



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

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

JUNE 21, 2013

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EXAMINER:

JEFFREY GOOD

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawskey  
Superintendent

June 21, 2013

Honorable Benjamin M. Lawskey  
Superintendent of Financial Services  
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30813, dated June 15, 2012 and annexed hereto, an examination has been made into the condition and affairs of The Independent Order of Foresters, hereinafter referred to as “the Society,” at its home office located at 789 Don Mills Road, Toronto, Ontario M3C 1T9 Canada.

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

1. EXECUTIVE SUMMARY

The recommendation contained in this report is summarized below.

- The Department recommends that the Society continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored. (See item 6F of this report)

## 2. SCOPE OF EXAMINATION

The examination of the Society was a full scope examination as defined in the NAIC Financial Condition Examiners Handbook, 2011 Edition (the “Handbook”). The examination covers the three-year period from January 1, 2009 through December 31, 2011. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2011 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

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

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

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

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

The Society was audited annually, for the years 2009 through 2011, by the accounting firm of KPMG, LLP (KPMG). The Society received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Society has an internal audit department. Where applicable, internal audit workpapers and reports were reviewed and portions were relied upon for this examination.

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

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

### 3. DESCRIPTION OF SOCIETY

#### A. History

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

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

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

On January 19, 2011, the Society acquired First Investors Consolidated Corporation ("FICC"), which wholly owns First Investors Life Insurance Company ("FILIC"), a domestic stock life insurer. The Society plans to operate FICC as a standalone entity in the Society's U.S. Division.

#### B. Management

The Society's constitution provides that the board of directors shall be comprised of the International Fraternal President, the President and chief Executive Officer, ex officio and 13 officers elected by the International Assembly, one of whom is designated the International Fraternal Vice President. Every four years the International Assembly meets to elect the board of directors and perform other general business. If a board member dies, resigns, or becomes unable to continue in office, the other board members may elect a voting member of the Society to fill the vacancy. The new board member will remain in office until the next regular meeting of the International Assembly. As of December 31, 2011, the board of director consisted of 15 members. Meetings of the board are held at least quarterly.

The 15 board members and their principal business affiliation, as of December 31, 2011, were as follows:

| <u>Name and Residence</u>                 | <u>Principal Business Affiliation</u>                                       | <u>Year First Elected</u> |
|---|---|---------------------------|
| Bernard E. Bloom<br>Southampton, UK       | International Fraternal President   | 2000                      |
| Richard M. Freeborough*<br>Oakville, ON   | Retired Auditor<br>KPMG, LLP (Toronto)                                      | 2005                      |
| Karen L. Gavan*<br>Toronto, ON            | President and CEO<br>The Economical Group                                   | 2009                      |
| Brian A. Isabelle*<br>Prince George, BC   | Management<br>James Weston Star Sterling                                    | 2009                      |
| Robert E. Lamoureux*<br>Toronto, ON       | Retired Auditor<br>PriceWaterhouseCoopers                                   | 2009                      |
| Frank N.C. Lochan*<br>Oakville, ON        | Retired Executive<br>Brookfield Asset Management, Inc.                      | 2009                      |
| Louise L. McCormick*<br>West Hartford, CT | Retired Lawyer<br>Aetna, Inc.   | 2005                      |
| Christopher H. McElvaine*<br>Kingston, ON | Retired Actuary<br>The Empire Life Insurance Company, Ltd.                  | 2005                      |
| Martha E. Marcon*<br>Glendale, CA         | Retired Accountant<br>KPMG, LLP (California)                                | 2009                      |
| George S. Mohacsi<br>Etobicoke, ON        | President and Chief Executive Officer<br>The Independent Order of Foresters | 2005                      |
| Laraine J. Morris*<br>Overland Park, KS   | Retired Executive Assistant<br>Saint Luke's Health System                   | 2009                      |
| David E. Morrison*<br>Winnipeg, MB        | Retired Actuary<br>Great-West Life Assurance Company                        | 2005                      |
| David R. Saunders*<br>Nottinghamshire, NG | Retired Owner<br>Target Joinery Centres Ltd.                                | 2009                      |
| John B. Scott*<br>Arlington Heights, IL   | Retired Insurance Executive<br>Kemper Life Insurance Companies              | 2009                      |

| <u>Name and Residence</u>             | <u>Principal Business Affiliation</u>        | <u>Year First Elected</u> |
|---------------------------------------|--|---------------------------|
| Christopher J. Stranahan*<br>Stow, OH | Owner of Retail Shop<br>Wild Birds Unlimited | 2009                      |

\* Not affiliated with the Company

Karen L. Gavan resigned as a director of the Society on October 1, 2012 and was replaced by Sonia Baxendale on November 13, 2012.

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

The following is a listing of the principal officers of the Society as of December 31, 2011:

| <u>Name</u>              | <u>Title</u>   |
|--------------------------|--|
| George S. Mohacsi        | President and Chief Executive Officer  |
| Christopher H. Pinkerton | Senior Vice President, Independent Order of Foresters<br>President and Chief Executive Officer – U.S. Division |
| Sharon T. Giffen         | Senior Vice President and Chief Financial Officer  |
| Katharine E. Rounthwaite | Senior Vice President, General Counsel and Executive Secretary   |
| Kasia Czarski            | Senior Vice President, Chief Membership and Marketing Officer  |
| Susanne M. Nielsen       | Senior Vice President and Chief Talent Officer   |
| Peter Sweers             | Senior Vice President, Chief Operations and Information Officer  |
| J. Stephen McDonald      | Vice President, Controller and Executive Treasurer   |
| Terence M. Mawhinney     | Vice President and Chief Actuary   |
| Stephen Cheeseman*       | U.S. Division Compliance Officer and Assistant General Counsel   |

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

In May, 2012, Anthony W. Poole replaced Christopher H. Pinkerton as President and Chief Executive Officer of the Society's U.S. Division and in August, 2012, Paul D. Reaburn replaced Sharon T. Giffen as Senior Vice President and Chief Financial Officer.

#### 4. TERRITORY AND PLAN OF OPERATIONS

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

The Society is licensed to transact business in all 50 states and the District of Columbia. In 2011, 28% of life premiums were received from California (11.5%), Texas (9.0%) and Florida (7.5%), 73.4% of annuity considerations were received from California (44.7%) and Michigan (28.7%), and 31.8% of deposit type funds were received from Ohio (10.8%), Illinois (10.6%) and California (10.4%); 1.9% of life premiums and less than 1% of annuity and deposit type funds were received from New York. Certificates are written on a participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2011, the Society had \$1,000,000 (par value) of U.S. Treasury Notes on deposit with the State of New York, its port of entry state, for the benefit of all policyholders, claimants and creditors of the Society. As per confirmations received from the following states which were reported in Schedule E of the 2011 filed annual statement, an additional \$900,000 was being held by the states of Florida, New Hampshire and North Carolina.

##### B. Direct Operations

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

During the current examination period the Society recruited a number of IMOs and increased the number of contracted producers from 12,000 to well over 33,000. The U.S. Division continues to focus on: diversifying the product portfolio through the introduction of new permanent products; recruiting additional IMOs and producers; marketing the Society’s value proposition to appointed producers; providing producers with a good service experience; and leveraging the Society’s fraternal nature with prospects and members.

### C. Reinsurance

As of December 31, 2011, the Society had reinsurance treaties in effect with four companies, of which two were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$500,000. The total face amount of life insurance ceded as of December 31, 2011, was \$5,063,121,000, which represents 18.6% of the total face amount of life insurance in force. No reserve credit was taken for reinsurance ceded to unauthorized companies.

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

## 5. SIGNIFICANT OPERATING RESULTS

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

The following table indicates the Company's financial growth during the period under review:

|                                       | December 31,<br><u>2008</u> | December 31,<br><u>2011</u> | <u>Increase</u>      |
|---------------------------------------|-----------------------------|-----------------------------|----------------------|
| Admitted assets                       | <u>\$2,636,433,320</u>      | <u>\$2,789,815,266</u>      | <u>\$153,381,946</u> |
| Liabilities                           | <u>\$2,492,885,335</u>      | <u>\$2,630,753,911</u>      | <u>\$137,868,576</u> |
| Reserve for Future Fraternal Benefits | 11,000,000                  | 11,000,000                  | 0                    |
| Special Reserve re: Arkansas          | 300,000                     | 300,000                     | 0                    |
| Unassigned funds (surplus)            | <u>132,247,985</u>          | <u>147,761,355</u>          | <u>15,513,370</u>    |
| Total surplus                         | <u>\$ 143,547,985</u>       | <u>\$ 159,061,355</u>       | <u>\$ 15,513,370</u> |
| Total liabilities and surplus         | <u>\$2,636,433,320</u>      | <u>\$2,789,815,266</u>      | <u>\$153,381,946</u> |

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

|                                       | December 31,<br><u>2008</u> | December 31,<br><u>2011</u> | <u>Increase</u>      |
|---------------------------------------|-----------------------------|-----------------------------|----------------------|
| Trustee assets                        | <u>\$2,421,242,487</u>      | <u>\$2,555,930,694</u>      | <u>\$134,688,207</u> |
| Deposit with the State of New York    | 1,005,164                   | 1,079,860                   | 74,696               |
| Accrued interest                      | <u>0</u>                    | <u>4,842</u>                | <u>4,842</u>         |
| Total trustee assets                  | <u>\$2,422,247,650</u>      | <u>\$2,557,015,397</u>      | <u>\$134,767,747</u> |
| Liabilities                           | <u>\$2,492,885,335</u>      | <u>\$2,630,753,911</u>      | <u>\$137,868,576</u> |
| Deductions from liabilities           | <u>180,482,759</u>          | <u>210,814,431</u>          | <u>30,331,672</u>    |
| Net liabilities                       | <u>\$2,312,402,576</u>      | <u>\$2,419,939,480</u>      | <u>\$107,536,904</u> |
| Trustee surplus                       | <u>109,845,074</u>          | <u>137,075,917</u>          | <u>27,230,843</u>    |
| Total liabilities and trustee surplus | <u>\$2,422,247,650</u>      | <u>\$2,557,015,397</u>      | <u>\$134,767,747</u> |

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

The Society's invested assets as of December 31, 2011 were mainly comprised of bonds (90.1%) and contract loans (5.3%).

The majority (99.9%) of the Society's bond portfolio, as of December 31, 2011, was comprised of investment grade obligations.

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

|                           | <u>2009</u>            | <u>2010</u>           | <u>2011</u>            |
|---------------------------|------------------------|-----------------------|------------------------|
| Ordinary:                 |                        |                       |                        |
| Life insurance            | \$(111,354,148)        | \$(30,168,909)        | \$(119,860,654)        |
| Individual annuities      | 3,849,148              | 6,703,918             | 3,114,094              |
| Supplementary contracts   | <u>271,748</u>         | <u>(1,374,326)</u>    | <u>(680,827)</u>       |
| Total ordinary            | <u>\$(107,233,252)</u> | <u>\$(24,839,317)</u> | <u>\$(117,427,387)</u> |
| Accident and health:      |                        |                       |                        |
| Other                     | \$ <u>647,210</u>      | \$ <u>469,838</u>     | \$ <u>799,479</u>      |
| Total accident and health | <u>\$ 647,210</u>      | <u>\$ 469,838</u>     | <u>\$ 799,479</u>      |
| All other lines           | <u>\$ 13,210,523</u>   | <u>\$ 14,360,840</u>  | <u>\$ 4,862,696</u>    |
| Total insurance           | <u>\$(93,375,519)</u>  | <u>\$(10,008,639)</u> | <u>\$(111,765,212)</u> |
| Fraternal benefits        | <u>\$ (139,411)</u>    | <u>\$ 30,128,650</u>  | <u>\$ 2,033,042</u>    |
| Total                     | <u>\$ (93,514,930)</u> | <u>\$ 20,120,011</u>  | <u>\$(109,732,170)</u> |

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, surplus and other funds as of December 31, 2011, as contained in the Society's 2011 filed annual statement, a condensed summary of operations and a reconciliation of the surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Society's financial condition as presented in its financial statements contained in the December 31, 2011 filed annual statement.

### A. Independent Accountants

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

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

### B. Net Admitted Assets

|  |                            |
|--|----------------------------|
| Bonds  | \$2,432,524,574            |
| Stocks:  |                            |
| Common stocks  | 77,447,547                 |
| Mortgage loans on real estate:   |                            |
| First liens  | 7,447,547                  |
| Cash, cash equivalents and short term investments  | 38,017,738                 |
| Contract loans   | 144,095,476                |
| Receivable for securities  | 491,706                    |
| Student loans  | 4,463                      |
| Investment income due and accrued  | 29,470,499                 |
| Premiums and considerations:   |                            |
| Uncollected premiums and agents' balances in the course of collection                    | 28,737                     |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 53,330,820                 |
| Reinsurance:   |                            |
| Amounts recoverable from reinsurers  | 6,570,814                  |
| <br>Total admitted assets  | <br><u>\$2,789,815,266</u> |

C. Liabilities, Surplus and Other Funds

|   |                                   |
|---|-----------------------------------|
| Aggregate reserve for life contracts  | \$2,295,457,929                   |
| Aggregate reserve for accident and health contracts   | 1,403,976                         |
| Liability for deposit-type contracts  | 44,431,806                        |
| Contract claims:  |                                   |
| Life  | 62,070,498                        |
| Accident and health   | 4,200                             |
| Refunds due and unpaid  | 13,496                            |
| Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts |                                   |
| Dividends apportioned for payment   | 20,847,838                        |
| Premiums and annuity considerations for life and accident and health contracts received in advance        | 886,537                           |
| Contract liabilities not included elsewhere:  |                                   |
| Interest maintenance reserve  | 134,851,760                       |
| Commissions to fieldworkers due or accrued  | 700,801                           |
| Commissions and expense allowances payable on reinsurance assumed   |                                   |
| General expenses due or accrued   | 4,723,830                         |
| Amounts withheld or retained by Society as agent or trustee   | 284,539                           |
| Remittances and items not allocated   | 2,674,253                         |
| Asset valuation reserve   | 24,472,666                        |
| Payable for securities  | 660,677                           |
| Reserve for fraternal benefits approved   | 25,760,032                        |
| Interbranch payables  | 2,440,158                         |
| Benevolent Fund   | 1,757,980                         |
| Other liability reinsurance   | 938,563                           |
| Miscellaneous liabilities   | 451,794                           |
| Interest on certificate claims  | 298,000                           |
| <br>Total liabilities   | <br><u>\$2,630,753,911</u>        |
| <br>Reserve for future fraternal benefits   | <br>11,000,000                    |
| Special Reserve re: Arkansas  | 300,000                           |
| Unassigned funds (surplus)  | <u>147,761,365</u>                |
| Total   | <u>\$ 159,061,355</u>             |
| <br>Total liabilities, surplus and other funds  | <br><u><u>\$2,789,815,266</u></u> |

D. Condensed Summary of Operations

|   | <u>2009</u>                | <u>2010</u>              | <u>2011</u>               |
|---|----------------------------|--------------------------|---------------------------|
| Premiums and considerations                                 | \$191,929,738              | \$212,435,837            | \$269,994,444             |
| Investment income   | 136,965,589                | 135,541,116              | 125,411,389               |
| Commissions and reserve adjustments<br>on reinsurance ceded | 795                        | 13,846,912               | 13,612,784                |
| Miscellaneous income  | <u>813,965</u>             | <u>(615,743)</u>         | <u>(317,969)</u>          |
| <br>Total income  | <br><u>\$329,710,087</u>   | <br><u>\$361,208,122</u> | <br><u>\$408,700,648</u>  |
| <br>Benefit payments  | <br>\$184,937,296          | <br>\$194,151,089        | <br>\$204,892,388         |
| Increase in reserves  | 73,292,732                 | (33,412,490)             | 59,601,525                |
| Commissions   | 57,697,492                 | 90,572,581               | 123,006,517               |
| General expenses and taxes                                  | 87,361,211                 | 101,076,106              | 113,638,645               |
| Decrease in reserves for fraternal benefits<br>approved     | <u>0</u>                   | <u>(30,682,439)</u>      | <u>(3,976,670)</u>        |
| <br>Total deductions  | <br><u>\$403,288,731</u>   | <br><u>\$321,704,847</u> | <br><u>\$497,162,405</u>  |
| <br>Net gain (loss)   | <br>\$ (73,578,644)        | <br>\$ 39,503,275        | <br>\$ (88,461,757)       |
| Refunds to members  | 19,936,286                 | 19,383,264               | 21,270,413                |
| Net realized capital gains (losses)                         | <u>(16,235,912)</u>        | <u>5,955,070</u>         | <u>16,951,979</u>         |
| <br>Net income  | <br><u>\$(109,750,842)</u> | <br><u>\$ 26,075,081</u> | <br><u>\$(92,780,191)</u> |

The \$135.8 million increase in net income for the year ending December 31, 2010 compared to the previous year was primarily a result of 1) a \$106.7 million decrease in aggregate reserves due in part to reserves totaling \$38.9 million being released due to aggregation of results in cash flow testing, reserves for the special financial return benefit totaling \$9.6 million being released, and reserves for in-force and new business increased by \$20.4 million; 2) a \$30.7 million decrease in reserves for fraternal benefits approved based on a current review of claims experience for Havens benefits where the Society found that the number of Havens residents was less than half the number they had held reserves for since 2002; 3) a \$22.2 million increase in net realized capital gains; and 4) a \$20.5 million increase in premiums and annuity considerations. Offsetting these were a \$32.9 million increase in commissions on premiums and a \$14.0 million increase in general insurance expenses primarily due to sales volume of traditional life products.

The \$118.9 million decrease in net income for the year ending December 31, 2011 compared to the previous year was primarily a result of 1) an increase in aggregate reserve for life and accident and health contracts during 2011 resulting from model corrections and refinements, as well as changes in reserve strain due to changes in business in-force; 2) Fraternal benefits reserves decreased by only \$4.0 million compared to a \$30.7 million decrease in 2010; 3) Agent compensation increased over 2011 by \$32.4 million resulting from first-year commissions on increased sales, higher renewal commissions on a growing in-force, and annual performance incentives to brokers; 4) Death benefits increased by \$18.7 million mainly due to the growth in in-force business; 5) Premium considerations increased by \$57.8 million mainly due to higher first year premiums of \$23.5 million and an increase in renewal premiums of \$34.1 million due to the growth in in-force business; and 6) General expenses increased by \$12.4 million from the previous year, primarily due to additional costs associated with the increase in sales volume.

#### E. Surplus Account

|   | <u>2009</u>           | <u>2010</u>           | <u>2011</u>             |
|---|-----------------------|-----------------------|-------------------------|
| Surplus, December 31, prior year                | \$ <u>143,547,985</u> | \$ <u>241,166,982</u> | \$ <u>278,473,153</u>   |
| Net income                                      | \$(109,750,842)       | \$ 26,075,081         | \$ (92,780,191)         |
| Change in net unrealized capital gains (losses) | 51,949,194            | 22,152,838            | (6,506,899)             |
| Change in non-admitted assets and related items | (2,590,148)           | (15,180,097)          | (2,032,669)             |
| Change in reserve valuation basis               | 24,668,434            | 0                     | 21,453,125              |
| Change in asset valuation reserve               | (5,293,061)           | (4,860,412)           | 13,553,187              |
| Sundry  | (264,040)             | (114)                 | (39,134)                |
| Surplus (withdrawals) contributions from parent | <u>138,899,460</u>    | <u>9,118,875</u>      | <u>(53,059,217)</u>     |
| Net change in surplus for the year              | \$ <u>97,618,987</u>  | \$ <u>37,306,171</u>  | \$ <u>(119,411,798)</u> |
| Surplus, December 31, current year              | \$ <u>241,166,982</u> | \$ <u>278,473,153</u> | \$ <u>159,061,355</u>   |

The Society makes surplus contributions and withdrawals based on an internal capital management policy to maintain the greater of an RBC level of at least 300%, or,

an MCCR ratio (Canadian capital requirement) of 200%. These surplus transfers in or out of a division are made quarterly in arrears.

In 2009, surplus contributions of \$138,899,460 were required because the RBC ratio decreased at December 31, 2008 compared to the Society's internal calculation at September 30, 2008. During the 4th quarter of 2008 the Society reported a surplus reduction of \$64,671,472 due to a combination of the net loss and unrealized capital losses reported. The resulting surplus contribution to maintain target capital ratios was made the following quarter in 2009. Additional surplus contributions were required in 2009 due to significant net losses of \$109,750,842, and higher capital requirements due to an increase in new business.

In 2011, capital requirements were based on the lower of an RBC ratio of 300% or an MCCR ratio of 200%. Refinements in the calculation of the MCCR ratio related to participating policies enabled the Society to lower the capital requirements on these policies and other economic impacts in 2011 contributed to lower capital requirements resulting in a higher MCCR ratio and a surplus withdrawal.

#### F. Actuarial Review

The actuarial review revealed a significant concern that excessive expenses are leading to net losses and rapidly decreasing surplus. An expense overrun is occurring because incoming premiums from new business are not enough to cover acquisition expenses. The Society is documenting the expense overrun concerns by providing the Department with a plan for managing down the expense overrun situation over the next several years, by demonstrating to the Department's satisfaction that their maintenance expenses were reasonable and preparing an ongoing quarterly report to the Department so that progress in managing their expense overrun may be monitored.

To date, there is still a large expense overrun even though the Society has been trying to reduce the amount of the expense overrun by growing business, so that per unit expenses would theoretically decrease over time. These plans include underwriting, product development, distribution support, marketing, etc., for the growth of new business. However a concern was that the new business, final expense life insurance, was unprofitable during the examination period.

The Society is in the process of implementing a program called “Foresters Invests in Transformation.” This consists of a new administration system and re-engineered processes to attempt to improve efficiency which would further lower per unit expenses.

The Department recommends that the Society continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.

## 7. MARKET CONDUCT ACTIVITIES

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

### A. Advertising and Sales Activities

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

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

### B. Underwriting and Policy Forms

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

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

### C. Treatment of Policyholders

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

Section 86.4 of Department Regulation No. 95 states in part:

“(a)... all claim forms for insurance ... provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

... (e) Notwithstanding the provisions of subdivisions (a) . . . of this section, insurers may use substantially similar warning statements provided such warning statements are submitted to the Insurance Frauds Bureau for prior approval.”

A review of claims paid to New York residents during the period under examination indicated that the fraud warning statement used by the Society on its claim forms failed to contain the complete fraud warning statement required by Section 86.4(a) of Department Regulation No. 95. In addition, the Society failed to submit an alternate fraud warning statement to the Insurance Frauds Bureau for prior approval.

The Society violated Section 86.4 of Department Regulation No. 95 by using claim forms that did not contain the required fraud warning statement, and by not submitting an alternate fraud warning statement to the Insurance Frauds Bureau for prior approval.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

The prior report on examination was bifurcated into two reports; financial and market conduct. Following are the recommendation contained in the prior financial report on examination and the two violations contained in the prior market conduct report on examination and the subsequent actions taken by the Company in response to each citation:

| <u>Item</u> | <u>Description</u>   |
|-------------|--|
|             | <u>Financial</u>   |
| A           | <p>The examiner recommended that the Society segregate the assets of the United States branch from those of other business segments.</p> <p>The examination revealed that the Society segregated the remaining assets of the U.S. Branch from those of other business segments that were not split prior to the examination. This was completed by the end of the second quarter 2010.</p>     |
|             | <u>Market Conduct</u>  |
| A           | <p>The Society violated Section 51.6(a)(2) of Department Regulation No. 60 by failing to have a "Definition of Replacement" notice signed by the applicant and the agent.</p> <p>The examination revealed that the Society requires and maintains a "Definition of Replacement" notice signed by the applicant and the agent.</p>  |
| B           | <p>The Society violated Section 51.6(c)(2) of Department Regulation No. 60 by failing to provide the required information to the replacing insurer within twenty days of a request to provide such information.</p> <p>The examination revealed that the Society provided the required information to the replacing insurer within twenty days of the request to provide such information.</p> |

## 9. SUMMARY AND CONCLUSIONS

Following are the recommendation and violation contained in this report:

| <u>Item</u> | <u>Description</u>   | <u>Page No(s).</u> |
|-------------|--|--------------------|
| A           | The Department recommends that the Society continue to provide quarterly reports to the Department so that progress in managing their expense overrun may be monitored.  | 17                 |
| B           | The Society violated Section 86.4 of Department Regulation No. 95 by using claim forms that did not contain the required fraud warning statement and by not submitting an alternate fraud warning statement to the Insurance Frauds Bureau for prior approval. | 18                 |



APPOINTMENT NO. 30813

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, 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:

**JEFF GOOD**

as a proper person to examine the affairs of the

**INDEPENDENT ORDER OF FORESTERS**

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

**SOCIETY**

with such other information as he shall deem requisite.

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

this 15th day of June, 2012

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

