

REPORT ON EXAMINATION

OF THE

EMPIRE BONDING AND INSURANCE COMPANY

AS OF

DECEMBER 31, 2015

DATE OF REPORT

MAY 31, 2017

EXAMINER

TEENA JOSEPH

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

May 31, 2017

Honorable Maria T. Vullo
Superintendent
New York State Department of Financial Services
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31510 dated August 4, 2016, attached hereto, I have made an examination into the condition and affairs of Empire Bonding and Insurance Company as of December 31, 2015, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Empire Bonding and Insurance Company.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the Company’s office located at 80 Main Street, Hempstead, NY 11550.

1. SCOPE OF EXAMINATION

The Department has performed an individual examination of the Company, a single-state insurer. This is the first financial examination of the Company after the report on organization, which was conducted as of January 18, 2011. This examination covered the period from January 19, 2011 through December 31, 2015. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Company’s independent public accountants where deemed appropriate.

This examination report includes, but is not limited to, the following:

- Company history
- Management and control
- Territory and plan of operation
- Holding company description
- Reinsurance
- Loss review and analysis
- Financial statement presentation
- Significant subsequent events
- Summary of recommendations
- Significant subsequent events

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

2. DESCRIPTION OF COMPANY

Empire Bonding and Insurance Company was incorporated under the laws of the State of New York on February 25, 2008. It became licensed and commenced business on April 26, 2011. The Company is a wholly-owned subsidiary of Empire Surety Holdings, Inc. (“Empire Surety”), which in turn is owned equally by Michelle Esquenazi, Wendy Fordin, and Jason Fordin.

Capital paid in is \$1,000,000 consisting of 100 shares of \$10,000 par value per share common stock. Gross paid in and contributed surplus is \$562,571. Gross paid in and contributed surplus increased by \$48,971 during the examination period, as follows:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
1/18/2011	Beginning gross paid in and contributed surplus	\$513,600
2011	Surplus contribution	\$46,071
2015	Surplus contribution	<u>2,900</u>
	Total surplus contributions	<u>48,971</u>
2015	Ending gross paid in and contributed surplus	<u>\$562,571</u>

A. Management

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less than 13 nor more than 21 members. The board meets at least 4 times during each calendar year. At December 31, 2015, the board of directors was comprised of the following 13 members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Ilana Esquenazi Farmingdale, NY	Vice President, Empire Bonding and Insurance Company

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Mario Esquenazi Oceanside, NY	Retired
Michael C. Esquenazi Oceanside, NY	Agent, Empire Bail Bonds
Michelle Esquenazi Oceanside, NY	President, Empire Bonding and Insurance Company
Sheila Esquenazi Oceanside, NY	Homemaker
Hallie Fordin Bellmore, NY	Part-time Substitute Teacher, Bellmore School District
Jason Fordin Bellmore, NY	Treasurer, Empire Bonding and Insurance Company
Wendy Fordin Oceanside, NY	Secretary, Empire Bonding and Insurance Company
Eileen Goldberg Old Bridge, NJ	Retired
Robert Goldberg Old Bridge, NJ	Retired
Rose Goldberg Queens, NY	Retired
Shayna R. Lee Royal Oak, MI	Part-time Substitute Teacher, Southfield School District
Russell Lusteran Dix Hills, NY	Owner, Lusteran & Co.

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 had an acceptable record of attendance with the exception of Sheila Esquenazi who attended less than 50% of the meetings for which she was eligible to attend.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria.

It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.

It was further noted during the review of the board meeting minutes that the minutes did not indicate any review of the prior board meeting minutes, financial review or actuarial review.

It is recommended that the board members be provided with a financial and actuarial review and document such in the board meeting minutes. It is also recommended that board members agree with and approve the contents of the prior meeting minutes.

Additionally, the examination review indicated that the minutes lacked adequate detail with regard to the discussion of insurance operations. The fundamental role of the meeting minutes is to preserve an accurate and official record of the proceedings of a board or committee meeting. In order to achieve this, the minutes should include more detail and elaboration of what transpired during discussions held at the meeting.

It is recommended that the Company ensure that the board and committee meeting minutes include details of the proceedings of the board and committee meetings.

As of December 31, 2015, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Michelle Esquenazi	President
Wendy Fordin	Secretary
Jason Fordin	Treasurer
Ilana Esquenazi	Vice President

Charter and By-laws

A review of the Company's charter and by-laws indicated that the annual meeting date of the shareholder's meetings is not in agreement with each other.

Section 6, Part A of the Company's charter states as follows:

"The annual meeting of shareholders of the Corporation will be conducted at the principal office of the Corporation or such other place, within or without New York State, each year on the first Monday in April".

Article II, Section 2 of the Company's by-laws states as follows:

"The annual meeting of shareholders shall be held on the second Monday of February of each year..."

It is recommended that the Company amend its charter or by-laws so that both documents agree to the date of the annual shareholder's meeting. Subsequent to the examination date, the Company has complied with this recommendation.

Conflict of Interest

The examiner noted that the Company's consulting accountant Russell Lusterman performs the accounting services for the Company. Mr. Lusterman is a board member and also an audit committee member. This appears to be a conflict of interest.

It is recommended that the Company re-evaluate Russell Lusterman's duties for the Company so as to avoid a conflict of interest.

B. Territory and Plan of Operation

As of December 31, 2015, the Company was licensed only in the State of New York to write fidelity and surety insurance as defined in paragraph 16 of Section 1113 (a) of the New York Insurance Law. Effective December 13, 2016, the Company became licensed to write fidelity and surety insurance in Pennsylvania.

Based on the line of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13,41 and 68 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,000,000.

The following schedule shows the direct premiums written by the Company for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums Written</u>
2011	\$167,094
2012	\$460,833
2013	\$492,643
2014	\$606,126
2015	\$781,765

The Company began writing bail bond policies in August 2011 and limits its bond to \$150,000. On October 7, 2014, the Company started writing motor vehicle forfeiture bonds. The Company is affiliated with Empire Bonding Agency, Inc., Jawam, Inc., SIM 3 Corp., SIM 3 Management Corp., and Bail Bond AAAA Empire Agency, Inc. These affiliates produce approximately 75% of the Company's premiums.

C. Reinsurance

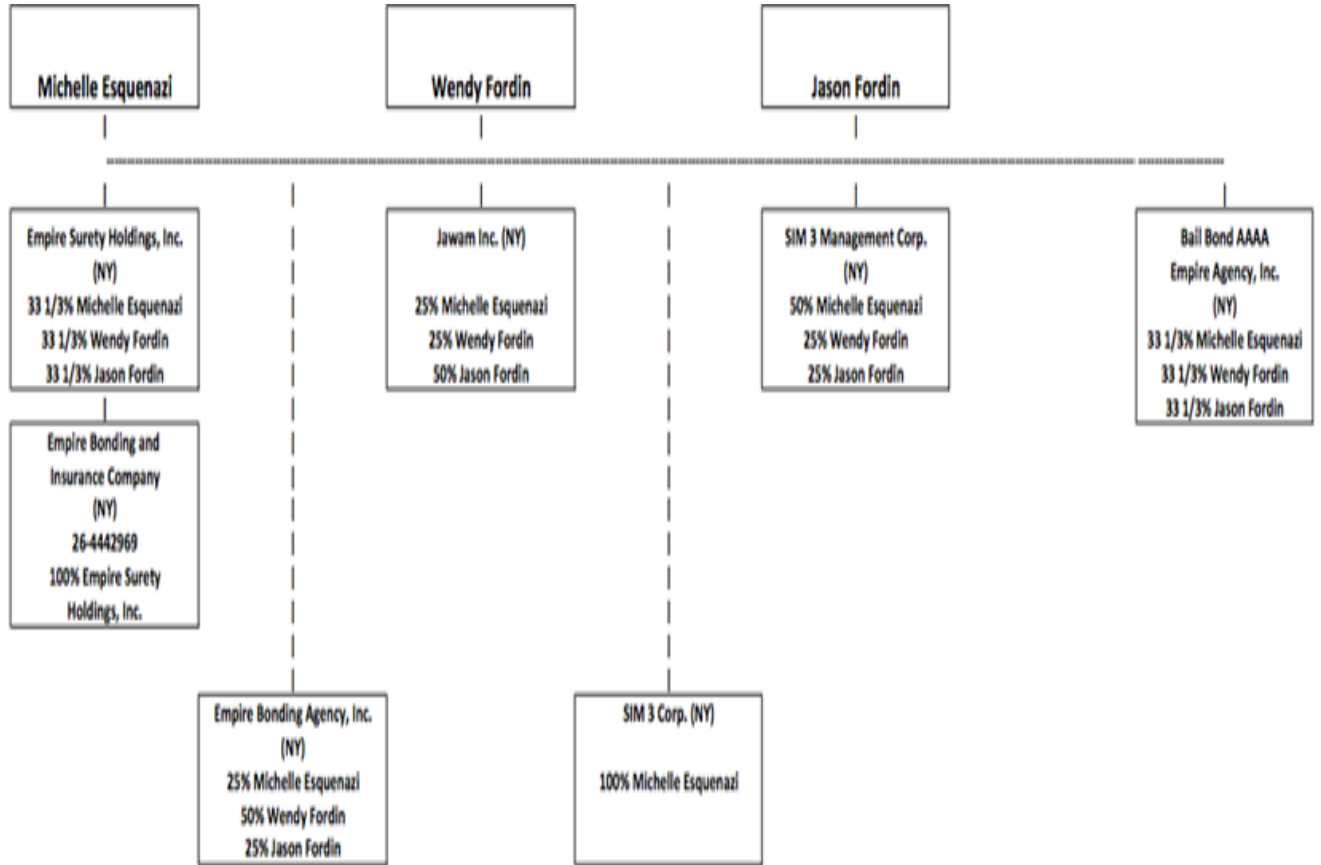
The Company does not have any assumed nor ceded reinsurance.

D. Holding Company System

The Company is a wholly-owned subsidiary of Empire Surety Holdings, Inc. ("Empire Surety"), which in turn is owned by Michelle Esquenazi, Wendy Fordin and Jason Fordin. Both companies are governed by the same set of directors and officers.

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 a chart of the holding company system at December 31, 2015:



At December 31, 2015, the Company was party to the following agreements with other members of its holding company system:

Tax Allocation Agreement

Effective January 1, 2011, the Company entered into a tax allocation agreement with Empire Surety Holdings, Inc. (“Holdings”). Pursuant to the terms of the agreement, the Company shall make periodic payments of estimated tax to Holdings, in such amounts as, and by the dates on which, payments of estimated amounts would have been due by the Company if it were not included in the consolidated group and had filed its pro forma return. The balance of the tax due for the taxable year shall be paid no later than the date on which such taxes would be due, if any, for such consolidated return year, determined as if the portion of the taxable year in which Empire is included in the consolidated group were a separate return year.

The agreement was submitted to the Department. The examiner noted that the agreement did not include the following required provisions as per Department Circular Letter No. 33 (1979):

Item 7 (c): The agreement shall be terminated if:

The affiliated group fails to file the consolidated return for any taxable year

Item 10: The agreement should provide for the arbitration of disputes arising in the implementation of its terms and conditions.

It is recommended that the Company review its tax allocation agreement and ensure that it is in compliance with Department Circular Letter No. 33 (1979). Subsequent to the date of this report, the Company has complied with this recommendation.

Producer Agreements

Effective February 1, 2010, the Company entered into separate producer’s agreement with Empire Bonding Agency, Inc., Jawam Inc., Sim 3 Corporation and Sim 3 Management Corp. (“Producers”). Effective June 1, 2013, the Company also entered into a producer agreement with Bail Bond AAAA Empire Agency, Inc. The Company and the Producers are members of the same holding company system as defined in Article 15 of the New York Insurance Law. The producers’

agreements set forth the following terms and conditions whereby the Company appoints the Producers as agencies of the Company, for the purposes of soliciting and writing of bail bonds.

- The Producers agreed that the premiums to be charged and collected on behalf of the Company shall be at the rates as approved by the Superintendent of Insurance of the State of New York and shall not exceed those permitted by Article 68 of the New York Insurance Law.
- The Producers shall on or before the fifth and twentieth of each month, submit to the Company a report for bonds written by the Producers. The report due on the 5th of each month shall be for bonds written from the 16th to the last day of the preceding month, and the report due on the 20th of the month shall be for bonds written from the 1st to the 15th of that month.

The examiner noted that the Producers are not submitting the reports to the Company pursuant to the provisions of the producer agreements. The Company has indicated that the reports due on the 20th of the month are used solely to monitor the policies the affiliated agencies are underwriting and are discarded once reviewed by the Company. The reports for the entire month are due on the 5th of the subsequent month.

It is recommended that the Company ensure that its Producers submit a report for bonds written to the Company pursuant to the provisions of the producer agreements or amend the producer agreements to reflect how the producers submit the reports.

It is further recommended that the Company maintain its records for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer, in accordance with 11 NYCRR 243 (Department Regulation 152).

The agreements were submitted to the Department and non-disapproved pursuant to Section 1505(d) (3) of the New York Insurance Law.

Service Agreement

Effective February 10, 2010, the Company entered into a service agreement with Empire Bonding Agency, Inc. (“Empire”), an affiliate of the Company. The agreement sets forth the terms and conditions whereby Empire agrees to provide administrative, investment and legal services to the Company. Pursuant to the agreement, Empire shall provide an allocation to the Company of the estimated cost and expense of performing services for the Company. The allocation and classification of shared expenses will be made in accordance with Department Regulation 30.

The examiner noted that although the Company entered into a service agreement with Empire, the duties have been performed internally by the Company and the service agreement has not been utilized. Therefore, no expenses have been shared to date.

The agreement was submitted to the Department and non-disapproved pursuant to Section 1505 (d) (3) of the New York Insurance Law.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2015, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	39%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	42%
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 five -year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$ 140,031	6.57%
Other underwriting expenses incurred	1,364,086	63.99
Net underwriting gain	<u>627,671</u>	<u>29.44</u>
 Premiums earned	 <u>\$2,131,788</u>	 <u>100.00%</u>

F. Accounts and Records

1) Annual Statement Discrepancies

Several discrepancies were noted during the review of the 2011 – 2015 filed annual statements as follows:

- a. The Company failed to complete Schedule Y, Part 2 of the annual statement for all years under examination with the exception of 2011. The 2011 Schedule Y, Part 2 was filled out, but was incomplete.
- b. The Company incorrectly filled out Schedule Y, Part 1 of the annual statement for 2013 through 2015.
- c. Note 10 of the 2015 annual statement states that the Company has \$520,760 in restricted deposits with the Department. This amount actually represents the build-up fund payable for affiliated producers as of December 31, 2015. This amount is not deposited with the Department.
- d. The Company reported an amount of \$502,023 for question 25.28 of the general interrogatories page of the 2015 annual statement. However, the amount reported in Schedule E, Part 3 is \$503,023.

It is recommended that the Company exercise greater care in the preparation of its filed annual statement and ensure that it complies with the NAIC annual statement instructions.

2) Audit Committee Charter

The Company has not implemented a formal audit committee charter. It is recommended that the Company implement a formal audit committee charter that sets forth the general purpose, authority, composition and responsibilities of the audit committee to ensure that the committee is meeting its objectives.

3) Annual Statement Schedule Y, Part 1

The Company is affiliated with the following bond agencies: Empire Bonding Agency, Inc., Jawam, Inc., SIM 3 Corp., SIM 3 Management Corp. and Bail Bond AAAA Empire Agency. The Company uses the name Empire Bail Bonds for doing business. It is recommended that going forward, the Company include a footnote in Schedule Y, Part 1 stating Empire Bail Bonds is only a name for a DBA (“doing business as”).

4) Fidelity Insurance

The examiner noted that the Company did not maintain the minimum insurance coverage recommended by Section 2 Exhibit R of the NAIC Financial Condition Examiners Handbook. It is recommended that the Company evaluate its business needs and purchase the minimum fidelity insurance coverage as set forth in the guidance promulgated in the NAIC Financial Condition Examiners Handbook.

5) Allocation of Expenses

Examination review revealed that the Company is classifying certain expenses to an incorrect expense line category. This method of classifying the Company’s expenses on the Expense Exhibit of the annual statement does not conform with the classification requirements prescribed by Department Regulation 30. It is recommended that in future annual statements filed with the Department, the Company comply with the classification requirements of Department Regulation 30.

6) Compliance with Section 325 (a) of New York Insurance Law

The Company's general ledgers and premium registers are located in the Company's consulting accountant's office in Mineola, New York.

Section 325 (a) of the New York Insurance Law states in part:

“Every domestic insurer and every licensed United States branch of an alien insurer entered through this state shall, except as hereinafter provided, keep and maintain at its principal office in this state its charter and by-laws, (in the case of a United States branch a copy thereof) and its books of account...”

It is recommended that the Company comply with Section 325 (a) of the New York Insurance Law by maintaining its books and records at its principal office.

7) Change in membership of Audit Committee

Pursuant to Part 89.2 (c) of Department Regulation 118, the Company designated a group of individuals to constitute its audit committee. In 2013, the Company had a change in audit committee membership, but did not notify the Department regarding the change. Part 89.12 (e) of Department Regulation 118 states as follows:

“The Company shall submit written notification to the superintendent of the selection of its audit committee within 30 days of the effective date of this Part and within 30 days of any change in membership of the audit committee. The notice shall include a description of the reason for the change”.

It is recommended that in the future, the Company provide written notification to the Department of any change in membership of the audit committee pursuant to Part 89.12 (e) of Department Regulation 118.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2015 as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Cash, cash equivalents and short-term investments	\$3,293,189	\$ 0	\$3,293,189
Uncollected premiums and agents' balances in the course of collection	60,581	0	60,581
Net deferred tax asset	27,420	1,524	25,896
Electronic data processing equipment and software	3,000	0	3,000
Furniture and equipment, including health care delivery assets	12,517	12,517	0
Start-up costs	11,418	11,418	0
Leasehold improvements	<u>2,221</u>	<u>2,221</u>	<u>0</u>
Total assets	<u>\$3,410,346</u>	<u>\$27,680</u>	<u>\$3,382,666</u>

Liabilities, Surplus and Other FundsLiabilities

Losses and loss adjustment expenses	\$ 84,413
Other expenses (excluding taxes, licenses and fees)	69,500
Taxes, licenses and fees (excluding federal and foreign income taxes)	28,303
Current federal and foreign income taxes	68,490
Unearned premiums	376,672
Amounts withheld or retained by company for account of others	188,709
Build-up fund payable	<u>574,189</u>
Total liabilities	\$1,390,276

Surplus and Other Funds

Common capital stock	\$1,000,000	
Gross paid in and contributed surplus	562,571	
Unassigned funds (surplus)	<u>429,819</u>	
Surplus as regards policyholders		<u>1,992,390</u>
Total liabilities, surplus and other funds		<u>\$3,382,666</u>

Note: The Internal Revenue Service has not audited tax returns covering tax years 2011 through 2015. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Income

Net income for the examination period, January 19, 2011 through December 31, 2015, as reported by the Company was \$427,240, detailed as follows:

Underwriting Income

Premiums earned		\$2,131,788
Deductions:		
Losses and loss adjustment expenses incurred	\$ 140,031	
Other underwriting expenses incurred	<u>1,364,086</u>	
Total underwriting deductions		<u>1,504,117</u>
Net underwriting gain		\$ 627,671

Investment Income

Net investment income earned	\$ <u>15,136</u>	
Net investment gain		<u>15,136</u>
Net income before federal and foreign income taxes		642,807
Federal and foreign income taxes incurred		<u>215,567</u>
Net income		\$ <u>427,240</u>

C. Surplus and Capital Accounts

Surplus as regards policyholders increased \$482,743 as reported by the Company during the five-year examination period, January 19, 2011 through December 31, 2015, detailed as follows:

Surplus as regards policyholders per report on examination as of January 18, 2011			\$1,509,647
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$ 427,240	0	
Change in net deferred income tax	27,630		
Change in nonadmitted assets		14,569	
Capital changes paid in	1,000,000		
Surplus adjustments paid in		947,076	
Aggregate write-ins for gains and losses in surplus	<u>0</u>	<u>10,482</u>	
Net increase in surplus	<u>\$1,454,870</u>	<u>\$972,127</u>	<u>482,743</u>
Surplus as regards policyholders per report on examination as of December 31, 2015			<u>\$1,992,390</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$84,413 is the same as reported by the Company as of December 31, 2015. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The report on organization did not contain any recommendations.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
ii. It is recommended that the board members be provided with a financial and actuarial review and document such in the board meeting minutes.	5
iii. It is recommended that the board members agree with and approve the contents of the prior meeting minutes.	5
iv. It is recommended that the Company ensure that the board and committee meeting minutes include details of the proceedings of the board and committee meetings.	5
v. It is recommended that the Company amend its charter or by-laws so that both documents agree to the date of the annual shareholder's meeting.	6
Subsequent to the examination date, the Company has complied with this recommendation.	
vi. It is recommended that the Company re-evaluate board member Russell Lusterman's duties for the Company so as to avoid a conflict of interest.	6
B. <u>Holding Company System</u>	
i. It is recommended that the Company review its tax allocation agreement and ensure that it is in compliance with Department Circular Letter No. 33 (1979).	9
Subsequent to the examination date, the Company has complied with this recommendation.	

- ii. It is recommended that the Company ensure that its producers submit a report for bonds written to the Company as per the producer agreements or amend the producer agreements to reflect how the producers submit the reports. 10
- iii. It is further recommended that the Company maintain its records for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer, in accordance with 11 NYCRR 243 (Regulation 152). 10

C. Accounts and Records

- i. It is recommended that the Company exercise greater care in the preparation of its annual statement and ensure that it complies with the annual statement instructions. 12
- ii. It is recommended that the Company implement a formal audit committee charter that sets forth the general purpose, authority, composition and responsibilities of the audit committee to ensure that the committee is meeting its objectives. 13
- iii. It is recommended that going forward, the Company include a footnote in Schedule Y, Part 1 stating that Empire Bail Bonds is only a name used for a DBA. 13
- iv. It is recommended that the Company evaluate its business needs and purchase the minimum fidelity insurance coverage as set forth in the guidance promulgated by the NAIC. 13
- v. It is recommended that in future annual statements filed with the Department, the Company comply with the classification requirements of Department Regulation 30. 13
- vi. It is recommended that the Company comply with Section 325 (a) of the New York Insurance Law by maintaining its books and records at its principal office. 14
- vii. It is recommended that in the future, the Company provide written notification to the Department of any change in membership of the audit committee pursuant to Part 89.12 (e) of Department Regulation 118. 14

Respectfully submitted,

Teena Joseph
Senior Insurance Examiner

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

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

Teena Joseph

Subscribed and sworn to before me

this _____ day of _____, 2017.

APPOINTMENT NO. 31510

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **Maria T. Vullo**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Teena Joseph

as a proper person to examine the affairs of the

Empire Bonding and Insurance Company
and to make a report to me in writing of the condition of said

COMPANY

with such other information as she shall deem requisite.

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

this 4th day of August, 2016

MARIA T. VULLO
Superintendent of Financial Services



By:

Joan P. Riddell

Joan Riddell
Deputy Bureau Chief