

REPORT ON EXAMINATION

OF

AVIVA INSURANCE COMPANY OF CANADA (U.S. BRANCH)

AS OF

DECEMBER 31, 2019

DATE OF REPORT

APRIL 30, 2021

EXAMINER

SABU CHERIAN

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## Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

April 30, 2021

Honorable Linda A. Lacewell  
Superintendent  
New York State Department of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 32138 dated September 22, 2020, attached hereto, I have made an examination into the condition and affairs of Aviva Insurance Company of Canada, U.S. Branch as of December 31, 2019, and submit the following report thereon.

Wherever the designation “the Branch” appears herein without qualification, it should be understood to indicate Aviva Insurance Company of Canada, U.S. Branch.

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

The examination was conducted remotely due to the Governor’s Executive Order of New York State on PAUSE regarding the COVID-19 pandemic.

## **1. SCOPE OF EXAMINATION**

The Department has performed an examination of the Branch, a single-state insurer. The previous examination was conducted as of December 31, 2014. This examination covered the five-year period from January 1, 2015 through December 31, 2019. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

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

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

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

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

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

## **2. DESCRIPTION OF BRANCH**

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

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

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

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

A. Corporate Governance

For the period under examination, the Branch was managed by Aviva Insurance Company of Canada (the “Home Office”), located in Ontario, Canada, with Kevin A. Taylor as its U.S. manager (“Manager”).

Pursuant to the Home Office’s charter and by-laws, management of the Home Office is vested in a board of directors consisting of not less than nine nor more than twenty-one members. At December 31, 2019, the board of directors was comprised of the following nine members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Nick Amin London, England	Chief Operating Officer, Aviva plc
James Stuart Barton Chilliwack, British Columbia, Canada	Retired
Francine Blackburn Caledon, Ontario, Canada	Retired
Jean Margaret Fraser Toronto, Ontario, Canada	Retired
Colm Joseph Holmes London, England	Chief Executive Officer, Aviva Insurance Limited
Steven Richard Irvine Toronto, Ontario, Canada	Founder & Chief Executive Officer, Integrate.ai

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Anne Marie O'Donovan Oakville, Ontario, Canada	Retired
Michael McMaster Shaw Toronto, Ontario, Canada	Retired
Jason Storah Toronto, Ontario, Canada	President and Chief Executive Officer, Aviva Canada Inc.

As of December 31, 2019, the principal officers of the Branch were as follows:

<u>Name</u>	<u>Title</u>
Jason Storah	Chief Executive Officer
Colin Simpson	Chief Financial Officer
Michel Dione	Appointed Actuary

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

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

#### B. Territory and Plan of Operation

As of December 31, 2019, the Branch was licensed to write business in New York only. However, the Branch has been in run-off since 2000 and has not underwritten any business since then. As part of the sale of GAN General to the CGU Insurance Group, the Branch submitted to the Department a plan of operation, which included the relocation of the Branch's books of account and claim files to Ontario, Canada. The Department approved the plan on September 22, 2000.

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

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

The Branch is also authorized to write such workers' compensation insurance as may be incidental to coverages contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance Law, including the insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69th Congress as amended; 33USC Section 901 et seq. as amended) to the extent permitted by certified copy of its charter document on file with this Department, provided, however, that the authority conferred by the license shall be limited to the writing of contracts issued for delivery in the United States, insuring risks of policyholders within the United States.

Based upon the lines of business for which the Branch is licensed and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Branch is required to maintain a minimum surplus to policyholders in the amount of \$2,050,000.

C. Reinsurance Ceded

The Branch has been in run-off since 2000. As of examination date, the Branch has no material reinsurance recoverables.

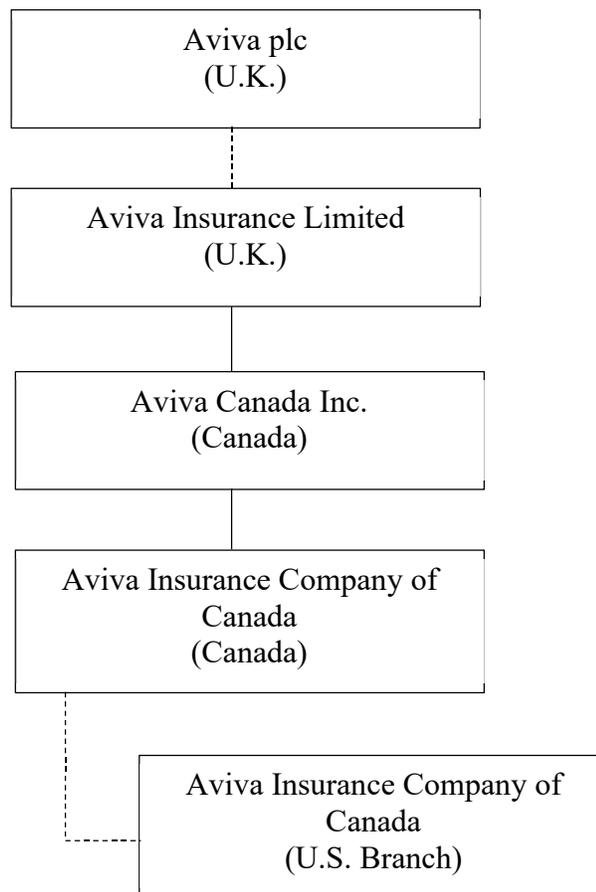
D. Holding Company System

The Branch is part of the Aviva plc holding company system. The Branch's Home Office, Aviva Insurance Company of Canada, is a wholly-owned subsidiary of Aviva Canada, Inc., and is ultimately controlled by Aviva plc (U.K).

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

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

The following is an abridged chart of the holding company system at December 31, 2019:



### Holding Company Agreements

At December 31, 2019, the Branch was party to the following agreement with other members of its holding company system:

### Investment Management Agreement

Effective November 8, 2018, Aviva Investors Canada, Inc., a company incorporated under the laws of the Province of Ontario, Canada, was appointed as the investment manager to manage the Branch's investment portfolio. This agreement replaced the investment management agreement with Aviva Investors Canada, Inc., effective March 14, 2014.

#### E. Significant Ratios

The Branch's operating ratios and underwriting ratios normally contained herein are not applicable due to the Branch's run-off status.

#### F. Accounts and Records

The prior report on examination included a repeat recommendation that the Branch resolve "the remaining discrepancies between itself and the ceding companies to determine if it has any unreported liabilities for assumed reinsurance balances payable."

The Branch has been following up with the cedents regarding the remaining discrepancies in reporting. Some cedents agreed with the Branch, but then reverted to reporting balances as due from the Branch rather than from Aviva Canada. The Branch indicated this issue will be ongoing for the duration of the Branch as it is beyond their control. It is again recommended that the Branch resolve the remaining discrepancies between itself and the ceding companies to determine if it has any reported liabilities for its assumed reinsurance balances payable.

A review of the 2019 CPA engagement letter shows that the following language, required by Department Regulation 118, was not included.

Department Regulation 118 Section 89.15 states:

"(a) In the case of a United States branch of a Canadian or British insurer, the annual audited financial report shall be the annual statement of total business on the form filed by the insurer with its supervision authority duly audited by an independent chartered accountant.

(b) For each insurer described in subdivision (a) of this section, the letter required in section 89.4(b) of this Part shall state that the CPA is aware of the requirements relating to the annual audited financial report filed with the superintendent pursuant to section 89.3 of this Part and shall affirm that the opinion expressed is in conformity with those requirements.”

Department Regulation 118 Section 89.4(b) states:

“The company shall obtain a letter from the CPA, and file a copy with the superintendent, stating that the CPA is aware of the provisions of the insurance law and the regulations thereunder of the state of domicile that relate to accounting and financial matters and affirming that the CPA will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as the CPA may believe appropriate.”

It is recommended that the Branch establish a procedure to ensure that its engagement letter with the independent certified public accountant include all language required by Department Regulation 118. Subsequent to the examination, on April 8, 2021, the independent certified public accountant provided the retroactive letters with requisite language.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2019, as reported by the Branch:

##### Assets

	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$13,332,351	\$0	\$13,332,351
Cash, cash equivalents and short-term investments	1,625,553	0	1,625,553
Investment income due and accrued	108,681	0	108,681
Amounts recoverable from reinsurers	<u>36,815</u>	<u>0</u>	<u>36,815</u>
Total assets	<u>\$15,103,400</u>	<u>\$0</u>	<u>\$15,103,400</u>

##### Liabilities, Surplus and Other Funds

##### Liabilities

Losses and loss adjustment expenses	\$ 1,899,073
Reinsurance payable on paid losses and loss adjustment expenses	46,118
Other expenses (excluding taxes, licenses and fees)	41,250
Funds held by company under reinsurance treaties	<u>60,297</u>
Total liabilities	\$ 2,046,738

##### Surplus and Other Funds

Statutory deposits	\$ 500,000
Unassigned funds (surplus)	<u>12,556,662</u>
Surplus as regards policyholders	<u>13,056,662</u>
Total liabilities, surplus and other funds	<u>\$15,103,400</u>

Note: The Internal Revenue Service has not audited tax returns covering tax years 2015 through 2019. The examiner is unaware of any potential exposure of the Branch to any tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Income

The net income for the examination period as reported by the Branch was \$425,773, as detailed below:

Premiums earned		\$ (684)
Deductions:		
Losses and loss adjustment expenses incurred	\$115,783	
Other underwriting expenses incurred	<u>418,446</u>	
Total underwriting deductions		<u>534,229</u>
Net underwriting gain or (loss)		\$(534,913)
 <u>Investment Income</u>		
Net investment income earned	\$932,016	
Net investment gain or (loss)		932,016
 <u>Other Income</u>		
Miscellaneous income	\$ 28,920	
Total other income		<u>28,920</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$426,023
Federal and foreign income taxes incurred		<u>250</u>
Net income		<u>\$425,773</u>

C. Capital and Surplus

Surplus as regards policyholders increased \$2,639,427 during the five-year examination period January 1, 2015 through December 31, 2019, as reported by the Branch, detailed as follows:

Surplus as regards policyholders as reported by the Branch as of December 31, 2014			\$10,417,235
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$ 425,773		
Change in provision for reinsurance	135,400		
Net remittances from Home Office	<u>2,078,254</u>	<u>0</u>	
Total gains and losses	\$2,639,427	\$0	
Net increase (decrease) in surplus			<u>2,639,427</u>
Surplus as regards policyholders as reported by the Branch as of December 31, 2019			<u>\$13,056,662</u>

D. Trusteed Surplus StatementAssets

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

New York	\$499,890
Cash	<u>6,944</u>

Total	\$ 506,834
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Vested in and held by United States Trustee for the protection of all the Branch's policyholders and creditors within the United States:

Bonds	\$12,832,461
Cash	165,701
Accrued investment income	<u>108,681</u>

Total	<u>13,106,843</u>
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Total gross trustee assets	<u>\$13,613,677</u>
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Liabilities

Liabilities	\$ 2,046,738
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Deductions from liabilities:

Reinsurance recoverable on paid losses and loss adjustment expenses:	\$ <u>36,815</u>
Authorized companies	

Total deductions	<u>36,815</u>
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Net liabilities (per Section 1312)	\$ 2,009,923
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Trusteed surplus (per Section 1312)	<u>\$11,603,746*</u>
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Total liabilities and trustee surplus	<u>\$13,613,669*</u>
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\* The Branch understated its trustee surplus by \$8, which was due to additional interest transferred on December 31<sup>st</sup>, 2019. The Branch correctly updated the asset page of the trustee surplus statement by \$8, but missed the offset in the surplus line on the liabilities page. The correct trustee surplus amount should have been reported at \$11,603,754.

#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$2,060,073 is \$161,000 more than the \$1,899,073 reported by the Branch in its December 31, 2019, filed annual statement. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including SSAP No. 55. An examination change has not been made because the Branch has subsequently recognized the \$161,000 deficiency in its 12-month development.

#### **5. SUBSEQUENT EVENTS**

On March 11, 2020, the World Health Organization declared an outbreak of a novel coronavirus (“COVID-19”) pandemic. The COVID-19 pandemic has continued to develop throughout 2020, with significant uncertainty remaining regarding the full effect of COVID-19 on the U.S. and global insurance and reinsurance industry. At the time of releasing this report, the examination’s review noted that there has not been a significant impact to the Company. The Department has been in communication with the Company regarding the impact of COVID-19 on its business operations and financial position. The Department continues to closely monitor the impact of the pandemic on the Company and will take necessary action if a solvency concern arises.

## 6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Accounts and Records</u>	
	It is again recommended that the Branch resolve the remaining discrepancies between itself and the ceding companies to determine if it has any unreported liabilities for its assumed reinsurance balances payable.	13

A similar recommendation is made in this report on examination.

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Accounts and Records</u>	
i.	It is again recommended that the Branch resolve the remaining discrepancies between itself and the ceding companies to determine if it has any unreported liabilities for its assumed reinsurance balances payable.	7
ii.	It is recommended that the Branch establish a procedure to ensure that its engagement letter with the independent certified public accountant include all language required by Department Regulation 118.	8

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
Sabu Cherian  
Senior Insurance Examiner

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

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

\_\_\_\_\_/S/\_\_\_\_\_  
Sabu Cherian

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

I, *Linda A. Lacewell*, 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:

***Sabu Cherian***

*as a proper person to examine the affairs of the*

***Aviva Insurance Company of Canada (U.S. Branch)***

*and to make a report to me in writing of the condition of 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 the Department  
at the City of New York*

*this 22nd day of September, 2020*

*LINDA A. LACEWELL  
Superintendent of Financial Services*

By:

*Joan Riddell*

\_\_\_\_\_  
*Joan Riddell  
Deputy Bureau Chief*

