriting results from its reinsurance business, the home office decided to run off the reinsurance business managed by Tokio Re Corporation beginning 2001. Currently, the day to day operation of TRC is handled by an unaffiliated vendor named RSI Solutions International, Inc. ("RSI"). RSI maintains a separate general ledger and trial balance for TRC, posts and reconciles the ledger on a monthly basis and completes the quarterly and annual statements for TRC. The Branch's finance department incorporates TRC balances into its quarterly and annual statements. There was a three-year portfolio management agreement between TRC and RSI effective April 1, 2002. It was renewed on April 1, 2005. The agreement is not subject to Article 15 of the New York Insurance Law since the Branch is not a direct party in the agreement.

TRC also manages about 1,500 excess of loss claims and 40 claims from proportional treaties for the home office. These claims are not related to the Branch. TRC charges the home office directly.

RSI also currently manages these claims for TRC under a claim management agreement effective April 1, 2002. It was replaced by the portfolio management agreement effective April 1, 2005.

Reinsurance Agreements

As of December 31, 2004, the Branch was a party to quota share, excess of loss and master obligatory facultative reinsurance agreements with its affiliates. The Department approved the affiliated reinsurance agreements in accordance with Article 15 of the New York Insurance Law. Limits of liability provided under the affiliated agreements are summarized in Section C – Reinsurance of this Report.

E. Abandoned Property Law

Section 1316 of the New York Abandoned Property Law provides that amounts payable to a resident of this State from a policy of insurance, if unclaimed for three years, shall be deemed to be abandoned property. Such abandoned property shall be reported to the Comptroller on or before the first day of April each year. Such filing is required of all insurers regardless of whether or not they have any abandoned property to report.

The Company's abandoned property reports for the period of this examination were filed on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law.

F. Significant Operating Ratios

The following ratios have been computed as of December 31, 2004, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	76%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	79%
Premiums in course of collection to surplus as regards policyholders	3%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned/incurred basis and encompass the four-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$861,714,410	83.85%
Other underwriting expenses incurred	244,030,321	23.74
Net underwriting loss	<u>(78,039,214)</u>	<u>(7.59)</u>
Premiums earned	<u>\$1,027,729,725</u>	<u>100.00%</u>

G. Accounts and Records

(i) Drafts Outstanding

The Branch reported outstanding checks for claims payments as outstanding drafts in its filed annual statement. This practice is contrary to SSAP No. 2 of the NAIC Accounting Practices and Procedures Manual, which states:

“A check is payable on demand. A draft must be approved for payment by the issuer. Outstanding checks are accounted as reduction of cash.”

It is recommended that the Branch report and classify outstanding checks for claims payments as reduction of cash instead of a liability in accordance with SSAP No. 2 NAIC Accounting Practices and Procedures Manual.

(ii) Certified Public Accountant (“CPA”) Engagement Letters

The Branch hired PricewaterhouseCoopers LLP (“PwC”) to render an opinion for the Branch’s 2004 financial statements. The qualification letter issued by PwC states that the audit workpapers will be retained for no less than five years. Department Regulations 118 and 152 require that workpapers be retained by the auditors for six calendar years from their creation or until after the filing of the report on examination in which the records are subject to review, whichever is longer.

It is recommended that the Branch ensure that the contract between the Branch and the independent auditors specify the proper workpaper retention period in accordance with the Department Regulations 118 and 152.

(iii) Uncollected Premiums and Agents' Balances in the Course of Collection

The following reconciliation issues were noted for uncollected premiums and agents' balances in the course of collection:

1) Netting Unapplied Cash to Agents' Balances

The Branch does not use a suspense account to monitor the unapplied funds. Collections are credited to the agency accounts even if the funds have not been reconciled to the proper policies. According to the Annual Statement Instructions, unapplied cash should be reported as a liability in the "Remittances and items not allocated" account.

2) Outdated Agents' Balances System

The Branch has used the same system to process agents' balances for the past twenty years. Since the Branch generates different policy numbers upon policy renewals, the system has difficulty applying funds received from policyholders for prior policy periods.

3) Improper Offset of Overdue Balances

Most of the Branch's clients are large Japanese corporations that have multiple U.S. subsidiaries. The Branch writes workers' compensation, general liability and other commercial lines for them. The Branch generates the overdue balances by policy, using effective dates from the system. The agency accounting department then manually offsets the overdue balances with credits from other policies, either from the same insureds with multiple policies or from different insureds which are the affiliates of the insureds with the overdue balances.

The Branch explained that since the insureds settle their audit and retro premiums on workers' compensation policies in lump sums, the agency accounting department nets the balances for several policy years together. However, the Branch could not determine how much of the total offset amount of \$4.8 million taken as of December 31, 2004, were due to that reason.

Nonetheless, it was noted that the Branch also applied credits for general liability policies to overdue balances on workers' compensation policies, and applied credits for one insured to overdue balances from other insureds.

These practices contradict to SSAP No. 6 of the NAIC Accounting Practices and Procedures Manual which specifies that offsets are allowed if on the same underlying policy.

The following recommendations were made based on the findings:

It is recommended that the Branch report unapplied cash in the "Remittances and items not allocated" account as a liability in accordance with the Annual Statement Instructions.

It is recommended that the Branch update the current agents' balances system or invest in a new system that can properly apply policy numbers upon renewals and track policies and premiums for different policy years correctly.

It is recommended that the Branch conduct periodic audits on processing of premiums and agents' balances.

It is recommended that the Branch establish clear written guidelines in the following five areas in processing premiums and agents' balances:

- Billing - If the Branch continues to use different policy numbers on renewals, then the new system should have the capability to link all policy numbers for the same policy.
- Collection - The Branch should require the agency accounting department to resolve any account discrepancies within a specific time period. The Branch should actively work with the agents and brokers to resolve any discrepancies.
- Aging - Aging of premiums and agents' balances should be done in accordance with SSAP No. 6 of the NAIC Accounting Practices and Procedures Manual ("NAIC AP&P"). Offsets are allowed only if the conditions of SSAP No. 6 paragraph 9 are met.
- Write Off - Write off of premiums and agents' balances should be done in accordance with SSAP No. 6 of the NAIC AP&P. There should be a clear deadline on policy cancellation and premiums and agents' balances write off.
- Reconciliation - The Branch should require reconciliation of premiums and agents' balances at least on a quarterly basis. Reconciling items that are over 90 days due should be non-admitted in accordance with SSAP No. 6 of the NAIC AP&P.

The new guidelines and policies should be clearly communicated to the agency accounting department, the finance Department, and the agents and brokers.

It is recommended that the Branch monitor and test implementation of the new guidelines on a periodic basis.

(iv) Adjustments to Earned But Unbilled ("EBUB") Premiums

It was noted that the Branch's actuary adjusted 2004 year-end EBUB premiums by \$10,000,000. However, the Branch neglected to adjust the EBUB premium balances for the annual statement. The Branch subsequently adjusted EBUB premiums in first quarter 2005 according to the

Branch's latest actuarial projection. The Branch has also updated the review process in an attempt to avoid such errors in the future.

H. United States Trustee

The Tokio Marine and Fire Insurance Company, Limited of Tokyo, Japan ("TMF Japan") appointed The Bank of Tokyo Trust Company as its United States trustee by a deed of trust effective December 20, 1977, pursuant to Section 1315 of the New York Insurance Law.

Pursuant to the deed of trust, the trustee shall have the power to receive securities and property belonging to TMF Japan. Legal title of such securities and property shall be vested in the trustee. The trustee shall hold the securities and property for security of all policyholders and creditors of TMF Japan within the United States. The trustee shall execute all business transactions with the written direction of the board of directors, or the TMF Japan's United States Manager ("TMM") representing the United States Branch ("TMNF"). The trustee assets shall not be withdrawn, other than for income or dividend earnings or as specified in Section 1315(e)(3) of the New York Insurance Law, without the approval of the Superintendent. Any modification or amendment to the deed of trust shall not become effective unless approved by the Superintendent.

The trustee may resign or be removed provided that no such resignation or removal shall be effective until a successor has been appointed and has qualified and has been approved by the Superintendent.

The trustee changed its name to The Bank of Tokyo - Mitsubishi UFJ Trust Company in January 2006. The deed of trust has been amended to reflect the trustee and the home office's current name.

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2004 as determined by this examination and as reported by the Branch:

Assets	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$1,012,339,121	\$ 0	\$1,012,339,121
Common stocks	76,088,324		76,088,324
Cash, cash equivalents and short-term investments	68,246,671		68,246,671
Investment income due and accrued	13,358,564		13,358,564
Uncollected premiums and agents' balances in the course of collection	19,226,501	5,480,328	13,746,173
Deferred premiums, agents' balances and installments booked but deferred and not yet due	72,686,747	2,411,672	70,275,075
Accrued retrospective premiums	38,464,696	3,846,470	34,618,226
Amounts recoverable from reinsurers	16,156,671		16,156,671
Funds held by or deposited with reinsured companies	17,516,556		17,516,556
Net deferred tax asset	53,716,480	35,231,336	18,485,144
Net adjustment in assets and liabilities due to foreign exchange rates	461,346		461,346
Receivables from parent, subsidiaries and affiliates	1,050,134		1,050,134
Aggregate write-ins for other than invested assets	<u>7,808,957</u>	<u>272,985</u>	<u>7,535,972</u>
Total assets	<u>\$1,397,120,768</u>	<u>\$47,242,791</u>	<u>\$1,349,877,977</u>

Liabilities, Surplus and Other FundsLiabilities

Losses	\$ 589,027,222
Reinsurance payable on paid losses and loss adjustment expenses	820,629
Loss adjustment expenses	166,956,598
Commissions payable, contingent commissions and other similar charges	2,033,744
Other expenses (excluding taxes, licenses and fees)	706,246
Taxes, licenses and fees (excluding federal and foreign income taxes)	2,945,948
Current federal and foreign income taxes	12,045,992
Unearned premiums	109,479,749
Policyholders (dividends declared and unpaid)	214,568
Ceded reinsurance premiums payable (net of ceding commissions)	23,450,105
Funds held by company under reinsurance treaties	189,287
Amounts withheld or retained by company for account of others	2,198,375
Provision for reinsurance	3,675,600
Drafts outstanding	14,426,093
Payable to parent, subsidiaries and affiliates	746,734
Aggregate write-ins for liabilities	<u>11,294,747</u>
Total liabilities	\$ 940,211,637

Surplus and Other Funds

Aggregate write-ins for special surplus funds	\$ 5,400,000
Unassigned funds (surplus)	<u>404,266,340</u>
Surplus as regards policyholders	<u>409,666,340</u>
Total liabilities, surplus and other funds	<u>\$1,349,877,977</u>

Note: The Internal Revenue Service has completed its audits of the Company's Federal Income Tax returns through tax year 1999. There were no material adjustments arising from the audit. The Internal Revenue Service has not yet begun to audit tax returns covering tax years 2000 through 2004. The examiner is unaware of any potential exposure of the Branch to any tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased by \$116,793,384 during the four-year examination period from January 1, 2001 through December 31, 2004, detailed as follows:

Underwriting Income

Premiums earned		\$1,027,729,725
Deductions:		
Losses incurred	\$692,345,028	
Loss adjustment expenses incurred	169,369,382	
Other underwriting expenses incurred	244,030,321	
Aggregate write-ins for underwriting deductions	<u>24,208</u>	
Total underwriting deductions		<u>1,105,768,939</u>
Net underwriting gain or (loss)		\$ (78,039,214)

Investment Income

Net investment income earned	\$177,104,447	
Net realized capital gain	<u>5,970,740</u>	
Net investment gain or (loss)		183,075,187

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ (18,348)	
Aggregate write-ins for miscellaneous income	<u>498,909</u>	
Total other income		<u>480,561</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$ 105,516,534
Dividends to policyholders		<u>3,933,789</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$ 101,582,745
Federal and foreign income taxes incurred		<u>27,466,651</u>
Net Income		<u>\$ 74,116,094</u>

Capital and Surplus Account

Surplus as regards policyholders per report on examination as of December 31, 2000			\$292,872,956
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$ 74,116,094		
Net unrealized capital gains or (losses)	2,201,441		
Change in net unrealized foreign exchange capital gain (loss)	1,983,393		
Change in net deferred income tax	11,536,513		
Change in nonadmitted assets		\$16,181,579	
Change in provision for reinsurance	5,277,939		
Cumulative effect of changes in accounting principles	37,840,771		
Net remittances from or (to) home office	<u>18,812</u>	<u>0</u>	
Total gains and losses	<u>\$132,974,963</u>	<u>\$16,181,579</u>	
Net increase (decrease) in surplus			<u>116,793,384</u>
Surplus as regards policyholders per report on examination as of December 31, 2004			<u>\$409,666,340</u>

C. Trusteed Surplus Statement

The examination trustee surplus of \$99,788,146 is \$2,177,489 less the \$101,965,655 reported by the Branch in its Trusteed Surplus Statement as of December 31, 2004. The difference represents accrued interest on state deposits for policyholders of specific states that the Branch erroneously included twice as part of the trustee surplus. Subsequent to the examination date, the Branch noted the error and amended the formula for calculating trustee surplus for 2006.

The following shows the trustee surplus of the Branch as of December 31, 2004 calculated pursuant to Section 1312 of New York Insurance Law:

Assets

Bonds deposited with the state insurance departments for the protection of all policyholders and creditors within the United States:

New York	\$ 4,209,318
Wyoming	2,892,775
Accrued interest thereon	<u>129,192</u>

Total deposits with state insurance departments \$ 7,231,285

Vested in and held by United States Trustee:

Bonds	\$710,058,976
Stocks	50,400,142
Accrued interest thereon	<u>9,288,398</u>

Total trustee assets 769,747,516

Total gross assets \$776,978,801

Liabilities

Total liabilities per examination \$940,211,637

Deduction from liabilities:

Reinsurance recoverable on paid losses:

Authorized companies	\$ 5,030,671
Unauthorized companies	11,126,000

Special deposits, not exceeding net liabilities carried in this statement on liabilities in each respective state 122,243,713

Accrued interest on state deposit 2,177,489

Agents' balances or uncollected premiums not more than ninety days past due, not exceeding unearned premium reserves carried thereon 118,639,474

Other assets offsetting liabilities 3,803,635

Total deductions 263,020,982

Net liabilities (Section 1312) \$677,190,655

Trusteed surplus (Section 1312) 99,788,146

Total liabilities and trustee surplus \$776,978,801

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$755,983,820 is the same as reported by the Branch as of December 31, 2004. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Branch's internal records and in its filed annual statements.

A review of the Branch's actuarial report found that it did not fully comply with the requirements of the Annual Statement Instructions issued by the National Association of Insurance Commissioners and Section 5.2 of the Actuarial Standard of Practice No. 9 issued by the Actuarial Standard Board, in that it lacks an executive summary detailing the actuarial analyses in an easy to follow overview format.

The following is an excerpt from Item # 7 of the Actuarial Opinion section of the Annual Statement Instructions:

"The Actuarial Report should be consistent with the documentation and disclosure requirement of ASOP # 9. The Actuarial Report should contain both narrative and technical components. The narrative component should provide sufficient detail to clearly explain to company management, the regulator, or other authority the findings, recommendations and conclusions, as well as their significance. The technical component should provide sufficient documentation and disclosure for another actuary practicing in the same field to evaluate the work. This technical component must show the analysis from the basic data, e.g., loss triangles, to the conclusions.

The Report must also include:

- An exhibit which ties to the Annual Statement and compares the Actuary's conclusions to the carried amounts;
- Summary exhibit(s) of either the actuary's best estimates, range of reasonable estimates, or both, that led to the conclusion in the OPINION paragraph regarding the reasonableness of the provision for all unpaid loss and loss adjustment expense obligations;
- Documentation of the required reconciliation from the data used for analysis to the Annual Statement Schedule P;
- Extended comments on trends that indicates the presence or absence of risks and uncertainties that could result in material adverse deviation; and
- Extended comments on factors that led to unusual IRIS ratios for One-Year Reserve Development to Surplus, Two-Year Reserve Development to Surplus, or Estimated

Current Reserve Deficiency to Surplus, and how these factors addressed in prior and current analyses.”

It is recommended that the Branch include sufficient detail in the narrative and technical components in its actuarial reports for future periods that meet the requirements of the Annual Statement Instructions and Section 5.2 of the Actuarial Standard of Practice No. 9.

5. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Branch conducts its business and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau of this Department.

Certain market conduct issues in underwriting and claims were noted. The internal audit reports regarding those issues were forwarded to the Market Conduct Unit of the Department Property Bureau. The Department has scheduled a market conduct review of the Branch’s underwriting and claims practices.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained one recommendation as follows (page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A It was recommended that the Branch amend the agreements with its custodian to include the protective covenants and provisions deemed by this Department to be representative of good business practices for the contents of such agreements.</p> <p>The Branch has complied with this recommendation.</p>	15

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A <u>Reinsurance</u></p> <p>i. It is recommended that the Branch submit all reinsurance agreements with related parties to the Department in a timely manner in accordance with Section 1505(d)(2) of the New York Insurance Law.</p> <p>The Branch has subsequently filed the aforementioned agreement with the Department.</p>	8
<p>ii. It is recommended that the Branch amend its letters of credit to include the proper required wording in order to take credit for unauthorized reinsurance in accordance with Department Regulation 133.</p>	9
<p>iii. It is recommended that the Branch amend its obligatory master facultative reinsurance agreement for Cover 1000 and Cover 2000 to include the proper insolvency clause and submit the agreement to the Department in accordance with Section 1505 of the New York Insurance Law. The Company subsequently submitted an amendment to the contract with the proper insolvency clause to the Department. The Department approved the amendment on May 23, 2006.</p>	9
<p>iv. It is recommended that the Branch amend its reinsurance agreements to include the proper arbitration clause, extra contractual obligations clause and excess of original policy limits clause and submit the</p>	10

ITEMPAGE NO.

agreements to the Department in accordance with Section 1505 of the New York Insurance Law. The Company subsequently submitted an amendment to the contract with the proper arbitration clause, extra contractual obligations clause and excess of original policy limits clause to the Department. The Department approved the amendment on May 23, 2006.

- v. It is recommended that the Branch write off uncollectible reinsurance balances and commuted balances through the accounts in which they were originally recorded in compliance with SSAP No. 62 paragraphs 56 and 60 of the NAIC Accounting Practices and Procedures Manual. 11

The Branch has established new procedures for writing off reinsurance recoverable on paid losses, case and IBNR reserves, and ceded balance payable in 2005. The Branch also eliminated the balances in the other liability account for the immaterial balances previously written off. The Branch has properly recorded the write off amounts for reinsurance recoverable and payable for the 2005 annual statement.

B Accounts and Records

Drafts Outstanding

It is recommended that the Branch report and classify outstanding checks for claims payments as reduction of cash instead of a liability in accordance with SSAP No. 2 NAIC Accounting Practices and Procedures Manual. 16

Certified Public Accountant (“CPA”) Engagement Letters

It is recommended that the Branch ensure the contract between the Branch and the independent auditors specify the proper workpaper retention period in accordance with the Department Regulations 118 and 152. 16

Uncollected Premiums and Agents' Balances in the Course of Collection

It is recommended that the Branch report unapplied cash in the “Remittances and items not allocated” account as a liability in accordance with the Annual Statement Instructions. 17

It is recommended that the Branch update the current agents' balances system or invest in a new system that can properly apply policy numbers upon renewals and track policies and premiums for different policy years correctly. 18

ITEMPAGE NO.

It is recommended that the Branch conduct periodic audits on processing of premiums and agents balances. 18

It is recommended that the Branch establish clear written guidelines in the following five areas in processing of premiums and agents' balances 18

- Billing - If the Branch continues to use different policy numbers on renewals, then the new system should have the capability to link all policy numbers for the same policy.
- Collection - The Branch should require the Agency Accounting Department to resolve any account discrepancies in a specific time period. The Branch should actively work with agents and brokers to resolve any discrepancies.
- Aging - Aging of premiums and agents' balances should be done in accordance with SSAP No. 6 of the NAIC Accounting Practices and Procedures Manual ("NAIC AP&P"). Offsets are allowed only if the conditions of SSAP # 6 paragraph 9 are met.
- Write Off - Write off of premiums and agents' balances should be done in accordance with SSAP No. 6 of the NAIC AP&P. There should be a clear deadline on policy cancellation and premiums and agents' balances write off.
- Reconciliation - The Branch should require reconciliation of premiums and agents' balances at least on a quarterly basis. Reconciling items that are over 90 days due should be non-admitted in accordance with SSAP No. 6 of the NAIC AP&P.

The new guidelines and policies should be clearly communicated to the agency accounting department, finance department, and the agents and brokers.

It is recommended that the Branch monitor and test implementation of the new guidelines on a periodic basis. 18

Adjustments to Earned But Unbilled Premiums

It was noted that the Branch's actuary adjusted 2004 year end EBUB premiums by \$10,000,000. However, the Branch neglected to adjust the EBUB premium balances for the annual statement. The Branch subsequently adjusted EBUB premiums in first quarter 2005 according to the Branch's latest actuarial projection. The Branch has also updated the review process in an attempt to avoid such errors in the future. 18

ITEMPAGE NO.C Trusteed Surplus

The examination trustee surplus of \$99,788,146 is \$2,177,489 less the \$101,965,655 reported by the Branch in its Trusteed Surplus Statement as of December 31, 2004. The difference represents accrued interest on state deposits for policyholders of specific states that the Branch erroneously included twice as part of the trustee surplus. Subsequent to the examination date, the Branch noted the error and amended the formula for calculating trustee surplus for 2006.

24

D Losses and Loss Adjustment Expenses

It is recommended that the Company include sufficient detail in the narrative and technical components in its actuarial reports for future periods that meet the requirements of the Annual Statement Instructions and Section 5.2 of the Actuarial Standard of Practice No. 9.

26

E Market Conduct Issues

Certain market conduct issues in underwriting and claims were noted. The internal audit reports regarding those issues were forwarded to the Market Conduct Unit of the Department Property Bureau. The Department has scheduled a market conduct review of the Branch's underwriting and claims practices.

26

Respectfully submitted,

_____/S/
Annie Lau, CFE
Associate Insurance Examiner

STATE OF NEW YORK)
)SS:
)
COUNTY OF NEW YORK)

ANNIE LAU, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/S/
Annie Lau

Subscribed and sworn to before me

this _____ day of _____, 2008.

Appointment No 22398

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Annie Lau

as proper person to examine into the affairs of the

**TOKIO MARINE AND NICHIDO FIRE INSURANCE CO., LTD.
(UNITED STATES BRANCH)**

and to make a report to me in writing of the condition of the said

Branch

with such other information as she shall deem requisite.

*In Witness Whereof, I have hereunto subscribed by the
name and affixed the official Seal of this Department, at
the City of New York,*

this 9th day of August, 2005



Howard Mills

HOWARD MILLS
Superintendent of Insurance