



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
UNITED STATES BRANCH  
OF  
THE INDEPENDENT ORDER OF FORESTERS

CONDITION:

DECEMBER 31, 2014

DATE OF REPORT:

JUNE 27, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

AHMED SALEH

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

June 27, 2016

Honorable Maria T. Vullo  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31284, dated July, 22, 2015 and annexed hereto, an examination has been made into the condition and affairs of the United States Branch of The Independent Order of Foresters, hereinafter referred to as “the Society,” at its home office located at 789 Don Mills Road, Toronto, Ontario M3C 1T9 Canada.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The material recommendation and violations contained in this report are summarized below.

- The examiner recommends that the Society continue to make efforts to reduce expenses, and continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored. (See item 6F of this report)
- The Society violated several sections of Department Regulation No. 60 by failing to examine disclosure statements; failing to ascertain if they were accurate and met the requirements of the insurance law; failing to furnish sales material, proposals and completed Disclosure Statements to the insurer whose coverage was being replaced; failing to provide such letters within the 10 day time period; failing to issue revised disclosure statements in the instances where the policy issued differed from the policy applied for. (See item 7A of this report)
- The Society violated Section 2112(d) of the New York Insurance Law when it failed to notify the Superintendent of the agents' terminations, when it failed to file a statement with the superintendent within 30 days, in such form as the superintendent may prescribe, of the facts relative to such termination for cause, and when it failed to provide, within 15 days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to all eight producers at their last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery. (See item 7A of this report)
- The Society violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement on its claim form immediately above the space provided for the signature of the person executing the claim statement. (See item 7C of this report)
- The Society violated Section 3227(c) of the New York Insurance Law by failing to pay the required interest on policy loans and surrendered policies. (See item 7C of this report)

## 2. SCOPE OF EXAMINATION

The examination of the Society was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2015 Edition* (the “Handbook”). The examination covers the three-year period from January 1, 2012 to December 31, 2014. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2014 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Society conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

The examination was conducted on a risk focused basis in accordance with the provisions of the Handbook published by the National Association of Insurance Commissioners (“NAIC”). The Handbook guidance provides for the establishment of an examination plan based on the examiner’s assessment of risk in the insurer’s operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management’s compliance with New York statutes and Department guidelines, Statutory Accounting Principles as adopted by the Department, and annual statement instructions.

Information about the Society's organizational structure, business approach and control environment were utilized to develop the examination approach. The Society's risks and management activities were evaluated incorporating the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The Society was audited annually, for the years 2012 through 2014, by the accounting firm of KPMG, LLP ("KPMG"). The Society received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Society has an internal audit department ("IAD"). The IAD provides assurance that the organization's risk management, governance and internal control processes are operating effectively. Where applicable, internal audit workpapers and reports were reviewed and portions were relied upon for this examination.

The examiner reviewed the corrective actions taken by the Society with respect to the recommendation and violation contained in the prior report on examination. The results of the examiner's review are contained in item 8 of this report.

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

### 3. DESCRIPTION OF SOCIETY

#### A. History

The Society's origin traces back to a reincorporation under the name of the Right Worthy High Court of The Independent Order of Foresters, in Ontario Canada in 1881.

The Society was reincorporated in 1889 as a federal corporation by an act of the Canadian Parliament and has continued to be a federal corporation under Canadian law. In 1890, the Society received a license from the State of New York to conduct business in the United States as an alien fraternal benefit society. In 1913, the Society's name was changed to The Independent Order of Foresters. Since 1926, the following societies have been merged into the Society:

<u>Year</u>	<u>Name of Society</u>
1926	The Ancient Order of the United Workmen of Ontario
1926	The United States Branch of the Canadian Home Circles
1931	Royal Templars of Temperance
1931	Modern Brotherhood of America
1952	Catholic Mutual Benefit Organization
1971	The Royal Clan Order of Scottish Clans
1971	The Canadian Business of Modern Woodmen of America
1992	Canadian Foresters Life Insurance Society

On January 19, 2011, the Society acquired First Investors Consolidated Corporation ("FICC"), which wholly owned First Investors Life Insurance Company ("FILIC"), a domestic stock life insurer, and collectively known as First Investors.

On September 21, 2015, FICC changed its name to Foresters Financial Holding Company, Inc. ("FFHC"), and FILIC changed its name to Foresters Life Insurance and Annuity Company ("FLIAC"). The Foresters family of companies is to be known collectively by one brand - Foresters Financial. The Society operates FLIAC as a standalone entity in the Society's U.S. Division.

#### B. Management

The Society's constitution provides that the board of directors shall be comprised of the International Fraternal President, the President and chief Executive Officer, ex officio and 13 officers elected by the International Assembly, one of whom is designated the International Fraternal Vice President. Every four years the International Assembly meets to elect the board of directors and perform other general business. If a board member dies, resigns, or becomes unable



to continue in office, the other board members may elect a voting member of the Society to fill the vacancy. The new board member will remain in office until the next regular meeting of the International Assembly. As of December 31, 2014, the board of directors consisted of 15 members. Meetings of the board are held at least quarterly.

The 15 board members and their principal business affiliation, as of December 31, 2014, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Sonia A. Baxendale* Toronto, ON	Retired Executive Canadian Imperial Bank of Commerce	2012
James M. Bowden* Rowlett, TX	Retired Owner JiNiN-Co Enterprise, LLC	2009
Richard M. Freeborough* Oakville, ON	Retired Auditor KPMG, LLP (Toronto)	2005
Anthony M. Garcia Vaughn, ON	President and Chief Executive Officer The Independent Order of Foresters	2014
Brian A. Isabelle Prince George, BC	International Fraternal President The Independent Order of Foresters	2009
Robert E. Lamoureux* Toronto, ON	Retired Auditor PriceWaterhouseCoopers	2009
Frank N.C. Lochan* Oakville, ON	Retired Executive Brookfield Asset Management, Inc.	2009
Martha E. Marcon* Glendale, CA	Retired Accountant KPMG, LLP (California)	2009
Laraine J. Morris* Overland Park, KS	Retired Executive Assistant Saint Luke's Health System	2009
David E. Morrison* Winnipeg, MB	Retired Actuary Great-West Life Assurance Company	2005
David R. Saunders* Nottinghamshire, NG	Retired Owner Target Joinery Centres Ltd.	2009
John B. Scott* Arlington Heights, IL	Retired Insurance Executive Kemper Life Insurance Companies	2009

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Michael P. Stramaglia* Toronto, ON	President Matrisc Advisory Group, Inc.	2013
Christopher J. Stranahan Stow, OH	Owner of Retail Shop Wild Birds Unlimited	2009
Wendy A. Watson* Boston, MA	Retired Executive State Street Corporation	2013

\* Not affiliated with the Society

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Society as of December 31, 2014:

<u>Name</u>	<u>Title</u>
Anthony M. Garcia	President and Chief Executive Officer
Anthony W. Poole	Executive Vice President
Paul D. Reaburn	Executive Vice President and Chief Financial Officer
Katharine E. Rounthwaite	Senior Vice President, General Counsel, Executive Secretary and Chief Compliance Officer
Kasia Czarski	Senior Vice President, Chief Membership and Marketing Officer
Susanne M. Nielsen	Senior Vice President and Chief Talent Officer
J. Stephen McDonald	Vice President, Controller and Executive Treasurer
Ralph Ovsec	Vice President and Chief Actuary
Rino Rondinone	Vice President and Chief Information Officer
James G. Giles	Vice President and Chief Investment Officer
Patricia Colavita	Vice President and Chief Internal Auditor
Valerie L. Howes*	Assistant Vice President, Special Investigations Unit and Consumer Complaints

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

Katharine E. Rounthwaite retired and was replaced as General Counsel by Rene Zanin in February 2015; she was also replaced as Senior Vice President and Executive Secretary by Susanne M. Nielsen, and as Chief Compliance Officer by Sharon T. Griffin both in March 2015.

In May, 2015, Cheryl K. Neal replaced Anthony W. Poole as Executive Vice President.

#### 4. TERRITORY AND PLAN OF OPERATIONS

The Society is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Society is licensed to transact business in all 50 states and the District of Columbia. In 2014, 27.30% of life premiums were received from California (9.99%), Texas (8.77%) and Florida (8.54%); 80.31% of annuity considerations were received from Michigan (34.62%), California (23.82%), and Texas (21.87%); and 30.94% of deposit type funds were received from California (14.16%), Illinois (9.30%), and Texas (7.48%). 3.87% of life premiums and 2.74% of annuity and deposit type funds were received from New York. Certificates are written on a participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2014, the Society had \$1,000,000 (par value) of U.S. Treasury Notes on deposit with the State of New York, its port of entry state, for the benefit of all policyholders, claimants and creditors of the Society. As per confirmations received from the following states which were reported in Schedule E of the 2014 filed annual statement, an additional \$903,750 was being held by the states of Florida, New Hampshire and North Carolina.

##### B. Direct Operations

The Independent Order of Foresters (“Foresters”) operates under three business segments by Country; The U.S. Division, the Canadian Division, and the U.K. Division. The Society focuses its sales on the middle-income market combining its financial service expertise with its community involvement. In the United States, the Society markets a range of life insurance products including whole life, universal life, and term life, through Independent Marketing Organizations (“IMOs”).

The percentage of the Society’s business accounted for by National Marketing Organizations (“NMOs”), National Agents Alliance (“NAA”), Broker General Agencies (“BGA”) and First Investors Consolidated Corporation (“FICC”) was 61%, 22%, 11% and 6%, respectively.

During the current examination period, the Society’s products were available through 11 IMOs and the number of independent agents appointed with the Society was 31,717 in 2012, 32,732 in 2013, and 27,492 in 2014. Included in these numbers were New York appointed agents of 1,257 in 2012, 1,487 in 2013, and 1,333 in 2014.

The U.S. Division continues to focus on: diversifying the product portfolio through the introduction of new permanent products; recruiting additional IMO's and producers; marketing the Society's value proposition to appointed producers; providing producers with a good service experience; and leveraging the Society's fraternal nature with prospects and members.

### C. Reinsurance

As of December 31, 2014, the Society had reinsurance treaties in effect with four companies, of which two were authorized or accredited. The Society's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$500,000. The total face amount of life insurance ceded as of December 31, 2014, was \$5,601,945,618, which represents 19.8% of the total face amount of life insurance in force. No reserve credit was taken for reinsurance ceded to unauthorized companies.

The Society did not assume any reinsurance business during the examination period.

## 5. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Society during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Society's financial growth (decline) during the period under review:

	<u>December 31,</u> <u>2011</u>	<u>December 31,</u> <u>2014</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$2,789,815,266</u>	<u>\$2,911,783,932</u>	<u>\$121,968,666</u>
Liabilities	<u>\$2,630,753,911</u>	<u>\$2,805,341,987</u>	<u>\$174,588,076</u>
Reserve for Future Fraternal Benefits	\$ 11,000,000	\$ 11,000,000	\$ 0
Special Reserve re: Arkansas	300,000	300,000	0
Unassigned funds (surplus)	<u>147,761,355</u>	<u>95,141,945</u>	<u>(52,619,410)</u>
Total surplus	<u>\$ 159,061,355</u>	<u>\$ 106,441,945</u>	<u>\$ (52,619,410)</u>
Total liabilities and surplus	<u>\$2,789,815,266</u>	<u>\$2,911,783,932</u>	<u>\$121,968,666</u>

The trustee assets of a licensed alien insurer entered through this state are required to be continuously kept in this state. The following table indicates the Society's financial growth (decline) as shown in the trustee statements during the period under review:

	<u>December 31,</u> <u>2011</u>	<u>December 31,</u> <u>2014</u>	<u>Increase</u> <u>(Decrease)</u>
Trustee assets	<u>\$2,555,930,694</u>	<u>\$2,620,728,178</u>	<u>\$ 64,797,484</u>
Deposit with the State of New York	1,079,860	1,046,629	(33,231)
Accrued interest	<u>4,842</u>	<u>4,868</u>	<u>26</u>
Total trustee assets	<u>\$2,557,015,397</u>	<u>\$2,621,779,675</u>	<u>\$ 64,764,278</u>
Liabilities	<u>\$2,630,753,911</u>	<u>\$2,805,341,957</u>	<u>\$174,588,046</u>
Deductions from liabilities	<u>210,814,431</u>	<u>238,529,602</u>	<u>27,715,171</u>
Net liabilities	<u>\$2,419,939,480</u>	<u>\$2,566,812,355</u>	<u>\$146,872,875</u>
Trustee surplus	<u>137,075,917</u>	<u>54,967,290</u>	<u>(82,108,627)</u>
Total liabilities and trustee surplus	<u>\$2,557,015,397</u>	<u>\$2,621,779,675</u>	<u>\$ 64,764,278</u>

The Society has maintained the required trusteed surplus, during the period under examination, as required by Section 4503(c) of the New York Insurance Law.

The Society's invested assets as of December 31, 2014 were mainly comprised of bonds (89.3%) and contract loans (5.0%).

The majority (99.4%) of the Society's bond portfolio, as of December 31, 2014, was comprised of investment grade obligations.

The following is the net gain (loss) from operations by line of business after refund to members but before realized capital gains (losses) reported for each of the years under examination in the Society's filed annual statements:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Ordinary:			
Life insurance	\$(65,455,269)	\$(39,956,253)	\$(50,472,268)
Individual annuities	(3,123,476)	1,280,551	2,020,562
Supplementary contracts	<u>26,492</u>	<u>918,844</u>	<u>(797,906)</u>
Total ordinary	<u>\$(68,552,153)</u>	<u>\$(37,756,858)</u>	<u>\$(49,248,612)</u>
Accident and health:			
Other	\$ <u>(1,012,440)</u>	\$ <u>(468,810)</u>	\$ <u>(382,819)</u>
Total accident and health	\$ <u>(495,258)</u>	\$ <u>(468,810)</u>	\$ <u>(382,819)</u>
All other lines	\$ <u>21,991,441</u>	\$ <u>19,484,497</u>	\$ <u>17,339,641</u>
Total insurance	<u>\$(48,068,410)</u>	<u>\$(19,209,981)</u>	<u>\$(32,674,609)</u>
Fraternal benefits	\$ <u>2,906,532</u>	\$ <u>(4,630,788)</u>	\$ <u>(4,905,046)</u>
Total	<u>\$(45,161,878)</u>	<u>\$(23,840,769)</u>	<u>\$(37,579,655)</u>

The steady losses in ordinary life insurance during the examination period were the result of the continued significant level of first year premiums and the associated higher first year commissions. The variance between years was due to the, still significant but, reduced level of first year premiums and associated commissions.

The loss in individual annuities in 2012 as compared to 2013 and 2014 is due to volatility of the equity markets and the corresponding negative amortization of \$4.2 million to the interest maintenance reserve.

The net income of \$2.9 million in 2012 for fraternal benefits was due to a reserve release of \$7 million based on a methodology change and a review of claims experience for Young Family Member Benefits.

The losses in fraternal benefits in 2013 and 2014 were the result of fraternal benefits expenditures that exceeded investment income for the line of business. The Fraternal operations fund the Society's member benefits and volunteer events. The main source of revenue for fraternal operations is investment income.

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2014, as contained in the Society's 2014 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Society's financial condition as presented in its financial statements contained in the December 31, 2014 filed annual statement.

### A. Independent Accountants

The firm of KPMG was retained by the Society to audit the Society's combined statutory basis statements of financial position of the Society as of December 31<sup>st</sup> of each year in the examination period, and the related statutory-basis statements of operations, surplus, and cash flows for the year then ended.

KPMG concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Society at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

### B. Net Admitted Assets

Bonds	\$2,488,944,752
Common stocks	70,350,255
Mortgage loans on real estate: First liens	651,633
Cash, cash equivalents and short term investments	67,812,524
Contract loans	139,959,835
Other invested assets	19,951,443
Receivable for securities	37,659
Investment income due and accrued	28,244,956
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	300,410
Deferred premiums, agents' balances and installments booked but deferred and not yet due	82,674,727
Amounts recoverable from reinsurers	12,840,457
Sundry Suspense	15,281
 Total admitted assets	 <u>\$2,911,783,932</u>



C. Liabilities, Surplus and Other Funds

Aggregate reserve for life contracts	\$2,409,394,201
Aggregate reserve for accident and health contracts	2,950,258
Liability for deposit-type contracts	15,720,586
Contract claims:	
Life	74,384,794
Accident and health	2,737
Refunds due and unpaid	13,496
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts:	
Dividends apportioned for payment	23,226,249
Premiums and annuity considerations for life and accident and health contracts received in advance	941,444
Contract liabilities not included elsewhere:	
Interest maintenance reserve	204,260,516
Commissions to fieldworkers due or accrued	1,173,394
General expenses due or accrued	2,944,061
Amounts withheld or retained by Society as agent or trustee	311,620
Remittances and items not allocated	6,315,636
Liability for benefits for employees and fieldworkers if not included above	8,551,499
Asset valuation reserve	21,398,851
Reserve for fraternal benefits approved	18,439,645
Interbranch payables	10,189,406
Miscellaneous liabilities	1,757,980
Benevolent Fund	1,910,741
Other liability reinsurance	1,269,873
Interest on certificate claims	185,000
 Total liabilities	 <u>\$2,805,341,987</u>
 Reserve for future fraternal benefits	 \$ 11,000,000
Special Reserve re: Arkansas	300,000
Unassigned funds (surplus)	<u>95,141,945</u>
 Total surplus and other funds	 <u>\$ 106,441,945</u>
 Total liabilities, surplus and other funds	 <u>\$2,911,783,932</u>

D. Condensed Summary of Operations

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Premiums and considerations	\$301,335,988	\$327,627,542	\$354,931,206
Investment income	127,674,901	126,148,228	125,554,149
Commissions and reserve adjustments on reinsurance ceded	12,327,207	10,535,607	9,682,167
Miscellaneous income	<u>(365,193)</u>	<u>(454,050)</u>	<u>(158,892)</u>
 Total income	 <u>\$440,972,903</u>	 <u>\$463,857,327</u>	 <u>\$490,008,630</u>
 Benefit payments	 \$207,249,025	 \$224,498,479	 \$252,335,456
Increase in reserves	25,969,086	39,489,116	50,024,352
Commissions	125,894,435	105,570,112	102,047,299
General expenses and taxes	112,341,938	96,716,501	101,109,135
Decrease in reserves for fraternal benefits approved	<u>(6,955,418)</u>	<u>(99,211)</u>	<u>(265,758)</u>
 Total deductions	 <u>\$464,999,066</u>	 <u>\$466,174,997</u>	 <u>\$505,250,484</u>
 Net gain (loss)	 \$ (24,026,163)	 \$ (2,371,670)	 \$ (15,241,854)
Refunds to members	20,640,457	21,054,289	21,954,982
Net realized capital gains (losses)	<u>6,155,691</u>	<u>8,549,846</u>	<u>8,423,472</u>
 Net income	 <u>\$ (38,510,929)</u>	 <u>\$ (14,822,113)</u>	 <u>\$ (28,773,364)</u>

The decrease in general expenses in 2013 as compared to 2012 is primarily due to process efficiencies implemented to lower unit costs, such as: 1) the implementation of a new business underwriting system; 2) implementation of an electronic imaging system; and 3) consolidation and elimination of duplicate functions within the North American insurance operations processes.

The \$38.5 million in net loss for the year ending December 31, 2012 was primarily a result of 1) a \$30.1 million increase in reserves due to continued growth in in-force business; 2) a \$2.9 million increase in agent compensation due to higher renewal commissions on growing in-force business; and 3) a \$2.9 million increase in benefit payments due to continued growth in the in-force business.

The \$21.7 million decrease in net loss for the year ending December 31, 2013, compared to the previous year was primarily a result of 1) a \$26.3 million increase in premiums and annuity

considerations; 2) a \$20.3 million decrease in commissions on premiums due to lower commissions on first year premiums; and 3) a \$15.6 million decrease in general insurance expenses primarily due to process efficiencies implemented in the last several years to lower unit costs. Offsetting these were 1) a \$1.8 million decrease in commissions and reserve adjustments on reinsurance ceded; 2) a \$17.2 million increase in benefit payments due to continued growth in the in-force business; 3) a \$13.5 million increase in reserves due to a higher in-force block of business; increased surrender activities, and increased reserve credit taken for term business; and 4) a \$6.8 million reduction in the decrease in reserves for fraternal benefits approved due to a review of claims experience.

The \$12.9 million increase in net loss for the year ending December 31, 2014 compared to the previous year was primarily a result of 1) a \$27.9 million increase in benefit payments due to continued growth in in-force business; 2) a \$10.6 million increase in reserves due to changes in in-force business; and 3) a \$4.4 million increase in general insurance expenses due to additional costs associated with the increase in sales volume. Offsetting these were a \$27.3 million increase in premiums and annuity considerations and a \$3.5 million decrease in commissions on premiums due to lower commissions on first year premiums.

E. Surplus Account

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Surplus, December 31, prior year	\$ <u>159,061,355</u>	\$ <u>145,524,728</u>	\$ <u>124,022,621</u>
Net income	\$ (38,510,929)	\$ (14,822,113)	\$ (28,773,364)
Change in net unrealized capital gains (losses)	9,148,879	(4,369,219)	4,785,950
Change in non-admitted assets	12,373,827	(2,481,586)	5,908,428
Change in asset valuation reserve	2,404,694	170,811	498,310
Aggregate write ins for gains and losses in surplus:			
Surplus contributions from parent	1,047,105	0	0
Sundry	<u>(203)</u>	<u>0</u>	<u>0</u>
Net change in surplus for the year	\$ <u>(13,536,627)</u>	\$ <u>(21,502,107)</u>	\$ <u>(17,580,676)</u>
Surplus, December 31, current year	\$ <u>145,524,728</u>	\$ <u>124,022,621</u>	\$ <u>106,441,945</u>

F. Actuarial Review

The Department conducted a review of reserves as of December 31, 2014. During prior examinations it was noted that the company's excessive expenses were leading to net losses and rapidly decreasing surplus. Due to concerns with potentially excessive expenses the Society continues to provide a quarterly expense and surplus tracking report to document their expense overrun. Since the last exam the Society has made several efforts to reduce expenses and should continue to do so in the future. In addition, the company continues to monitor emerging mortality experience and has recently re-priced their plan right product.

The examiner recommends that the Society continue to make efforts to reduce expenses and continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.

## 7. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Society's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Society.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Society's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

#### 1. Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed “Disclosure Statement;” . . .

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the “*IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts;” the signed and completed “Disclosure Statement;” and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later;

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised “Disclosure Statement,” any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

Section 51.6(e) of Department Regulation No. 60 states in part:

“ . . . the insurer replacing the life insurance policy . . . shall establish and implement procedures to ensure compliance with the requirements of this Part . . . Such insurers shall also designate a principal officer specifically responsible for the monitoring and enforcement of these procedures. All insurers covered under this Part shall furnish the Superintendent with these procedures and the name and title of the designated principal officer . . . Any changes in these procedures or the designated principal officer shall be furnished to the Superintendent within thirty days of such change.”

In seven out of the 30 (23%) life insurance external policy replacements reviewed, the Society failed to provide proof that the insurer whose coverage was being replaced was furnished with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement (four instances) or provide the documentation within 10 days of receipt of the completed application (three instances).

The Society violated Section 51.6(b)(4) of Department Regulation No. 60 by either failing to provide proof that the insurer whose coverage was being replaced was furnished with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement, or failing to provide such information within 10 days of receipt of the application.

In six out of the 35 (17.14%) life insurance external and internal policy replacements reviewed, the Society failed to maintain complete copies of replacement files as follows:

- In four instances, the replacement file did not contain the authorization to release policy information.
- In one instance, the replacement file did not contain the sales material used in the sale of the proposed life insurance contract.
- In two instances, the replacement file did not contain the signed and completed disclosure statements.
- In one instance, the examiner could not locate the Important Notice Regarding Replacement of Life Insurance (“Important Notice”)

For one of the aforementioned policy replacements, the authorization form, disclosure statement and the Important Notice was missing.

The Society violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy, the Important Notice Regarding Replacement, and signed and completed Disclosure Statements.

In three of the 30 (10%) life insurance external policy replacements reviewed, the Society failed to, within 10 days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection.

The Society violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to, within 10 days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.

In three of the 30 (10%) life insurance external policy replacements reviewed, the Society failed to issue a revised Disclosure Statement in cases where the policy issued differed from the policy applied for.

The Society violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to issue a revised Disclosure Statement in cases where the policy issued differed from the policy applied for.

On December 18, 2013, Paula DiMascolo replaced Lesley Patterson as the Principal Officer responsible for monitoring and enforcement of Department Regulation No. 60 procedures. However, the Society failed to notify Superintendent of the change in the designated principal officer within 30 days of such change.

The Society violated Section 51.6(e) of the Department Regulation No. 60 by failing to notify the Superintendent of the change in the designated principal officer within 30 days of such change.

2. Section 2112(d) of the New York Insurance Law states, in part:

“Every . . . fraternal benefit society . . . doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The . . . fraternal benefit society . . . shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her, or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier . . . .”

The examiner reviewed all eight producers that were terminated for cause during the examination period under review. The review indicated that, for all eight terminations reviewed, the Society failed to file with the superintendent within 30 days a statement, of the facts relative to such termination for cause.

Additionally, the Society failed to provide, within 15 days after notification was sent to the superintendent, a copy of the statement filed with the superintendent to all eight producers at their last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery.

The Society violated Section 2112(d) of the New York Insurance Law when it failed to file with the superintendent within 30 days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause, and when it failed to provide, within 15 days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to all eight producers at their last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery.

#### B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Based upon the sample reviewed, no significant findings were noted.



### C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

1. Section 86.4(d) of Department Regulation No. 95 states, in part:

“Location of warning statements and type size. The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form . . . .”

A review of the Society’s life and annuity claim forms utilized during the examination period revealed that the fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.

The Society violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement on its claim form immediately above the space provided for the signature of the person executing the claim statement.

2. Section 3227 of the New York Insurance Law states in part:

“(a) Interest . . . shall be payable by fraternal benefit societies . . . upon: (1) the value of policies surrendered by policyholders for cash values, including the rollover of annuity funds to other entities, and (2) the funds disbursed as policy loans. Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest calculated on amounts described in paragraphs one and two of subsection (a) hereof shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the funds are not mailed or delivered by the insurer within ten working days of said receipt.

(c) No interest need be payable pursuant to this section unless the of such interest is at least twenty-five dollars or if the payment of benefits by the insurer has been deferred pursuant to other provisions of this chapter . . . .”

The examiner reviewed a sample of 42 policy loans and 22 surrendered policies. The policy files reviewed indicated that the Company failed to pay interest in all three cases (one policy loan and two surrendered policies), where interest was required to be paid in accordance with Section 3227(c) of the New York Insurance Law.

As a result, the examiner requested that the Society perform a study of all policy loans and surrendered policies paid during the examination period to determine whether any additional policy loans or surrendered policies required the payment of interest. Based on the study performed, the Society identified two additional surrendered policies that required the payment of interest, bringing the total to four surrendered policies and one policy loan in which the Society failed to pay interest in accordance with Section 3227(c) of the New York Insurance Law.

The Society violated Section 3227(c) of the New York Insurance Law by failing to pay the required interest on funds disbursed as policy loans and surrendered policies.

3. During a review of surrendered policies and policy loans, it was determined that the Society's whole life policy forms, namely, PlanRight (WL PRG-NY01-2012, WL PRL-NY01-2012 and WL PRM-NY01-2012), Advantage Plus (WL-NY01-2013) and Single Premium Whole Life (WL-SPREM-NY01-2014) contain the following provision:

“ . . . Interest will be paid on any cash value not mailed within 10 days after we receive the required documentation . . . Interest will be paid on any loan not mailed within 10 days after we receive the required documentation . . . ”

The review indicated that the Society failed to pay interest on any surrender or policy loan transaction not mailed within 10 days after receipt of the required documentation as stated in its filed policy forms.

When brought to the Society's attention, the Society performed a study to determine the number of cash value or policy loan transactions that required the payment of interest, and subsequently made the necessary payments of interest to the affected policyholders.

The examiner recommends that going forward the Society pays interest on any loan and any cash value not mailed within 10 days, in accordance with the policy provision contained in the policies sold to insureds.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation and violation contained in the prior report on examination and the subsequent actions taken by the Society in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Department recommended that the Society continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.</p> <p>The examination indicated that the Society continues to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.</p>
B	<p>The Society violated Section 86.4 of Department Regulation No. 95 by using claim forms that did not contain the required fraud warning statement and by not submitting an alternate fraud warning statement to the Insurance Frauds Bureau for prior approval.</p> <p>The examination revealed that the claim forms used during the examination period contained the required fraud warning statement as required by Section 403(d) of the New York Insurance Law and Sections 86.4(a) and (e) of Department Regulation No. 95. However, the Society failed to place the fraud warning statement on its claim form immediately above the space provided for the signature of the person executing the claim statement as required by Section 86.4(d) of Department Regulation No. 95. (See item 7C of this report)</p>

## 9. SUMMARY AND CONCLUSIONS

Following are the violations and recommendation, and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Society continue to make efforts to reduce expenses, and continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.	17
B	The Society violated Section 51.6(b)(4) of Department Regulation No. 60 by either failing to provide proof that the insurer whose coverage was being replaced was furnished with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement, or failing to provide such information within 10 days of receipt of the application.	19
C	The Society violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy, the important notice regarding replacement, and the signed and completed Disclosure Statements.	19-20
D	The Society violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to, within 10 days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore.	20
E	The Society violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to issue a revised Disclosure Statement in cases where the policy issued differed from the policy applied for.	20
F	The Society violated Section 51.6(e) of Department Regulation No. 60 by failing to notify the Superintendent of the change in the designated principal officer within 30 days of such change.	20

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The Society violated Section 2112(d) of the New York Insurance Law when it failed to file with the superintendent, within 30 days, a statement in such form as the superintendent may prescribe, of the facts relative to such termination for cause, and when it failed to provide, within 15 days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to all eight producers terminated for cause, at their last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery.	21
H	The Society violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement on its claim form immediately above the space provided for the signature of the person executing the claim statement.	22
I	The Society violated Section 3227(c) of the New York Insurance Law by failing to pay the required interest on funds disbursed as policy loans and surrendered policies.	22-23
J	The examiner recommends that going forward the Society pays interest on any loan and any cash value not mailed within 10 days in accordance with its policy provision.	23

Respectfully submitted,

\_\_\_\_\_  
/s/

Ahmed Saleh  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Ahmed Saleh

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 31284

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, ANTHONY J. ALBANESE, Acting 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:

**AHMED SALEH**

as a proper person to examine the affairs of the

**INDEPENDENT ORDER OF FORESTERS**

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

**SOCIETY**

with such other information as he shall deem requisite.

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

this 22nd day of July, 2015

ANTHONY J. ALBANESE  
Acting Superintendent of Financial Services

By:



MARK MCLEOD  
ASSISTANT CHIEF - LIFE BUREAU

