REPORT ON EXAMINATION

OF

FREELANCERS INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2009

DATE OF REPORT **JUNE 27, 2013**

EXAMINER **KENNETH I. MERRITT**

TABLE OF CONTENTS

June 27, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 30483, dated February 9, 2010, attached hereto, I have made an examination into the condition and affairs of Freelancers Insurance Company, Inc., a for-profit stock accident and health corporation licensed pursuant to the provisions of Article 42 of the New York Insurance Law, as of December 31, 2009, and submitted the following report thereon.

The examination was conducted at the home office of Freelancers Insurance Company, Inc., located at 20 Jay Street, Brooklyn, New York.

Wherever the designations "Freelancers" or the "Company" appear herein, without qualification, they should be understood to indicate Freelancers Insurance Company, Inc.

Wherever the designation the "Department" appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. EXECUTIVE SUMMARY

The results of this examination revealed various financial and operational deficiencies that indicated areas of weaknesses and/or directly impacted the Company's compliance with the New York Insurance Law, Department Regulations, Statements of Statutory Accounting Principles as per the National Association of Insurance Commissioners ("NAIC") *Accounting Practices and Procedures Manual* and prescribed practices per the *NAIC's Financial Condition Examiners Handbook.*

The most significant findings relative to this examination include the following:

Financial and Operational

- The Company is not adhering to the member eligibility rules of Freelancers Union, Inc. (the "Parent") of enrolling only New York residents and individuals who are primarily either independent or freelance workers.

- The Company violated Article 15 of the New York Insurance Law when it engaged in various inter-company transactions with certain affiliates during 2009 and 2010, without filing formal written agreements and receiving the non-disapproval of the Department.

- Freelancers violated Article 15 of the New York Insurance Law when it failed to maintain adequate documentation necessary to verify whether certain inter-company transactions between Freelancers and its affiliates were fair and equitable.

- The Company violated Parts 80-1.2 and 80-1.4 of Department Regulation No. 52 (11 NYCRR 80) when it failed to file its 2009 Annual Holding Company Registration Statement Form (HC-1) with all the requisite information and within the required timeframe.

- The Company violated the requirements of Section 1303 of the New York Insurance Law, when it understated its 2009 unpaid claim reserves by approximately $3 million.

- A significant internal control deficiency exists within the Company's cash function wherein the Chief Executive Officer, Chief Accounting and Administration Officer and Controller (without any additional requirements, including a second signatory) can individually execute wire transfers of up to $5 million from Freelancers' bank accounts.

- The Company was billed for charges and services of the Parent which included costs of Freelancers Union, Inc., such as social and political outreach activities. A review of Company paid invoices in 2009 revealed two separate transactions of $155,000 and $77,500, in marketing and advertising payments were made by the Company in connection with these Freelancers Union Inc., activities in the State of California. It should be noted that the Company was not licensed in California. Another example of such unusual and non-insurance related expenses included allocations to the Company in 2009 which were described as costs of the Parent's fundraising activities.

Market Conduct Activities

- During the period January 2009 through February 2010, the Department's Consumer Services Bureau received approximately 115 subscriber complaints against the Company. Most of the complaints involved coverage issues relative to pre-existing conditions, unwarranted coverage cancellations and inaccurate premium billings.

- In 2009, eight hundred of the Company's claims for out-of network services were processed and paid incorrectly, at in-network rates.

- The Company violated Sections 3224-a(a) and Section 3224-a(c) of the New York Insurance Law (Prompt Pay Law) in 2009, respectively, when it failed to pay claims in a timely manner and when it failed to pay interest to the claimants for such late payment of the claims, as required by statute.

- The Company's Explanation of Benefits Statements ("EOBs") were not fully compliant with paragraph (7) of Section 3234(b) of the New York Insurance Law. Wherein there no mention in the EOBs that failure to comply with the applicable requirements of paragraph (7) may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made.

- The Company failed to provide any evidence of fulfillment with Department Circular Letter No. 9 (1999) when it failed to obtain from either its internal auditor or independent CPA, the mandated certification affirming that proper Company standards for claims processing, etc. were in place.

2. SCOPE OF THE EXAMINATION

The Company was licensed on November 2008 and commenced writing business in January 2009. This is the first examination of the Company. This examination was a combined (financial and market conduct) examination and covered the one-year period January 1, 2009 to December 31, 2009. The financial component of the examination was conducted as a financial examination, as defined in the National Association of Insurance Commissioners ("NAIC") *Financial Condition Examiners Handbook, 2009 Edition* (the "Handbook"). The examination was conducted observing the guidelines and procedures in the Handbook. Where deemed appropriate by the examiners, transactions occurring subsequent to December 31, 2009, were also reviewed.

The examination was conducted on a risk-focused basis in accordance with the provisions of the Handbook, which provides guidance for the establishment of an examination plan based on the examiner's assessment of risk in the Company's operations and utilizes that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate Freelancers' current financial condition, as well as identify prospective risks that may threaten the future solvency of the Company.

The examiner identified key processes, assessed the risks within those processes and assessed the internal control systems and procedures used to mitigate those risks. The examination also included an assessment of the principles used and significant estimates made by management, an evaluation of the overall financial statement presentation, and determined management's compliance with the Department's statutes

and guidelines, Statutory Accounting Principles, as adopted by the Department and NAIC annual statement instructions.

Information concerning the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated the Company's risks and management activities in accordance with the NAIC's nine branded risk categories, as provided in the Handbook.

These categories are as follows:

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

The Company was audited, following its first year of operation, as of December 31, 2009, by the accounting firm, BDO Seidman, LLP ("BDO"). The Company received an unqualified opinion. Certain audit workpapers of BDO were reviewed and relied upon in conjunction with this examination. A review was also made of Freelancers' Corporate Governance structure.

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

3. DESCRIPTION OF THE COMPANY

Freelancers Insurance Company, Inc., was incorporated in the State of New York on January 28, 2008, as a for-profit stock corporation. The Company was licensed by the Department on November 10, 2008, as an accident and health insurer pursuant to Article 42 of the New York Insurance Law and commenced writing business on January 1, 2009.

Concurrent with its licensing, the Company was permitted, until January 1, 2010, to insure only the association group members of Freelancers Union, Inc., Freelancers' Parent.

In order to continue enrolling only Freelancers Union, Inc.'s ("FUI"), members beyond January 1, 2010, the date stipulated in which Freelancers was to start enrolling all other similar small groups and individuals, the Company submitted an application for participation in the independent workers demonstration project pursuant to Section 1123 of the New York Insurance Law. Section 1123 of the New York Insurance Law became effective on September 16, 2009, and Freelancers filed an application with the Department on October 7, 2009.

The Company was permitted to restrict enrollment to Freelancers Union, Inc.'s members during the Department's review of the application. The application was approved by the Department on December 7, 2010.

A. Management and Controls

The Company's by-laws provide for a Board of Directors ("Board") consisting of at least thirteen (13) members, but not more than seventeen (17).

The following fourteen (14) members comprised the Company's Board as of December 31, 2009:

Director	Principal Business Affiliation
John Baackes Menands, NY	President, Senior Whole Health of NY, Inc.
Nancy Biberman Pelham, NY	Corporation Co-Founder and President, Women Housing and Economic Development
Stephanie Buchanan Brooklyn, NY	Student
Trisala Chandaria New York, NY	Co-Founder, Temboo
Cheryl Dorsey Washington, DC	President, Echoing Green
Ron Gryzinski Chicago, IL	President and Chief Executive Officer, Shorebank
Matt Hancock Chicago, IL	Executive Director, Center for Polytechnical Education
Charles Heckscher Princeton, NJ	Professor, Rutgers University
Sara Horowitz Brooklyn, NY	President and Chief Executive Officer, Freelancers Insurance Company, Inc.
Andrew Kassoy New York, NY	Co-founder, B-Corporation
Hanan Kolko Montclair, NJ	Shareholder and Director, Meyer, Suozzi, English & Klein
Megan Mardiney Brooklyn, NY	Principal and Creative Director, The Mardiney Group
Andrea Phillips New York, NY	Executive Vice President, Seedco Financial
Laurie Rubiner Washington, DC	Vice President, Planned Parenthood Federation of America

The following individuals were listed as Freelancers' executive officers as of December 31, 2009:

Sara Horowitz	President and Chief Executive Officer
Hanan Kolko	Vice-President
Dina Sena	Chief Financial Officer

The Company's by-laws provide for an annual meeting of the Board of Directors immediately after Freelancers' shareholders annual meeting, which is held in June of each year. In addition, regular meetings of the Board of Directors are to be held as designated by resolutions of the Board or by the written consent of all the Directors.

During calendar year 2009, Freelancers' Board of Directors held an annual meeting as well as several regular meetings. Such meetings were generally well attended with all Board members attending more than 50% of the meetings they were eligible to attend.

Section 5.1 of the Company's by-laws states in part:

> *"…Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law, provided that at any one time there shall be at least two officers of the corporation. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors."*

It was noted also that the Company disclosed in the Jurat Pages of its 2009 and 2010 annual statement filings, and in its 2011 filed quarterly statements, a Vice-President who was not an employee of the Company. This individual is a Company Board member only.

In addition, beginning with the Company's September 30, 2010 quarterly statement filing and continuing through its June 30, 2011 quarterly statement filing, the Jurat Pages included the name of a Chief Financial Officer who also was not an employee of the Company. This individual was an outside consultant whose firm performed various services for the Company pursuant to a written contract. Such individual should not be considered an employee of the Company.

Accordingly, Freelancers' President and Chief Executive Officer, one person holding both positions, is the only Company employee. Although the Company's by-laws do not dictate that its executive managers be employees of the Company, prudent business practices would dictate otherwise.

It is recommended that the Board of Directors of the Company follow prudent business practices by ensuring that its executive management, at all times, are employees of the Company.

Section 5.2(c) of the by-laws states the following with respect to the duties of the Company's Vice-Presidents:

> *"(c) Duties of Vice-Presidents. The Vice-Presidents (if any), in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant…"*

Based on the above indicated requirement of the by-laws and the examiner's finding that the President and Chief Executive Officer is the Company's only officer, it does not appear that the Company has in place the necessary structure to readily succeed and assume the role of the President. It is therefore incumbent upon the Board to elect

and have Vice-Presidents or other succession plan. In turn, this will provide Freelancers with a viable plan of succession if such vacancy was to occur.

It is recommended that the Board of Directors implement a viable plan of succession, including staffing Freelancers with Vice-Presidents who can duly perform or assume the duties of the President, if called upon by the Board.

B. Territory and Plan of Operation

The Company provides health insurance coverage exclusively to the members of Freelancers Union, Inc. ("FUI"), which consist of independent workers who either reside or work within New York State. Pursuant to eligibility rules, independent workers are defined as individuals employed as follows: (i) freelancers, (ii) independent contractors or consultants, (iii) self-employed persons, (iv) part-time or temporary workers, and (v) workers employed simultaneously by multiple companies. Except for individuals receiving a W-2 while working for a temporary or placement agency, a member is not considered an independent worker if at the time of applying for coverage, the individual worked full-time as a "W-2 employee" for the last 18 months with the same employer, or whose employment is expected to last more than 18 months.

In order for a member of Freelancers Union, Inc. to obtain insurance coverage, he or she must meet the following eligibility requirements:

- Be an independent worker living or working in New York State;
- Work in one or more of the following eligible industries and/or occupations: (i) arts, design and entertainment, (ii) domestic child care giver, (iii) financial

services, (iv) media and advertising, (v) nonprofit, (vi) skilled computer user, (vii) technology, and (viii) traditional or alternative health care provider; and

- Demonstrate that he or she has done one of the following while working in the eligible industries or occupations above: (i) worked at least 20 paid hours in each of the last 8 weeks or (ii) earned at least $10,000 within the last 6 months.

In a letter dated December 1, 2009, to the Department, Freelancers Union, Inc., proposed revisions to its Members' Eligibility Rules for 2010, namely redefining the meaning of an independent worker and expanding the Company's eligible area to include additional New York counties within the proximity of several other states contiguous to New York State. Independent workers were redefined as individuals who work as freelancers, independent contractors and consultants, or who are self-employed, part-time, or temporary workers. No longer considered independent workers are individuals who at the time of application, are working full-time as a W-2 employee, unless they work for an employment agency or payroll service, or for an employer for a pre-determined, finite period of time or on a specific project(s). Also, the 2010 definition of eligible area was revised wherein members enrolled in Freelancers must either live in Freelancers' coverage area or live in an eligible state and also work within the Company's coverage area. Freelancers' coverage area comprises the thirty-four counties in New York where the Company has filed rates and forms.

As of December 31, 2009, the Company reported net written premiums in the amount of $67,361,063.

The following is a breakdown of the 2009 total net premiums by the individual health plan types marketed by the Company:

Policy Plan Type	**Amount**
Provider Preferred Option 1	$ 19,485,027
Provider Preferred Option 2	22,884,573
Provider Preferred Option 3	23,083,138
High Deductible Plan 1 ($5,000)	486,714
High Deductible Plan 2 ($10,000)	1,421,611
Total	$ 67,361,063

C. Reinsurance

The Company held the following ceded excess-of-loss reinsurance coverage with Munich Reinsurance America, a Delaware Corporation, and also an authorized New York reinsurer, as of December 31, 2009.

Layer 1

Company's retention	Reinsurer's liability
$250,000 of the first ultimate net loss, each covered person, each agreement year.	100% excess of the Company's $250,000 retention, of ultimate net loss, each covered person, each agreement year, not to exceed a maximum liability of $750,000 each covered person, per agreement year.

Layer 2

Company's retention	Reinsurer's liability
$250,000 of the first ultimate net loss, each covered person, each agreement year.	100% excess of $1,000,000, of ultimate net loss, each person, each agreement year, not to exceed a maximum liability of $1,000,000 each covered person per agreement year.

Extra Contractual Obligations*

Company's retention	Reinsurer's liability
$250,000 of the first ultimate net loss, each covered person, each agreement year.	A maximum limit on incurred claims of one additional policy limit any one covered person and $2 million for all covered persons in the aggregate under all policies reinsured in any one agreement year.

*Note: Extra Contractual Obligations: Additional liability above the Company's policy limits incurred in connection with a lawsuit and a court award against the Company for legal costs or expenses related to the Company's handling of a covered claim, including but not limited to, the failure by the Company to settle within the policy limit, or by reason of alleged or actual negligence, fraud, or bad faith, in rejecting, an order of settlement, or in the preparation of a defense.

The following clause appeared in the reinsurance agreement relative to the applicable business exclusions:

> "Business derived from any pool, association (including joint underwriting associations), syndicate, exchange, plan, fund or other facility directly as a member, subscriber or participant, or indirectly by way of reinsurance or assessments."

Based on the above association exclusion, it was noted that such wording contradicts the status of Freelancers Union, Inc., as an "association group". When questioned about the wording, management indicated the reference to association related to an association group of joint underwriting insurers and not to an association group such as Freelancers Union, Inc. However, the wording clearly states any association.

It is recommended that the Company, with regard to its reinsurance agreements, state in the agreements that such exclusion does not apply to Freelancers Union, Inc., as an association group.

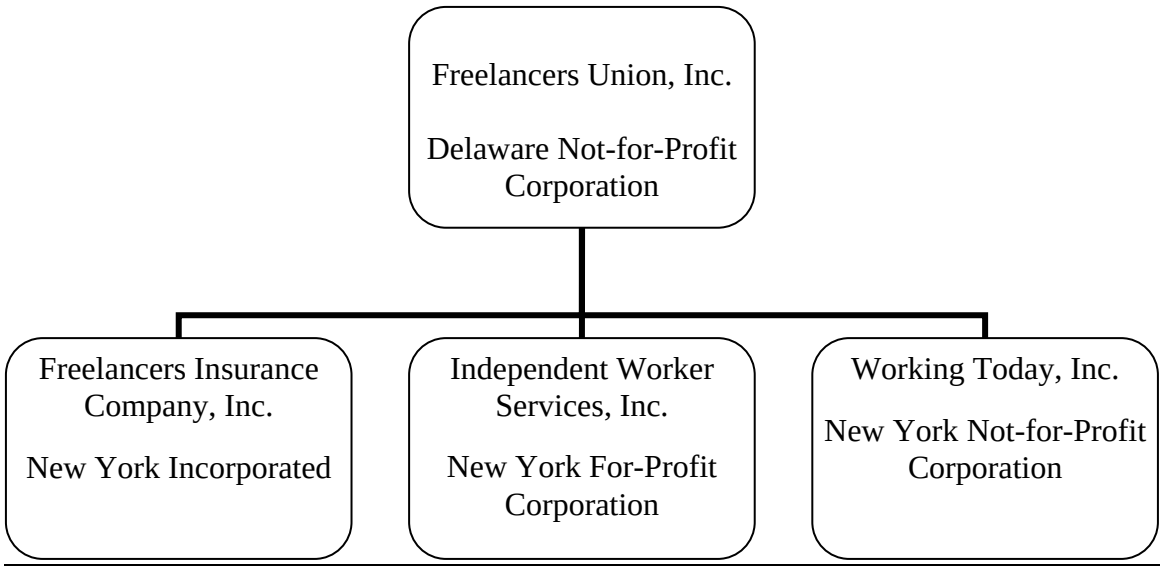
Subsequent the examination date the Company amended the language in its reinsurance agreements to reflect that Freelancers' Union, Inc. would not be excluded as an association group.

Effective January 1, 2010, the Company effected a new agreement with White Mountain Reinsurance Company of America, a New York domestic insurer, which included the same Company retention and reinsurer liability limits as the previous agreement. The only difference appeared to be with the extra contractual obligations and the applicable annual aggregate limit between the two agreements. The annual maximum limit for all covered persons of $2 million under the 2009 agreement increased to $10 million based on the 2010 agreement.

The reinsurance agreements contained all the required standard clauses, including the insolvency clause, as required by Section 1308 of the New York Insurance Law.

D. Holding Company System

The following chart depicts the Company's holding company system as of December 31, 2009:



The following describes the history and activities of each of the Company's affiliates:

(i) Freelancers Union, Inc. ("FUI" or the "Parent")

FUI is a non-profit organization that was re-organized in 2005 pursuant to the Internal Revenue Code as a Section 501(c)(4) tax-exempt organization. FUI, formerly named Working Today Education Fund, is a national organization that serves the independent workforce through advocacy, education, and service. FUI offers health, dental, life and disability benefits to its members as an association group. By bringing together a large group of people, the organization has been able to negotiate more favorable rates for its members. Any person may become a member of FUI by paying a $40 membership to the Parent. In 2009, the Parent formed Freelancers Insurance Company, Inc., a wholly-owned insurance company that offers health benefits to only FUI's members. Freelancers Union, Inc. provides benefits to members through carriers in addition to Freelancers Insurance Company, Inc. These benefits include dental, disability and life insurance that are offered through FUI's other non-affiliated carriers.

(ii) Working Today, Inc. ("WT")

WT is an Internal Revenue Code Section 501(c)(3) tax exempt, non-profit New York corporation which was formed in 1996. The organization is a research and policy organization. Freelancers Union, Inc., is its sole member. WT provides, through the leasing of its business personnel and infrastructure facilities, all of the administrative services for the day-to-day management of Freelancers Insurance Company, Inc.,

pursuant to an inter-company services agreement. Such agreement was approved by the Department, effective October 23, 2008.

(iii) Independent Worker Services, Inc. ("IWS")

IWS is a wholly-owned for-profit New York corporation of Freelancers Union, Inc. that was established in 2007. IWS provides administrative services to its affiliate, Working Today, Inc. Additionally, IWS on behalf of Freelancers Union, Inc. and Freelancers Insurance Company, Inc., contracted with an outside enrollment and billing vendor during 2009 through the end of August 2010, to provide enrollment, premium billings, collections, cash deposits and bank reconciliation services to FUI in connection with the various insurance products purchased by FUI's members, including, health insurance coverage provided by Freelancers Insurance Company, Inc.

In addition to Freelancers' approved agreement with Working Today, Inc. mentioned in Item (ii) above, the Company also held the following approved inter-company agreement with FUI:

Group Contract between Freelancers Insurance Company, Inc. and Freelancers Union, Inc., effective, November 10, 2008:

The captioned contract was approved by the Department on November 10, 2008. The contract established Freelancers Union, Inc. as the group contract holder with the primary responsibility of paying Freelancers the premiums to secure the benefits for members of the group contract holder who have elected to receive Freelancers' benefits. The group contract holder is responsible for notifying the Company when particular individuals and/or members of their families are to become covered or are no longer to be covered. The Company is not responsible for providing benefits unless it receives timely notification from the group contractholder within 30 days of the occurrence of the event causing member and family eligibility. The group contract holder is not at any time acting as an agent for the Company. Based on the contract and statements made by management, Freelancers Insurance Company, Inc. pays no service fees to Freelancers Union, Inc., under this contract.

Section 1505(d) of the New York Insurance Law states in part:

> "The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to

> enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period...
>
> (d)(1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end …
>
> (d)(3) rendering of services on a regular and systematic basis…"

A review of Freelancers' accounts and records revealed that the Company engaged in numerous inter-company transactions with its affiliates, without providing the Department with any prior written notice, in violation of Sections 1505(d)(1) and (d)(3) of the New York Insurance Law.

Below is a summary of the Company's 2009 year-end inter-company account balances:

Account	2009 Year End Balance
Inter-company receivables	
Due from Freelancers Union, Inc.	$ 8,950,025
Due from Independent Worker Services, Inc.	$ 451,840
Inter-company payables	
Due to Freelancers Union, Inc.	$ 6,721,469
Due to Independent Worker Services, Inc.	$ 205,000
Due to Working Today, Inc.	$ 514,102

Except for the Company's inter-company payable balance of $514,102, owed to Working Today, Inc., which was based on the parties' approved agreement, the remaining balances and associated transactions, were not based on any formally filed and/or approved agreements with the Department, as required by Sections 1505(d)(1) and (d)(3) of the New York Insurance Law.

In the case of the Company's inter-company balances with Freelancers Union Inc., the amounts consisted largely of inter-company transfers of collected premiums between Freelancers and the Parent's bank accounts and expenses incurred from the "non-filed" expense sharing arrangement described below. The inter-company balance, due to Independent Worker Services, Inc., relates to loans or advances received by the Company from IWS. The inter-company receivable account (due from IWS) consists of credit reimbursements due to Freelancers from IWS based on payments that were made by Freelancers for professional services rendered to IWS by outside consultants.

It is recommended that the Company comply with Sections 1505(d)(1) and 1505(d)(3) of the New York Insurance Law relative to transactions with members of its holding company system.

During 2010, the Company continued transacting business with IWS, without having filed an inter-company agreement with the Department. As of the Company's 2010 Annual Statement filing, Freelancers reported an inter-company receivable balance due from IWS in the amount of $71,266.

Subsequent to the examination date, the Company filed an inter-company expense sharing agreement between itself and Freelancers Union, Inc., with the Department. Such agreement was approved by the Department, effective on February 1, 2011. The agreement consists of the following third-party joint services and applicable expense allocations between the Company and its Parent:

Marketing and Advertising

Under the terms of the agreement, advertisements that promote only Freelancers will be paid 100% by the Company. This includes advertisements that do not promote Freelancers Union, Inc. services or benefits other than Freelancers, even if the Parent's name or logo is included in the advertisement in connection with describing Freelancers Insurance Company's benefits. In addition, Freelancers is to pay 100% of a Company advertisement that includes the Parent's name, its logo, or a reference thereto, and only if Freelancers Union, Inc. is not displayed in a predominant manner. The cost of an advertisement that promotes both Freelancers and Freelancers Union, Inc., benefits will be split 50/50 between Freelancers and Freelancers Union, Inc. Advertisements that promote only FUI benefits other than Freelancers Insurance Company, and do not mention Freelancers Insurance Company, Inc. will be paid 100% by FUI.

i. Billing and Enrollment

Billing and enrollment expenses related to FUI group insurance products are allocated between FUI and the Company. The Company's share of any joint billing and enrollment expenses incurred with the Parent is based on the ratio of Freelancers' total enrollees to the total overall enrollment of all FUI's membership.

ii. Other Services

The captioned services which include such expenditures other than marketing and advertising and billing and enrollments, will be allocated based on special studies that analyze the amount of time spent by any third-party administrator that provide services on each party's business, as described in Part 106.2 of Department Regulation No. 30 (11 NYCRR 106).

Part 80-1.2(a) of Department Regulation No. 52 (11 NYCRR 80-1.2) states:

> "An insurer required to register or amend its registration pursuant to Insurance Law, section 1503(a) shall furnish the required information on registration statement form HC-1, as specified in the instructions made a part thereof (see subdivision (d) of this section). The initial registration statement shall be accompanied by the information required by subdivisions (e) and (f) of section 80-1.4 of this Part. Thereafter, an amendment to the registration statement shall be required within 120 days following the end of its ultimate holding company's fiscal year and within 120 days following the end of each succeeding fiscal year, indicating changes, if any, during the preceding fiscal year in respect to items 1, 2, 4, 7 and 8 of the registration statement."

Part 80-1.4(c) of Department Regulation No. 52 (11 NYCRR 80-1.4) states in part:

> "Every controlled insurer registered or required to register pursuant to Insurance Law, section 1503, shall, within 120 days following the end of its ultimate holding company's fiscal year, and within 120 days following the end of each succeeding fiscal year, furnish to the superintendent a report containing the following…
>
> (c) A consolidated balance sheet of the ultimate holding company and each significant person within the holding company system, as of the end of the holding company's fiscal year, and related consolidated statements of income and surplus for the year then ended. Such financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such financials present fairly the consolidated financial position of the ultimate holding company and such persons, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law…"

The Company violated the aforementioned Regulation by failing to file with the Department its required 2009 annual HC-1 Registration Statement ("Holding Company Filing") in a timely manner. When requested by the examiner to provide a copy of such holding company filing, the Company's management stated that it was unaware of the Regulation and the required filing.

On July 20, 2010, subsequent to the May 1, 2010 due date, the Company filed its 2009 calendar year Annual HC-1 Registration Statement, however, it did not include a consolidated balance sheet of the Parent, as required in Part 80-1.4 of Department Regulation No. 52 (11 NYCRR 80-1.4)

It is recommended that the Company comply with Department Regulation No. 52, Parts 80-1.2 and 80-1.4 with regard to its HC-1 Annual Registration Statement filings.

E. Allocation of Expenses

Section 1505(a) of the New York Insurance Law states in part:

> "(a) Transactions within a holding company system to which a controlled insurer is a party shall be subject to the following:
>
> (1) the terms shall be fair and reasonable;
>
> (2) charges or fees for services performed shall be reasonable; and
>
> (3) expenses incurred and payments received shall be allocated to the insurer on an equitable basis in conformity with customary insurance accounting practices consistently applied."

Section 1505(b) of the New York Insurance Law states:

> "(b) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties."

Part 106.6 of Department Regulation No. 30 (11 NYCRR 106.6) states:

> "(a) The methods followed in allocating joint expenses shall be described, kept and supported as set forth under "detail of allocation bases.
> (b) The effects of the application, to each operating expense classification of all bases of allocation shall be shown on records kept in clear and legible form. Such records shall be readily available for examination."

Based on an expense sharing arrangement that was in use between the Company and Freelancers Union, Inc., during 2009 and 2010, the examiner determined that Freelancers was allocated and billed by the Parent for expenses totaling between $1,604,357 and $1,627,982 for 2009.

The amount of $1,604,357 was provided by the Company while the $1,627,982 amount was compiled by the examiner from the details recorded in the expense accounts of Freelancers and the Parent's 2009 general ledger reports.

The Company failed to provide sufficient documentation to support the method of allocation between the parties, to disclose the clear and accurate nature and details of the transactions and such accounting information necessary to support the reasonableness of the charges or fees to the respective parties

It should be noted that the abovementioned agreement is the same agreement mentioned in Section D of this report. The agreement was filed with the Department subsequent to the examination date and was approved effective, February 1, 2011.

It is recommended that the Company comply with the requirements of Sections 1505(a) and (b) of the New York Insurance Law with regard to transactions within its holding company system.

It is also recommended that the Company comply with Part 106.6 of Department Regulation No. 30 by maintaining proper records to support the allocation percentages used for its expenses.

Paragraphs 2, 5, 8 and 9 of Statement of Statutory Accounting Principles ("SSAP") No. 70, state respectively:

> "2. This statement establishes uniform expense allocation rules to classify expenses within prescribed principal groupings. It is necessary to allocate those expenses which may contain characteristics of more than one classification, which this statement will refer to as allocable expenses."
>
> "5. Allocable expenses for health insurers shall be classified as claims adjustment expenses; general administrative expenses; or investment expenses which are netted against investment income on the Statement of Revenue Expenses."
>
> "8. Many entities operate within a group where personnel and facilities are shared. Shared expenses, including expenses under the terms of a management contract, shall be apportioned to the entities incurring the

> expense as if the expense had been paid solely by the incurring entity. The apportionment shall be completed based upon specific identification to the entity incurring the expense. Where specific identification is not feasible apportionment shall be based upon pertinent factors or ratios."
>
> "9. Any basis adopted to apportion expenses shall be that which yields the most accurate results and may result from special studies of employee activities, salary ratios, premium ratios or similar analyses. Expenses that relate solely to the operations of a reporting entity, such as personnel costs associated with the adjusting and paying of claims, must be borne solely by the reporting entity and are not to be apportioned to other entities within a group."

It was noted that the Company was billed for charges and services of the Parent which included costs of Freelancers Union, Inc., such as social and political outreach activities. A review of Company paid invoices in 2009 revealed two separate transactions of $155,000 and $77,500, in marketing and advertising payments were made by the Company in connection with these Freelancers Union Inc. activities in the State of California. It should be noted that the Company was not licensed in California. Another example of such unusual and non-insurance related expenses included allocations to the Company in 2009 which was described as costs of the Parent's fundraising activities. When asked about such fundraising expenses, the Company indicated that amounts were grouped as a fundraising expense as part of the allocations of the Parent's non-profit consolidated audited financial statements.

It should be noted that expense allocations to the Company relative to the Parent's fundraising and political advocacy activities are atypical insurance related expenditures.

It is recommended that Freelancers refrain from reimbursing FUI for allocated expenses that are the direct costs of FUI only, and that it classify expense groups in compliance with SSAP No. 70.

It is also recommended that all expenses paid by Freelancers which are directly allocated to expenses of FUI, including FUI's fund raising and social and political activities, be repaid with interest, to Freelancers. It is further recommended that the Company's officers abide by their fiduciary duty in regard to the management of the Company's operations and finances.

F. Accounts and Records

During the course of the examination it was noted that the Company's treatment of certain items was not in accordance with certain areas of the New York Insurance Law, Department Regulations, Statements of Statutory Accounting Principles ("SSAP") of the *NAIC Accounting Practices and Procedures Manual*. A description of such items is as follows:

(i) Internal Controls - Check Issuance and Wire Transfers Function

The Company's cash disbursements policy allows its CEO, Chief Accounting and Administration Officer and Controller, to individually execute wire transfers of up to a maximum $5 million from the Company's bank accounts. Such authorization is excessive for any one person and exposes the Company to a high potential risk and is deemed a significant internal control deficiency.

It is recommended that Freelancers establish internal control procedures to address the current practice that allows Company signatories to have the sole authority to authorize large transfers of funds from the Company's bank accounts.

It is further recommended that the Company's procedures be amended to include policies that grant to the Company's officers and employees check signing authority that is commensurate with their job title and responsibilities. In addition, a policy should be developed that requires multiple signatures / approvals for checks and wire transfers above a defined amount.

(ii) Premiums Collection and Deposits

According to Freelancers' group contract with Freelancers Union, Inc., as described above in Section 3D of this report, the Parent is responsible for collecting the members' premiums and remitting the payments to the Company. Through a contract with an outside enrollment and billing vendor, Empyrean Benefit Solutions, Inc., the members' premiums were collected by the vendor and deposited into the Parent's bank account; instead of the Company's bank account. Once deposited into the Parent's bank account, the Parent subsequently deposited the collections into the Company's account only to have the funds transferred back to the Parent's bank account, usually within the same week. This transfer of cash back and forth between the Companies' bank accounts was a standard recording and reporting procedure by the Company. As a result, Freelancers Union, Inc., held physical custody of large sums of Freelancers Insurance Company's cash throughout the year and at year-end. As an offset to the Company, Freelancers Insurance Company, Inc., credited its account with an inter-company receivable from the Parent. As of December 31, 2009, the Company reported an inter-company receivable from Freelancers Union, Inc., which totaled $8.9 million as a result of the aforementioned bank transfers. In questioning management about such activity,

management described the transactions as simply an accounting procedure that the Company used. In response to management, the examiner requested the Company to cease the practice that allows for large sums of money to reside outside the Company's control.

It is recommended that all funds belonging to the Company reside in accounts under its control and that such funds be moved or transferred to FUI only as needed, and with proper authorization, to pay debts and other expenses related to its operations.

(iii) Unreported claims unpaid

Section 1303 of the New York Insurance Law states:

> "Every insurer shall, except as provided in section one thousand three hundred four of this article and subject to specific provisions of this chapter, maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses or adjustment or settlement of such losses or claims"

Further, Paragraph 6 of the Statement of Statutory Accounting Principles ("SSAP") No. 55 states in part:

> "…The following future costs relating to life and accident and health indemnity contracts, as defined in SSAP No. 50, shall be considered in determining the liability for unpaid claims and claim adjustment expenses…
>
> b. Claims Liabilities for Life/Accident and Health Contracts:
>
> i. Due and Unpaid Claims: Claims for which payments are due as of the statement date;
>
> ii. Resisted Claims in Course of Settlement: Liability for claims that are in dispute and are unresolved on the statement date. The liability either may be the full amount of the submitted claim or a percentage of the claim based on the reporting entity's past experience with similar resisted claims;

> iii. Other Claims in the Course of Settlement: Liability for claims that have been reported but the reporting entity has not received all of the required information or processing has not otherwise been completed as of the statement date;
>
> iv. Incurred But Not Reported Claims: Liability for which a covered event has occurred (such as death, accident, or illness) but has not been reported to the reporting entity as of the statement date."

The Company failed to provide proper oversight of its third-party administrator, Health Design Plus New York, LLC ("Health Design Plus"), its claims processing vendor, when the claims vendor failed to process and report approximately fifty (50) of the Company's "high dollar" claims received by Health Design Plus during 2009. These high dollar claims ranged in cost between $15,000 and $50,000 per claim case. The estimated total cost of these claims was in the range of $3.5 million to $4 million, however, for the 2009 annual statement date, the Company's claims unpaid account did not include such claim cases. The claims consisted of billed services by the hospitals and facilities that Health Design Plus received, but failed to pay to the claimants and failed to report to the Company for recording into its books and accounts. The Company explained that the claims were denied originally based on the vendor's policy of requiring that Health Design Plus receive from the hospitals and facilities all the itemized bills of high dollar claims before making any payments.

Under the circumstances, not all of the itemized bills were received along with the claims and, therefore, the vendor denied the payments. It should be noted that Health Design Plus' policy was not consistently applied in 2009. In a meeting with the Department in May 2010, the Company explained that these non-payments were detected during an internal review of the claims records by the Company's outside consulting

actuary in the first quarter of 2010. The Company directed the vendor to revise its policy of setting aside and denying the entire claims while waiting to receive all the billing information.

It is recommended that the Company comply with Paragraph 6 of SSAP No. 55 when determining liabilities for unpaid claims and claim adjustment expenses incurred under its accident and health contracts.

It is also recommended that the Company comply with the requirements of Section 1303 of the New York Insurance Law when determining liability amounts for unpaid claims and claim adjustment expenses incurred under its accident and health contracts.

It is further recommended that the Company exercise greater oversight of the claims processing activities of its third-party administrator.

(iv) Unsupported paid expenditures

Section 1217 of the New York Insurance Law states:

> "No domestic insurance company shall make any disbursement of one hundred dollars or more unless evidenced by a voucher signed by or on behalf of the payee as compensation for goods or services rendered for the company, and correctly describing the consideration for the payment. If such disbursement be for services and disbursements, such vouchers shall set forth the services rendered and itemize the disbursements; if it is in connection with any matter pending before any legislative or public body or before any government department or officer, the voucher shall correctly describe also the nature of the matter and the company's interest therein. If such a voucher is unobtainable, the disbursement shall be evidenced by a statement of an officer or responsible employee affirmed by him as true under the penalties of perjury, stating the reasons therefor and setting forth the particulars above mentioned."

Parts (a) and (b)(7) of Department Regulation No. 152 (11 NYCRR 243.2) state:

> "(a) In addition to any other requirement contained in Insurance Law Section 325, any other Section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting, marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part..."
>
> (b)(7) A financial record necessary to verify the financial condition of an insurer, including ledgers, journals, trial balances, annual and quarterly statement workpapers, evidence of asset ownership, and source documents, 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."

A review of the Company's expenses revealed that some of its paid invoices were either: (1) not signed by an authorized officer of the Company; (2) unavailable when requested by the examiner; and (3) not sufficiently detailed in terms of the nature of the services received in some cases.

It is recommended that the Company comply with the requirements of Section 1217 of the New York Insurance Law and Department Regulation No. 152, respectively, with regard to the Company's payment of expenses and also its maintenance of related records.

(v) Bank Custodial Agreement

The Company currently does not have a bank custody agreement relative to its invested assets. The Company's existing custody agreement with HSBC Bank relates to Freelancers' statutory deposit investment which is a restricted bank custody account.

Such account is subject to the Department's approval and is held in the name of the Superintendent of Financial Services pursuant to Section 1314 of the New York Insurance Law. As a restricted account, amounts deposited and withdrawn from this account are subject to the Superintendent's prior approval. Therefore, a separate custody agreement is needed by the Company to establish a bank custody account for purposes of depositing and maintaining Freelancers' invested assets.

It is recommended that the Company execute a bank custodial agreement for the safekeeping of Freelancers' invested assets. Such custodial agreement should comply with the requirements of Section 3, Item F of the *NAIC Financial Condition Examiners Handbook.*

G. Significant Operating Ratios

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

Account	**Amounts**	**Ratios**
Claims expenses incurred	$ 62,074,721	92.2%
Claim adjustment expenses incurred	5,116,372	7.6%
General administrative expenses incurred	8,245,339	12.2%
Net underwriting loss	(8,075,368)	(12.0)%
Premium earned	67,361,064	100.0%

Based on its first year of operation, the Company's net underwriting loss was impacted by high medical costs and high startup and administrative costs.

As of December 31, 2009, the Company's total capital and surplus was $6,806,431, which exceeded the risk-based capital requirement of Section 1322 of the New York Insurance Law, and the minimum capital requirement of Section 4204(a)(2) of the New York Insurance Law, respectively.

4. FINANCIAL STATEMENTS

A. Balance Sheet

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

	Examination	Company	Surplus Increase/ (Decrease)
Assets			
Bonds	$ 18,236,224	$ 18,236,224	
Cash and short-term investments	7,725,789	7,725,789	
Investment income due and accrued	170,545	170,545	
Amounts recoverable from reinsurers	30,000	30,000	
Receivable from subsidiaries/affiliates	2,475,395	2,475,395	
Health care receivable	275,000	275,000	
Total assets	$28,912,953	$28,912,953	
Liabilities			
Claims unpaid	$ 9,773,357	$ 6,872,863	$ (2,900,494)
Unpaid claims adjustment expenses	656,000	656,000	
Premiums received in advance	8,478,147	8,478,147	
General expenses due and accrued	2,220,356	2,220,356	
Ceded reinsurance premiums payable	404,673	404,673	
Amounts due to affiliates	514,101	514,101	
Aggregate write-ins for other liabilities	295,000	295,000	
Total liabilities	$ 22,341,634	$ 19,441,140	$ (2,900,494)
Capital and Surplus			
Common capital stock	$200,000	$200,000	
Gross paid-in and contributed surplus	16,026,131	16,026,131	
Unassigned funds (surplus)	(9,654,812)	(6,754,318)	$ (2,900,494)
Total capital and surplus	$ 6,571,319	$ 9,471,813	$ (2,900,494)
Total liabilities, capital and surplus	$ 28,912,953	$ 28,912,953	

Note: The Internal Revenue Service has not conducted any audits of the income tax returns filed on behalf of the Company during the period under examination. The examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Revenue and Expenses and Capital and Surplus

Capital and surplus decreased by $(8,188,216) during the one-year examination period, January 1, 2009 through December 31, 2009, detailed as follows:

Revenue		
Net premium income		$ 67,361,064
Expenses		
Hospital/medical benefits	$ 43,300,996	
Other professional services	488,422	
Prescription drugs	14,766,283	
Aggregate write-ins for other hospital and medical	3,549,020	
Net reinsurance recoveries	(30,000)	
Total hospital and medical expenses	$ 62,074,721	
Claim adjustment expenses	5,351,484	
General administrative expenses	8,245,339	
Total underwriting expenses		$ 75,671,544
Net underwriting loss		$ (8,310,480)
Net investment income earned		418,106
Aggregate write-ins for other expenses		(293)
Net loss		$ (7,892,667)

C. Changes in Capital and Surplus

Capital and surplus per annual statement as of January 1, 2009			$ 14,759,535
	Gains in Surplus	Losses in Surplus	
Net loss		$ 7,892,667	
Change in net deferred income tax	$ 1,747,903		
Change in non-admitted assets		1,747,903	
Aggregate write-ins for losses in surplus		295,549	
Net decrease in capital and surplus			(8,188,216)
Capital and surplus per report on examination as of December 31, 2009			$ 6,571,319

5. UNSECURED LOANS

In October 2008, Freelancers Union, Inc., received $10 million in unsecured loans from certain outside private foundations in order to capitalize Freelancers Insurance Company, Inc., via Freelancers Union Inc.'s, purchase of 100% of Freelancers' voting common stock. These loans mature on October 3, 2018, and include various interest rates ranging between 1% and 5%. Freelancers Union Inc.'s, repayment of the loans commenced on July 1, 2011. Except as otherwise provided in the individual loans, Freelancers Union Inc.'s obligation to repay the loans is limited to the amount of proceeds it receives in the form of either dividends from Freelancers or as profits resulting from fees charged to the Company for various administrative services performed by Freelancers Union, Inc., or its affiliates on behalf of the Company. Thus, due to the deficit amounts reported to the Company's unassigned surplus account as reflected below for the period December 31, 2009 through June 30, 2011, the Company was not permitted to pay dividends based on the "earned surplus" requirement of Section 4207 of the New York Insurance Law.

Section 4207(b)(1) of the New York Insurance Law states in part:

> "…no domestic stock accident and health insurance company shall declare or distribute any dividend on its capital stock, except out of earned surplus, as defined in subsection (a) of section four thousand one hundred five of this chapter…"

The Company reported the following balances to its unassigned surplus account and total paid management fees to FUI and affiliates as of Freelancers' filed quarterly and annual statements 2009 and 2010 during the period of December 31, 2009 through June 30, 2012:

Period	Unassigned Surplus	Management Fees Paid to FUI and Affiliated
12/31/09	$ (6,754,318)	$ 2,628,167
12/31/10	$ (5,450,733)	$ 2,276,236
03/31/11	$ (4,211,937)	$ 666,750
06/30/11	$ (1,262,232)	$ 1,345,499
09/30/11	$ 506,438	$ 2,158,422
12/31/11	$ 1,126,693	$ 3,535,134
03/31/12	$ 3,502,591	$ 965,082
06/30/12	$ 5,854,313	$ 1,236,517

Note: As noted in the balance sheet of this report, the Company reported an unassigned surplus of $(6,754,318) at December 31, 2009. This amount was adjusted to $(9,419,700) [difference of $(2,665,382)], per the Department's examination.

The above indicated management fees represent Freelancers' payments to FUI's affiliate, Working Today, Inc., for administrative services provided pursuant to the affiliates approved inter-company agreement.

Section 4207(b)(1) of the New York Insurance Law states in part:

> "…No domestic stock accident and health insurance company shall declare or distribute any dividend to shareholders which, together with all such dividends declared or distributed by it during the next preceding twelve months, exceeds the lesser of ten percent of its surplus to policyholders, as shown by its last statement on file with the superintendent, or one hundred percent of adjusted net investment income for such period unless, upon prior application therefore, the superintendent approves a greater dividend payment based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings..."

On July 2, 2012, the Company paid a $1,646,779 dividend, $75,191 more than the maximum allowed amount not requiring the Superintendent's approval, to Freelancers Union, Inc. The dividend was approved by the Freelancer's Board at its June 19, 2012, meeting. Accordingly, the dividend was reflected in the Company's September 30, 2012 quarterly statutory filing. Following this payment, the outstanding principal balance on the loans was approximately $9,400,000.

The Department determined that the $1,646,779 dividend met the criteria requiring the prior approval of the Superintendent, as noted in Section 4207(b)(1) of the New York Insurance Law. Subsequently, Freelancers' Union was required by the Department to refund the excess dividend to the Company. On May 8, 2013, a refund in the amount of $75,191 was paid to the Company.

It is recommended that the Company comply with the requirements of Section 4207(b)(1) of the New York Insurance Law with regard to approval of dividends.

6. CLAIMS UNPAID

The examination liability of $9,773,357 for the above captioned account is $2,900,494 more than the $6,872,863 amount reported by the Company in its filed annual statement as of December 31, 2009.

The examination analysis of the claims unpaid reserve was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and its filed annual statements as verified during the examination.

The examination reserve was based upon actual payments made through a point in time, plus an estimate for claims remaining unpaid at that date. Such estimate was calculated based on actuarial principles, which utilized the Company's past experience in projecting the ultimate cost of claims incurred on or prior to December 31, 2009.

The examination liability represents the sum of (i) the Company's development of 2009 calendar year incurred claims based on nine (9) months of actual claim runoff through the September 30, 2010 quarterly statement valuation date, and (ii) the Department's actuarial determination of an additional 5% margin for adverse claim fluctuations. It should be noted that in 2010, the Department's actuarial review identified significant fluctuations in the Company's 2009 claims development.

As mentioned above in Section 3 of Item F(iii) of this report, such fluctuations were caused when the Company's claims vendor, Health Design Plus, failed to process and report approximately fifty (50) of the Company's high dollar claims during 2009. Such items were addressed in the Department's actuarial analysis.

7. UNPAID CLAIMS ADJUSTMENT EXPENSES

The examination liability of $656,000 for the above captioned account is the same amount reported by the Company in its filed annual statement as of December 31, 2009.

8. MARKET CONDUCT ACTIVITIES

In the course of the examination, a review was made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and was directed at practices of the Company in the following areas:

A. Consumer Complaints
B. Claims processing
C. Prompt Pay Law
D. Explanations of benefits statements
E. Sales and advertising

A. Consumer Complaints

(i) The Department's Consumer Assistance Unit ("CAU") received numerous complaint filings against the Company during 2009 and 2010. During the period of January 2009 through September 2010, approximately 138 complaints were filed; the most common reasons for the complaints included claims denied for pre-existing conditions (11%), coverage terminations (21%) and interpretation of policy provisions (31%). The pre-existing conditions and terminations categories were due mainly to the operational inefficiencies of the third-party administrators (vendors) contracted by the Company to perform Freelancers' enrollment, premium billing and claims processing functions.

The CAU determined that the Company's listing of pre-existing conditions was too broad. The Company was directed by the CAU to have a medical director review Freelancers' list of pre-existing conditions. Subsequent to the examination date, the Company had a medical director review the list of pre-existing conditions, who concluded that the list was consistent with industry practices.

It should be noted that upon further review of the pre-existing conditions issue, it was determined that some claims were incorrectly denied indicating that the subscriber had a pre-existing condition, when in fact this was not the case. The Company, in turn,

reprocessed these claims, but because of the delay in processing, the timeframe mandated by Section 3224-a of the New York Insurance Law, (the Prompt Pay Law), was not met.

It is recommended that the Company correctly identify those claims that address pre-existing conditions and process such claims appropriately.

It is also recommended that claims be paid within the timeframe mandated by the Prompt Pay Law (Section 3224-a(a) of the New York Insurance Law) and that appropriate interest be paid as required by statute (Section 3224-a(c) of the New York Insurance Law).

It should be noted that subsequent to the examination date, the Company reported that it implemented new processes to improve its oversight and handling of claims that may address a pre-existing condition.

(ii) For the period January 2009 through September 2010, Empyrean Benefits Solutions Inc. was the Company's third-party administrator for billing, enrollment and termination. Complaints received by the Department's CAU regarding the billing, enrollment and terminations included:

- Freelancers sending monthly invoices via e-mail. If the member wanted a paper invoice there was a $2.00 per month charge.
- Invoices not being "user friendly", including adjustments not being shown on the invoices, and therefore, requiring the subscriber to request a summary reconciliation of the billed and paid amounts.
- Unexplained charges being applied to subscribers' accounts that resulted in some subscribers being terminated.

- Coverage terminated as a result of non-receipt of billing invoice. In late 2009, 131 members did not receive their invoice billings and many of these members were terminated as a result. Thereafter, Freelancers offered reinstatement only upon the member's request.
- User online payment history was different than the payment history provided by Freelancers.

In September 2010, Empyrean Benefit Solutions, Inc. ("Empyrean") was replaced by HealthPlan Services, Inc., as the Company's enrollment and billing vendor. To improve its operational efficiency, the Company indicated that it would have involvement, including daily communications, weekly scheduled meetings and periodic on-site visits at HealthPlan Services, Inc., by Freelancers' personnel. Additionally, management also stated that it enhanced the Company's Operations Department through staff restructuring and by equipping the Company with remote access to the vendor's computer system. This would allow the Company to directly investigate any problem areas that may arise.

(iii) Freelancers has an administrative services agreement with Anthem Blue Cross Blue Shield ("Anthem") and its affiliate, Empire HealthChoice Assurance, Inc., which provides the Company with in-network participating physicians and claims processing (claims pricing) services.

Complaints filed against Freelancers regarding Anthem's claims handling activities included:

- Incomplete claims or claims with missing information were returned by Anthem to the member with no record maintained of the claim that had been received and or rejected.
- Freelancers disclosed that 225 claims that were pended for adjustment in 2009 were not processed.

Effective January 14, 2010, Freelancers revised its process and removed Anthem's involvement with respect to member submitted claims. The claims are now processed through Health Design Plus ("HDP") and all claim forms are scanned upon receipt.

It is recommended that the Company, based on the corrective actions discussed with the Department's Consumer Assistance Unit, continue to assess and monitor the effectiveness of the policies and procedures implemented by the Company to address member billing, enrollment, and claims processing related matters.

B. Claims Processing

A review of claims was performed by using a statistical sampling methodology covering claims processed during the examination period, January 1, 2009 through December 31, 2009, in order to evaluate the overall accuracy and compliance environment of the Company's claims processing.

This statistical random sampling process, which was performed using the computer software ACL, was devised to test various attributes deemed necessary for successful claims processing activity. The objective of this sampling process was to be able to test and reach conclusions about all predetermined attributes, individually and on a combined basis. For example, if ten attributes were being tested, conclusions about each attribute individually or on a collective basis could be drawn for each item in the sample. The sample sizes were comprised of 167 randomly selected medical and hospital claims, respectively.

The examination review revealed that the overall claims processing financial accuracy level was 97% for both Hospital and Medical claims. The overall claims processing procedural accuracy level was also 97% for Hospital and Medical claims. Financial accuracy is defined as the percentage of times the dollar value of the claim payment was correct. Procedural accuracy is defined as the percentage of times a claim was processed in accordance with the Company's guidelines and/or Department regulations. An error in processing accuracy may or may not affect the financial accuracy. However, a financial error is caused by a procedural error and as such, it is counted both as a financial error and a procedural error. In summary, of the 167 Medical claims reviewed, 5 contained financial errors and 5 contained procedural errors. Additionally, of the 167 Hospital claims reviewed, 5 contained financial errors and 5 contained procedural errors.

The following tables summarize the claims processing review:

Summary of Procedural /Financial Accuracy – Hospital Claims

	Procedural Error	Financial Errors
Population	15,478	15,478
Sample size	167	167
Number of claims with errors	5	5
Calculated error rate	3.00%	3.00%
Calculated accuracy rate	97.00%	97.00%
Upper error limit	5.58%	5.58%
Lower error limit	N/A	N/A
Upper limit claims in error	863	863
Lower limit claims in error	63	63

Note: The upper and lower error limits represent the range of potential error (e.g., if 100 sample items were selected the rate of error would fall between these limits 95 times).

Summary of Procedural/ Financial Accuracy – Medical Claims

	Procedural Errors	Financial Errors
Population	186,154	186,154
Sample size	167	167
Number of claims with errors	5	5
Calculated error rate	3%	3%
Calculated accuracy rate	97%	97%
Upper error limit	5.58%	5.58%
Lower error limit	N/A	N/A
Upper limit claims in error	10,386	10,386
Lower limit claims in error	762	762

Note: The upper and lower error limits represent the range of potential error (e.g., if 100 sample items were selected the rate of error would fall between these limits 95 times).

An additional review of the Company's paid claims revealed that approximately 800 of the Company's 2009 out-of-network claims were processed incorrectly, as in-network claims by HDP. This discovery was made by HDP in April 2009. The error resulted from a mapping issue when the Anthem file was loaded into HDP's claims system.

After the mapping issue was corrected in April 2009, a file containing all claims that had been loaded into the system was created and compared back to the Anthem's original file. A list was created of all claims that had an indicator in the claim system as in-network, but the indicator on the Anthem file was for out-of-network. The list of claims that were paid in error was manually worked to adjust all the claims to correct the patient "in" and "out" of network accumulators, and also to process any under/overpayments that occurred.

It is recommended that Freelancers implement the procedures necessary to ensure that it provides proper oversight of its claims processing vendor(s).

Subsequent to the examination date, the Company implemented an ongoing monitoring procedure, whereby a daily report was created that provides a summary of the Anthem files that was loaded from the previous day. This report allows HDP to monitor the daily file and watch for extreme fluctuations in claims volume (e.g., "in" and "out" of network claims, adjustment claims, etc.). Any abnormalities are researched by the claims manager and appropriate action is taken.

Department Circular Letter No 9 (1999) states in part:

> "...It is recommended that the board obtain the following certifications annually: (i) from either the company's director of internal audit or independent CPA that the responsible officers have implemented the procedures adopted by the board, and (ii) from the company's general counsel a statement that the company's current claims adjudication procedures, including those set forth in the current claims manual, are in accordance with applicable statutes, rules and regulations)…"

The Company failed to provide any evidence of fulfillment with the above referenced annual certification.

It is recommended that the Company comply with the items set forth in Department Circular Letter No. 9 (1999).

C. Prompt Pay Law

Section 3224-a(a) of the New York Insurance Law, "Standards for prompt, fair and equitable settlement of claims for health care and payments for health care services" ("Prompt Pay Law"), requires all insurers to pay undisputed claims not transmitted via the internet or electronic mail within forty-five days of receipt. If such undisputed claims are not paid within forty-five days of receipt, interest may be payable (Section 3224-a(c)).

Section 3224-a(a) of the New York Insurance Law states:

> "Except in a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to article forty-three of this chapter or article forty-four of the public health law to pay a claim submitted by a policyholder or person covered under such policy or make a payment to a health care provider is not reasonably clear, or when there is a reasonable basis supported by specific information available for review by the superintendent that such claim or bill for health care services rendered was submitted fraudulently, such insurer or organization or corporation shall pay the claim to a policyholder or covered person or make a payment to a health care provider within forty-five days of receipt of a claim or bill for services rendered."

Section 3224-a(c) of the New York Insurance Law states in part:

> "…each claim or bill for health care services processed in violation of this section shall constitute a separate violation. In addition to the penalties provided in this chapter, any insurer or organization or corporation that fails to adhere to the standards contained in this section shall be obligated to pay the health care provider or person submitting the claim, in full settlement of the claim or bill for health care services, the amount of the claim or health care payment plus interest on the amount of such claim or health care payment of the greater of the rate equal to the rate set by the commissioner of taxation and finance for corporate taxes pursuant to paragraph one of subsection (e) of section one thousand ninety-six of the tax law or twelve percent per annum, to be computed from the date of claim or health care payment was required to be made. When the amount of interest due on such a claim is less than two dollars, an insurer or organization or corporation shall not be required to pay interest on such claim..."

Utilizing ACL software and the Company's data file of the 2009 calendar year paid claims, the examiners identified a total of 1,720 claims in which the payment dates to the claims occurred forty-five (45) days after the receipt dates of the claims by the Company. The was no indication that interest was paid on these claims, as required by Section 3224-a(c) of the New York Insurance Law.

It is recommended that the Company take steps to ensure that the provisions of Section 3224-a(a) of the New York Insurance Law are fully implemented and complied with.

It is also recommended that the Company take steps to ensure that the provisions of Section 3224-a(c) of the New York Insurance Law, regarding the payment of interest, are fully implemented and complied with by Freelancers.

D. Explanation of Benefits Statements

As part of the review of the Company's claims practices and procedures, an analysis of the Explanation of Benefits Statements ("EOBs") sent to the subscriber and/or provider of the Company, was performed. An EOB is an important link between the subscriber, the provider and the Company. It should clearly communicate to the subscriber and/or the provider that the Company has processed a claim and how that claim was processed. It should clearly describe the charges submitted, the date the claim was received, the amount allowed for the services rendered and any balance owed to the provider.

Sections 3234(b)(6) and (7) of the New York Insurance Law state:

> "(b) The explanation of benefits form must include at least the following:
>
> (6) a specific explanation of any denial, reduction, or other reason, including any other third-party payor coverage, for not providing full reimbursement for the amount claimed; and
>
> (7) a telephone number or address where an insured or subscriber may obtain clarification of the explanation of benefits, as well as a description of the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made."

The Company violated Section 3234(b)(7) of the New York Insurance Law due to its failure to include in its EOBs, a notification to the recipients that failure to comply with the appeal requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made.

It is recommended that the Company comply with Section 3234(b)(7) of the New York Insurance Law by ensuring that the required wording be included on the Company's EOBs.

The following EOB related issues were also noted as a result of an investigation by the Department's CAU in connection with complaint filings received regarding the Company:

- Claims were incorrectly adjudicated, with an EOB denial that a pre-existing condition exclusion applied, instead of the EOB reflecting that additional information was required to determine whether a pre-existing condition exclusion should have applied.
- Zero payment denials – Claims were processed; however, the EOBs indicated a 100% provider discount. It was subsequently determined that the claims were actually denied for untimely filing. The previously provided EOB gave no indication that the claims were denied or the reason for the denial, in violation of Section 3234(b)(6) of the New York Insurance Law.

In the case of the Company incorrectly denying the claims due to a pre-existing condition, Freelancers stated to the CAU in July 2010 that in an effort to improve member communication and internal data tracking capabilities, the Company was in the process of revising the verbiage related to the reason code used on claims for which a pre-existing condition investigation was ongoing to "*more information needed, pre-existing condition may apply*."

It is recommended that the Company refrain from the systematic practice of denying claims based on pre-existing conditions without having received sufficient, credible medical information necessary to render such decision.

It is also recommended that the Company comply with Section 3234(b)(6) of the New York Insurance Law and revise the verbiage on its Explanation of Benefits to indicate a pre-existing condition investigation is ongoing, whenever additional information related to a pre-existing condition is needed to fully adjudicate the claim.

It is further recommended that the Company comply with Section 3234(b)(6) of the New York Insurance Law by providing, when applicable, on EOBs, the denial code(s) that reflect the basis and specific explanation(s) for any denial of payments.

E. Advertising and Marketing

Part 215.13(a) of Department Regulation No. 34 (NYCRR 215.13(a)) states in part the following:

> "The name of the actual insurer and the form number or numbers advertised shall be identified and made clear in all of its advertisements. In addition, advertisements shall not use trade names, any insurance group designation, name of the parent company of the insurer… which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer…"

The Company's advertising and marketing files revealed that the advertising contents disseminated during the examination period were not compliant with the aforementioned Regulation. For example, most of the advertisements either listed

improperly the name Freelancers Union, Inc. (the “Parent”) only or both Freelancers Union, Inc. and Freelancers Insurance Company, Inc. with the Parent’s name and brand being more prominently displayed. In such cases, Freelancers Insurance Company, Inc. appeared as nondescript and/or in the “fine print” section of the advertisements.

It is recommended that the Company comply with the requirements of Department Regulation No. 34 with regard to its advertising and marketing materials.

9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM **PAGE NO.**

Respectfully submitted,

_____/S/_____
Kenneth I. Merritt
Associate Insurance Examiner

STATE OF NEW YORK)
)SS.
)
COUNTY OF NEW YORK)

KENNETH I. MERRITT, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

_____/S/_____
Kenneth I. Merritt

Subscribed and sworn to before me
this ____ day of _____ 2013.

Appointment No. **30483**

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:

Kenneth Merritt

as a proper person to examine into the affairs of the

Freelances Insurance Company, Inc.

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

Company

with such other information as he shall deem requisite.

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

this 9th day of February, 2010

James J. Wrynn
Superintendent of Insurance

STATE OF NEW YORK ★ SUPERINTENDENT OF INSURANCE ★ EXCELSIOR