

REPORT ON EXAMINATION

OF THE

AVIVA INSURANCE COMPANY OF CANADA UNITED STATES BRANCH

AS OF

DECEMBER 31, 2009

DATE OF REPORT

MARCH 18, 2011

EXAMINER

SHEIK MOHAMED

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

March 16, 2011

Honorable James J. Wrynn
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 30597 dated September 16, 2010 attached hereto, I have made an examination into the condition and affairs of Aviva Insurance Company of Canada, United States Branch ("U.S. Branch") as of December 31, 2009, and submit the following report thereon.

Wherever the designation "the Branch" appears herein without qualification, it should be understood to indicate Aviva Insurance Company of Canada, United States Branch.

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 home office located at 2206 Eglinton Avenue East, Scarborough, Ontario, Canada M1L 4S8.

1. SCOPE OF EXAMINATION

The Department has performed a single-state examination of Aviva Insurance Company of Canada, United States Branch. The previous examination was conducted as of December 31, 2005. This examination covered the four year period from January 1, 2006 through December 31, 2009. 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 Branch by obtaining information about the Branch including corporate governance, identifying and assessing inherent risks within the Branch and evaluating system controls and procedures used to mitigate those risks. This 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 financially significant accounts and activities of the Branch were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Branch’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Financial Condition Examiners Handbook of the NAIC:

- Significant subsequent events
- Branch history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Territory and plan of operation
- Growth of Branch
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements
- Summary of recommendations

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 that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

2. DESCRIPTION OF BRANCH

The Branch was licensed in the State of New York on December 31, 1978 as the United States Branch of Simcoe and Erie General Insurance Company, an insurer incorporated under the laws of the province of Ontario, Canada on February 26, 1959.

The Branch operated as a reinsurer only until 1985, when it discontinued underwriting and commenced the run off of its reinsurance operations. In June 1990, the Branch began writing surety business on a direct basis. The Branch discontinued writing surety in 2000.

On February 21, 1996, the Branch changed its name to GAN General Insurance Company, U.S. Branch (“GAN General”). On December 30, 1999, GAN General was purchased by CGU Insurance Company of Canada (“CGU”), and amalgamated into that Company. On March 23, 2000, the Branch changed its name to CGU Insurance Company of Canada, U.S. Branch.

Effective May 5, 2003, CGU Insurance Company of Canada changed its name to Aviva Insurance Company of Canada and the Branch adopted its current title.

A. Management

On September 22, 2000, the Branch appointed Mr. Kenneth Ottenbreit as its United States manager. For the period under examination, the Branch was managed by its Home Office, Aviva Insurance Company of Canada, located in Ontario, Canada. All expenses for the operation of the Branch were paid by the Home Office and there was no allocation of expenses to the Branch.

Pursuant to the Branch’s charter and by-laws, management of the Branch is vested in a board of directors consisting of not less than nine nor more than twenty-one members. At December 31, 2009, the board of directors was comprised of the following eleven members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Brian W. Barr Orillia, Ontario	Chairman & Chief Executive Officer, MedProDirect Inc.
J. Charles Caty Oakville, Ontario	Retired
Thomas C. Godlasky West Des Moines, IA	President & Chief Executive Officer, Aviva USA Corporation
Richard Hoskins Glencoe, IL	Executive Vice President & Chief Financial Officer, Aviva North America
David H. Laidley Westmount, Quebec	Chairman Emeritus, Deloitte & Touche LLP
M. Theresa McLeod Toronto, Ontario	Retired
J. William Rowley Toronto, Ontario	Chairman Emeritus, McMillan LLP
C. Wesley M. Scott Toronto, Ontario	Retired
Michael M. Shaw Calgary, Alberta	Retired
Robin L. Spencer Toronto, Ontario	President & Chief Executive Officer, Aviva Canada Inc.
Louise Vaillancourt-Chatillon Montreal, Quebec	President, LV Conseils

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, 2009, the principal officers of the Branch were as follows:

<u>Name</u>	<u>Title</u>
Robin L. Spencer	President & Chief Executive Officer
James B. Falle	Executive Vice President, Chief Financial Officer & Treasurer
Catherine A. Novick	Senior Vice President & Chief Accountant
Chris Townsend	Senior Vice President & Chief Actuary

Pursuant to the provisions of Section 1315 of the New York Insurance Law, an alien insurer is required to maintain in the United States, trusteed assets for the security of all its policyholders and creditors within the United States and to appoint a trustee of such assets. Under the terms of a deed of trust dated August 14, 1978, the Branch designated Citibank, NA as its United States trustee. The deed provides that legal title to the trusteed assets shall be vested in the trustee and authorizes the trustee to sell or collect any security or property and to invest or reinvest the proceeds thereof upon written direction of the manager.

Citibank, NA, is also the custodian of the required securities on deposit with the Superintendent pursuant to Section 1314 of the New York Insurance Law.

B. Territory and Plan of Operation

As of December 31, 2009, the Branch was licensed to write business in New York only. As part of the sale of the GAN General to the CGU Insurance Group, the Branch submitted a new plan of operation. This plan included the relocation of the Branch's book of accounts and claim files to Ontario, Canada. This Department approved the plan on September 22, 2000.

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	Accident & health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
9	Boiler and machinery
12	Collision
13	Personal injury liability

<u>Paragraph</u>	<u>Line of Business</u>
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 is also authorized to write 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 the insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69th Congress as amended; 33USC Section 901 it seq. as amended) to the extent permitted by certified copy of its charter document on file with this Department, provided, however, that the authority conferred by the license shall be limited to the writing of contracts issued for delivery in the United States, insuring risks of policyholders within the United States.

During the period under examination, the Branch did not have any direct premiums written.

C. Reinsurance

The bulk of the Branch's business was the assumption of insurance from other companies. During the period of the examination, the Branch continued to run-off its assumed reinsurance business. All of its ceded reinsurance contracts have been in run-off since 1985.

Prior to the run-off, the Branch had structured its ceded reinsurance program to limit its maximum exposure to any one risk as follows:

<u>Type of Contract</u>	<u>Cession</u>
Quota share	Effective January 1, 1979 – June 30, 1982: 80% of \$500,000 per occurrence in any one class of business per policy from any one original ceding company for all lines of business the branch is authorized to write except surety.
	100% Authorized

Type of ContractCession

Effective July 1, 1982 – December 31, 1983:
80% of the Branch's net liability under each and every contract of insurance and/or reinsurance issued by the Branch.

71.75% Authorized
28.25% Unauthorized

Effective January 1, 1984 – December 31, 1984:
56.25% of the Branch's net liability under each and every contract of insurance and/or reinsurance issued by the Branch.

73.4% Authorized
26.6% Unauthorized

All ceded reinsurance agreements in effect prior to the run-off 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 Law.

A 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 NAIC Accounting Practices and Procedures Manual Statements of Statutory Accounting Principles ("SSAP") No. 62. The Branch did not do a risk transfer analysis but did provide an attestation from the Branch's chief executive officer and chief financial officer pursuant to Department Circular Letter No. 8. Additionally, an 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.

D. Holding Company System

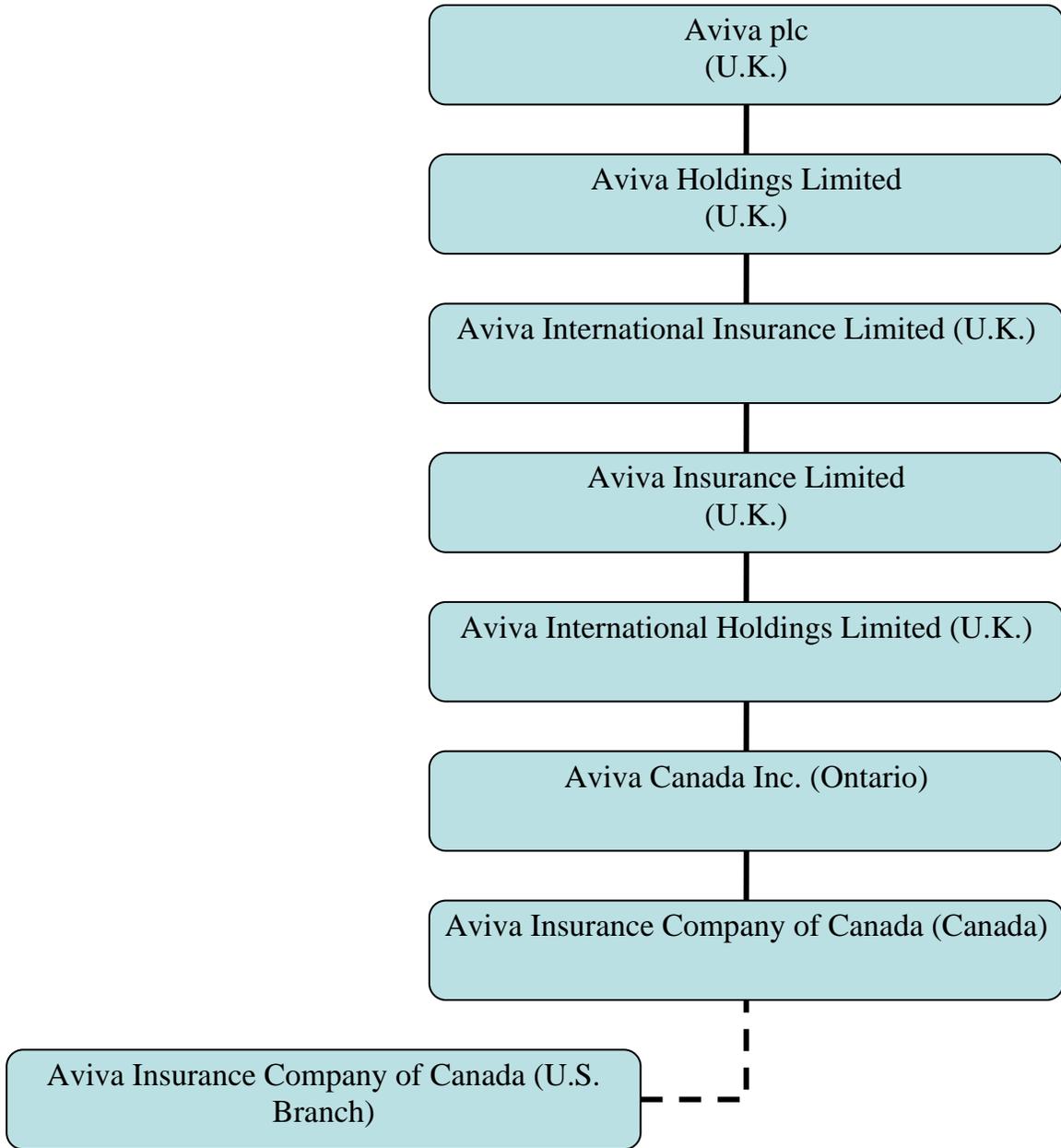
Aviva Insurance Company of Canada (U.S. Branch) is a member of a holding company system and is subject to the provisions of Article 15 of the New York Insurance Law. The immediate parent, Aviva Canada Inc., owns 100% of the issued and outstanding stock of Aviva Insurance Company of Canada (the "Home Office"). The ultimate parent is Aviva plc (UK).

Pursuant to Section 1502 of the New York Insurance Law, transactions between the Branch and the Home Office are exempted from the filing requirements of Article 15 of the New York Insurance Law.

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 except for the 2006 statement. Pursuant to Part 80-1.4 of Department Regulation 52, all controlled insurers are required to file an annual holding company registration statement (Form HC1) within 120 days following the end of its ultimate holding company's fiscal year. The Company's 2006 HC1 was not filed until June 28, 2007, which was 59 days late.

It is recommended in the future that the Branch file its annual holding company registration statements in a timely manner pursuant to the provisions of Part 80-1.4 of Department Regulation 52.

The following is a partial organizational chart of the holding company system at December 31, 2009:



At December 31, 2009, the Branch was party to the following agreements with other members of its holding company system:

Investment Management Agreement

Effective October 20, 2003, the Branch entered into an investment management agreement with Aviva Investment Canada, Inc., a corporation incorporated under the laws of the Province of Ontario, Canada. Pursuant to the agreement, Aviva Investment Canada, Inc. was appointed as the investment adviser to manage, invest and reinvest the Branch's investment portfolio for a management fee. This agreement was filed with the Department.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2009, based upon the results of this examination:

Net premiums written in 2009 as to surplus to policyholders	0%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	60%
Premiums in course of collection to surplus as regards policyholders	0%

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 were not calculated due to the fact that the Branch's business is in run off. Therefore, such ratios would not be meaningful.

F. Accounts and Records

Record Retention

The Branch reported ceded reinsurance activities in its filed 2009 Annual Statement with several reinsurers. The examiner requested copies of these reinsurance contracts. However, the Branch was only able to produce one of the reinsurance contracts.

It is recommended that the Branch maintain fully executed ceded reinsurance contracts of all active reinsurance contracts.

Assumed Reinsurance Payable on Paid and Case Losses and Loss Adjustment Expenses

A review of the NAIC's Reinsurance Assumed Jumpstart report indicated several instances where other companies were reporting ceded balances recoverable from the Branch, but the Branch was reporting \$0 or a lesser amount payable to the corresponding companies. Some of the items were determined to be timing differences and others were determined to have resulted from the ceding companies incorrectly coding the recoverables as due from the Branch rather than from Aviva Canada. The Branch was unable to resolve seven discrepancies totaling approximately \$1.5 million.

It is recommended that the Branch resolve the remaining discrepancies between itself and the ceding companies to determine if it has any unreported liabilities for assumed reinsurance balances payable.

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2009 as determined by this examination and as reported by the Branch:

<u>Assets</u>	<u>Assets</u>	Net Admitted <u>Assets</u>	Net Admitted <u>Assets</u>
Bonds	\$12,038,956	\$12,038,956	\$12,038,956
Cash, cash equivalents and short-term investments	5,423,156	5,423,156	5,423,156
Investment income due and accrued	39,401	39,401	39,401
Amounts recoverable from reinsurers	1,611,399	1,611,399	1,611,399
Funds held by or deposited with reinsured companies	<u>1,899</u>	<u>1,899</u>	<u>1,899</u>
Total assets	<u>\$19,114,811</u>	<u>\$19,114,811</u>	<u>\$19,114,811</u>

Liabilities, Surplus and Other FundsLiabilities

Losses and loss adjustment expenses		\$ 5,284,434
Reinsurance payable on paid losses and loss adjustment expenses		3,993,931
Other expenses (excluding taxes, licenses and fees)		65,025
Funds held by company under reinsurance treaties		960,045
Amounts withheld or retained by company for account of others		4,009
Provision for reinsurance		235,000
Total liabilities		<u>\$10,542,444</u>

Surplus and Other Funds

Statutory deposits	\$ 250,000	
Unassigned funds (surplus)	<u>8,322,367</u>	
Surplus as regards policyholders		\$ <u>8,572,367</u>
Total liabilities, surplus and other funds		<u>\$19,114,811</u>

NOTE: The Branch has not been audited by the Internal Revenue Service since it became licensed in this state. 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. Statement of Income

Surplus as regards policyholders increased \$1,815,141 during the four-year examination period January 1, 2006 through December 31, 2009, detailed as follows:

Underwriting Income

Premiums earned		\$ 4,625
Deductions:		
Losses and loss adjustment expenses incurred	\$ 264,210	
Other underwriting expenses incurred	<u>336,136</u>	
Total underwriting deductions		<u>600,346</u>
Net underwriting gain or (loss)		\$ (595,721)

Investment Income

Net investment income earned	<u>\$ 2,541,998</u>	
Net investment gain or (loss)		2,541,998

Other Income

Aggregate write-ins for miscellaneous income	\$ <u>14</u>	
Total other income		<u>14</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$1,946,291
Federal and foreign income taxes incurred		<u>123,919</u>
Net income (loss)		<u>\$1,822,372</u>

C. Capital and Surplus

Surplus as regards policyholders per report on examination as of December 31, 2005			\$6,757,226
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$1,822,372	\$ 0	
Change in provision for reinsurance	<u>0</u>	<u>7,231</u>	
Total gains and losses	<u>\$1,822,372</u>	<u>\$ 7,231</u>	
Net increase (decrease) in surplus			<u>1,815,141</u>
Surplus as regards policyholders per report on examination as of December 31, 2009			<u>\$8,572,367</u>

D. Trusteed Surplus Statement

The following statement shows the trustee surplus of the Branch calculated in accordance with Section 1312 of the New York Insurance Law and as determined by this examination:

Assets

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

New York	\$878,902	
Cash	\$5,636	
Accrued interest income	<u>7,347</u>	
Total		\$ 891,885

Vested in and held by United States Trustee for the protection of all of the Branch's policyholders and creditors within the United States:

Bonds	\$11,160,054	
Cash	3,262,608	
Accrued interest income	<u>32,053</u>	
Total		<u>14,454,715</u>

Total gross trustee assets \$15,346,600

Liabilities

Liabilities as determined by this examination \$10,542,444

Deductions from Liabilities:

Reinsurance recoverable on paid losses and loss adjustment expenses:

Authorized companies	<u>\$1,794,806</u>
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Total deductions 1,794,806

Net liabilities (per Section 1312) \$8,747,638

Trusteed surplus (per Section 1312) 6,598,962

Total liabilities and trustee surplus \$15,346,600

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$5,284,434 is the same as reported by the Branch as of December 31, 2009. 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.

Data anomalies were found in the Branch's 2009 Notes to Financial Statement (Asbestos & Environmental). The Branch responded that these anomalies were partially due to errors made during reporting and partially as a result of re-negotiation.

Also, the Department observed negative "Loss & Loss adjustment expenses" payments during 2009 as reported in the Branch's 2009 Schedule P - Part 1 Summary. The Branch responded that this is due to the timing difference in booking accounts.

Based on the above, it is recommended that the actuarial report comply with Paragraph 7 of the Actuarial Opinion section of NAIC instructions, which states in part as follows:

"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."

It is also recommended that the technical discussions in the actuarial report include sufficient documentation and disclosure for another actuary practicing in the same field to evaluate the analysis.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Trusteed Surplus Impairment</u>	
It was recommended that the Branch deposit additional qualifying assets with its United States trustee to eliminate the remaining impairment.	1, 18
The Branch has complied with this recommendation.	
B. <u>Reinsurance – Letters of Credit</u>	
i. It was recommended that the Branch amend its letter of credit with QBE Insurance and Reinsurance Ltd. to change the name of the beneficiary to Aviva Insurance Company of Canada (U.S. Branch), which is the legal name of the Branch.	7
The Branch has drawn down on this letter of credit. Therefore, this recommendation is no longer applicable.	
ii. It was recommended that the Branch report letters of credit in U.S. dollars in its filed financial statements.	8
The Branch has complied with this recommendation.	
C. <u>Holding Company System</u>	
i. <u>Investment Management Agreement</u>	
It was recommended that the Investment Management Agreement between the Branch and Aviva Investment Canada Inc. be submitted to this Department for approval pursuant to Section 1505(d) of the New York Insurance Law.	10
The Branch has complied with this recommendation.	
ii. <u>Expense Allocation Agreement</u>	
It was recommended that the Branch enter into a management agreement with its Home Office setting forth the services to be performed and the compensation to be paid by the Branch to its Home Office.	10

ITEMPAGE NO.

Given the relatively small size of the US Branch operations, and the fact that the Home Office is providing the runoff services to the Branch at no cost, we have reconsidered this recommendation and no longer believe a management agreement is necessary.

D. Accounts and Records

Custodian Agreement

It was recommended that the Branch amend its custodial agreement to include the safeguards and provisions per the NAIC Financial Condition Examiners Handbook Part 1, Section IV-J.

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The Branch has complied with this recommendation.

E. Losses and Loss Adjustment Expenses

It was recommended that the Branch provide to this Department sufficient documentation for the Department actuary to properly evaluate the Actuarial Report of the Branch.

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The Branch has not complied with this recommendation. A similar comment is made in this report.

F. Funds Held by Company Under Reinsurance Treaties

It was recommended that the Branch reports funds held in its annual statements in accordance with NAIC's Annual Statement Instructions.

20

The Branch has complied with this recommendation starting with the 2010 annual statement.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Holding Company</u>	
	It is recommended in the future that the Branch file its annual holding company registration statements in a timely manner pursuant to the provisions of Part 80-1.4 of Department Regulation 52.	8
B.	<u>Accounts and Records</u>	
i.	It is recommended that the Branch maintain fully executed ceded reinsurance contracts of all active reinsurance contracts.	11
ii.	It is recommended that the Branch resolve the remaining discrepancies between itself and the ceding companies to determine if it has any unreported liabilities for assumed reinsurance balances payable.	11
C.	<u>Losses and Loss Adjustment Expenses</u>	
i.	It is recommended that the actuarial report comply with Paragraph 7 of the Actuarial Opinion section of NAIC instructions.	17
ii.	It is recommended that the technical discussions in the actuarial report include sufficient documentation and disclosure for another actuary practicing in the same field to evaluate the analysis.	17

Respectfully submitted,

_____/s/_____
Sheik H. Mohamed,
Senior Insurance Examiner

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

SHEIK H. MOHAMED, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____/s/_____
Sheik H. Mohamed

Subscribed and sworn to before me
this _____ day of _____, 2011.

Appointment No. 30597

*STATE OF NEW YORK
INSURANCE DEPARTMENT*

I, James J. Wrynn Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Sheik Mohamed

as proper person to examine into the affairs of the

AVIVA INSURANCE COMPANY OF CANADA

UNITED STATES BRANCH

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

Branch

with such other information as he 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 16th day of September, 2010



James J. Wrynn

JAMES J. WRynn
Superintendent of Insurance