

REPORT ON EXAMINATION

OF

FDM PREFERRED INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2014

DATE OF REPORT

NOVEMBER 8, 2017

EXAMINER

KAREN GARD, CFE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

November 8, 2017

Honorable Maria T. Vullo
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 31363 dated August 17, 2015, attached hereto, I have made an examination into the condition and affairs of FDM Preferred Insurance Company, Inc. as of December 31, 2014, and submit the following report thereon.

Wherever the designation “the Company” or “FPI” appears herein without qualification, it should be understood to indicate FDM Preferred Insurance Company, Inc.

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 at the Company’s home office located at 777 Chestnut Ridge Road, Chestnut Ridge, New York 10977.

1. SCOPE OF EXAMINATION

The Department has performed a group examination of the Company, a single-state insurer. The previous examination was conducted as of December 31, 2010. This examination covered the four year period from January 1, 2011 through December 31, 2014. The examination of the Company was performed concurrently with the examinations of the following insurers: Fire Districts of New York Mutual Insurance Company, Inc. (“FDM”) and Fire Districts Insurance Company, Inc. (“FDI”). Collectively, the three insurers are referred to as Fire Districts Group (“FDG”). Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company, 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, and evaluating management’s compliance with Statutory Accounting Principles and annual statement instructions, when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Company’s independent public accountants where deemed appropriate.

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

- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Company

Loss experience
Reinsurance
Accounts and records
Statutory deposits
Financial statements
Significant subsequent events
Summary of recommendations

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 COMPANY

FPI is a not-for-profit stock company, which writes workers' compensation insurance and employer's liability insurance, primarily for volunteer firefighters, in New York State. It was established by FDM as a discounted company for policyholders having experienced better than average loss ratios and exposures to losses. The Company received a determination from the State of New York Department of Taxation and Finance that it is entitled to the exemption provided in Section 1512(a)(1) of the New York State Tax Law.

The Company was incorporated under the laws of the State of New York on December 21, 2007. It became licensed on March 16, 2009 and commenced business on the same date.

At December 31, 2014, capital paid in was \$600,000 consisting of 60,000 shares of \$10 par value per share common stock. Gross paid-in and contributed surplus was \$670,020 and has not changed during the examination period.

A. Management

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of 13 members, and in no case, shall there be less than nine members. The board meets four times during each calendar year. As of December 31, 2014, the board of directors was comprised of the following 13 members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Craig P. DeBaun Oceanside, NY	Administrator for Lifeguard Certification, Nassau County, NY
Roberta G. Doremus Tallman, NY	Retired
Michael H. Geoghan Bayport, NY	Treasurer, Fire Districts of New York Mutual Insurance Company, Inc. President, Walter P. Geoghan Insurance Agency, Inc.
Dominick D. Greene Newburgh, NY	Retired
Thomas E. Herlihy, Jr. Apulia Station, NY	Retired
Kenneth E. Hoffarth Valhalla, NY	Secretary, Fire Districts of New York Mutual Insurance Company, Inc. Financial Manager, Somers Fire District
John LoScalzo Huntington, NY	President, LoScalzo Oil Company
James J. McCormick East Northport, NY	Retired
Daniel F. McNeil III Cortland, NY	President, Fire Districts of New York Mutual Insurance Company, Inc. President, McNeil & Company, Inc.
Frank A. Nocerino North Massapequa, NY	Vice President, Fire Districts of New York Mutual Insurance Company, Inc. Commissioner of Parks, Town of Oyster Bay, NY
Lawrence A. Pierce Mendon, NY	Retired
Randall J. Rider Tonawanda, NY	Retired
Michael L. White Clay, NY	Marketing Agent, McNeil & Company, Inc.

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were well attended and each board member had an acceptable record of attendance.

As of December 31, 2014, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Daniel F. McNeil III	President
Kenneth E. Hoffarth	Secretary
Michael H. Geoghan	Treasurer
Frank A. Nocerino	Vice President

The position of Executive Vice President and Chief Operating Officer was vacated in the 4th quarter 2013 by Lanny D. Strain, and was filled effective September 2015 by Matthew P. Vehlies.

B. Territory and Plan of Operation

As of December 31, 2014, the Company was licensed to write business in New York only. The license covers workers' compensation and employers' liability insurance as defined in paragraph 15 of Section 1113(a) of the New York Insurance Law including volunteer firefighters' benefit insurance provided pursuant to the Volunteer Firefighters' Benefit Law.

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$600,000.

The following schedule shows the direct premiums written by the Company in New York State for the period under examination:

<u>Calendar Year</u>	<u>Total Premiums</u>
2011	\$5,916,079
2012	\$6,402,512
2013	\$6,778,594
2014	\$7,426,636

The New York Compensation Insurance Rating Board sets the loss costs component of rates used by workers' compensation writers. FDM, in order to achieve more equitable pricing for its insureds, created a 3-tier pricing format by forming two wholly-owned subsidiaries: the Company and FDI. FDM writes standard risks; the Company writes preferred risks at discounted rates; and FDI writes substandard risks at surcharged rates.

The Company is a direct writer and, in 2014, its business was produced through 50 agencies. Twenty-five of these agencies are part of a program called the Emergency Services Insurance Program ("ESIP"). ESIP was formed by and is managed by McNeil & Company, Inc. ("McNeil Agency"). ESIP provides insurance products other than VFBI including, but not limited to, property, commercial general liability, business automobile and others, to the same volunteer fire organizations to whom the Company provides VFBI. The McNeil Agency has a wholesale relationship with the other agencies participating in ESIP. It is noted that Daniel F. McNeil III is the President of the McNeil Agency, the President of the Company and a member of the Company's board of directors.

The agencies that are part of the ESIP program, including the McNeil Agency, placed 56% of the Company's direct written premium in 2014. Additionally, they placed 56% of FDM's direct written premium and 67% of FDI's direct written premium. Sixty-three percent of the total premium for FDG in 2014 was received from agents participating in ESIP, including the McNeil Agency.

C. Holding Company Analysis

Section 1501(a) of the New York Insurance Law states, in part:

“... (1) “Person” means an individual, partnership, firm, association, corporation... (2) “Control”... means the possession direct or indirect of the power to direct or cause the direction of the management and policies of a person... (3) “Holding Company” means any person who directly or indirectly controls any authorized insurer. (4) “Controlled insurer” means an authorized insurer controlled directly or indirectly by a holding company...”

By the terms defined in Section 1501(a) of the New York Insurance Law, the Company is a controlled insurer and part of a holding company system due to the following:

- 1) Mr. McNeil’s position as the president of the Company, a member of the Company’s board and as president/owner of the McNeil Agency; and
- 2) Depending upon the insurer, more than one half or up to two thirds of the written premiums are placed through the McNeil Agency and the ESIP program that it manages. The companies’ dependence upon the McNeil Agency, which is owned by Mr. McNeil, leads to this conclusion.

Subsequent to the examination date, by letter to the board of directors dated October 23, 2017, Mr. McNeil resigned as president of FDM and its subsidiaries, and stepped down from their boards, effective October 24, 2017. Because Mr. McNeil resigned as president of the Company, and is no longer a member of the board of directors, he is deemed to no longer control the Company and, therefore, the Company is no longer part of a holding company system. All recommendations in this report related to the Company being a controlled insurer are no longer applicable.

Section 1501(b) of the New York Insurance Law states:

“Notwithstanding the provisions of paragraph two of subsection (a) of this section, the superintendent may determine, after notice and opportunity to be heard, that a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the insurer’s policyholders or shareholders that the person be deemed to control the insurer.”

Pursuant to Section 1501(b) of the New York Insurance Law, Mr. McNeil is deemed to be the ultimate controlling party due to the factors listed above.

Due to his subsequent resignation, Mr. McNeil is no longer deemed to be the ultimate controlling party.

Section 1503(a) of the New York Insurance Law states, in part:

“Every person who becomes a controlled insurer shall, within thirty days thereafter register with the superintendent and shall amend the registration within thirty days following any change in the identity of its holding company or any other material change...”

The Company must file an amended registration with the Department. Pursuant to Section 1503(a) of the New York Insurance Law, it is recommended that the Company amend its registration with the superintendent to reflect that it is a controlled insurer ultimately controlled by Mr. McNeil and file such amended registration within 30 days of the filing of this report. However, due to Mr. McNeil’s subsequent resignation, this recommendation is no longer applicable.

Section 1503(b) of the New York Insurance Law states, in part:

(b) A holding company that directly or indirectly controls an insurer shall... file an enterprise risk report with the superintendent by April thirtieth of each year...”

It is noted the Company has filed an enterprise risk report identifying the Company as the ultimate controlling party. However, it is the Department’s position that Mr. McNeil is the ultimate controlling party in the holding company system; therefore, on a prospective basis, the enterprise risk report as currently filed will not be sufficient and will not meet the requirements of Section 1503(b) of the New York Insurance Law. It is recommended that the Company update and revise its formal enterprise risk management function and prospectively file an enterprise risk report which recognizes Mr. McNeil as the ultimate controlling party and includes material risks associated with the affiliated entities, including the McNeil Agency. Due to Mr. McNeil’s subsequent resignation, this recommendation is no longer applicable.

As this examination has determined the Company is part of a holding company system ultimately controlled by Mr. McNeil, it is subject to the provisions in Section 1505 of the New York Insurance Law which 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... and the superintendent has not disapproved it... (3) rendering of services on a regular and systematic basis; or (4) any material transaction...”

It is recommended that the Company comply with all of the provisions in Section 1505 of the New York Insurance Law.

It is also recommended that the Company file with this Department any service contracts between it and any member of its holding company system pursuant to Section 1505(d)(3) of the New York Insurance Law.

It is further recommended that the Company provide prior notification to the superintendent of any material transaction entered into with the McNeil Agency, pursuant to Section 1505(d)(4) of the New York Insurance Law.

Due to Mr. McNeil’s subsequent resignation, all recommendations related to Section 1505 of the New York Insurance Law are no longer applicable.

Regulation 52-A definitions state, in part:

“A controlling producer means (1) a producer who is a member of the holding company system, and who is not controlled by the insurer...”

The McNeil Agency is a controlling producer and the Company is a controlled insurer. Both are subject to the requirements of Regulation 52-A.

Regulation 52-A, specifically the reporting requirements of 11 NYCRR 80-2.2(c) states in part:

“The controlled insurer shall annually, on or before April 1st, provide to the superintendent:

(1) In addition to the loss reserve opinion...an opinion by an independent casualty actuary...acceptable to the superintendent. The opinion shall report...for which any business was placed by a controlling producer; and

(2) A report consisting of the following:

(i)(a) the amount of premiums on insurance business placed with the controlled insurer by the controlling producer;

(b) the amount of commissions, charges and other fees paid by the controlled insurer to the controlling producer during the previous calendar year; and

- (c) the amounts owed to the controlling producer on the business by line of insurance on the annual statement; and
- (ii) the percentage that the amounts specified in subparagraph (i) of this paragraph represent of the controlled insurer's net premiums written for each such line of insurance."

It is recommended that the Company comply with all provisions of Regulation 52-A. However, due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.

D. Corporate Governance

The board of directors has a duty to ensure that the Company is operated in a sound manner in the best interest of the policyholders. An effective control environment, which is significantly influenced by the board of directors, helps ensure that an organization is operated in such manner. Deficiencies in FDG's control environment manifested itself in several areas:

1. Conflict of Interest/ Code of Business Conduct and Ethics

The Company's Code of Business Conduct and Ethics ("Code") states, in part:

"...a conflict of interest exists when your private interests interfere in any way with the interests of the Company as a whole. A conflict may arise when you take actions or have personal interests that are incompatible with the interest of the Company...The basic principle to be observed is that your corporate position should not be used to make a personal profit..."

There is an inherent conflict of interest whereby Mr. McNeil is both president of the Company and president of the McNeil Agency. These conflicts of interest include, but are not limited to, the following:

- a. As president of the Company, Mr. McNeil has the ability, through underwriting, to effect pricing favorable to his agents, that would result in a profit to him personally;
- b. As president of the McNeil Agency, his priority is to generate a large volume of premium that would result in a profit to him personally, while as president of the Company his priority is to ensure that there is a prudent underwriting policy and that it is adhered to.

This conflict of interest should have been disclosed per the Code which requires all officers, directors and employees subject to the Code to annually sign a sworn statement, setting forth that he or she is familiar with the provisions of the Code, and while in office or as an employee, has not violated its provisions or acted in a manner contrary to the policy set forth. During the examination period, directors Mr. McNeil and Michael White (an employee of McNeil Agency) requested and were granted a waiver of the Code of Business Conduct and Ethics. A review of the board minutes indicated that these waivers were accepted and approved based upon a recommendation from the Audit Committee. However, the minutes of the Audit Committee meetings do not indicate any such recommendation and there is no documented evidence that these waivers were sufficiently reviewed by the board.

There are instances of which the Department is aware in which a board member may receive a waiver of certain provisions of a company's code of conduct; however, in this case a waiver of the entire code of conduct was granted. FDM's board accepted and approved the waivers of the entire code of conduct without the respective board member's disclosure of any real, apparent or perceived conflict of interests. As noted, Mr. McNeil is the President of the Company and also President of McNeil Agency. Approximately 56% of the Company's written premium is attributable to the ESIP program that is managed by the McNeil Agency; however, this was not disclosed when Mr. McNeil's waiver of the Code was approved by the board.

It is recommended that the board revoke the waivers previously issued, and in the future, as a matter of policy, no longer issue any blanket waivers of the Company's entire Code of Business Conduct and Ethics. If a waiver of certain provisions of the Company's Code is granted, the board should document in the board minutes, via a recorded vote, the supportive reasoning for granting the approval of the waiver and take measures to ensure that any director, officer or employee who receives a waiver, act in the best interest of the Company and its policyholders.

Additionally, it is recommended that the board take various actions to ensure it has the comprehensive knowledge necessary to fully exercise its fiduciary responsibilities to the policyholders of the Company, as follows:

- 1) Require an annual full written disclosure of real, apparent or perceived conflicts of interest from all directors, officers, and employees.
- 2) Review sufficiently waivers to provisions of the Code of Business Conduct and Ethics.

- 3) If it deems that a conflict of interest exists, the board takes steps to ensure that the conflict does not adversely affect the position of the Company or its policyholders.
- 4) That Mr. McNeil recuse himself from any involvement on decisions regarding the placement of any new or renewal business in any of the three insurance companies in the holding company system.
- 5) Require quarterly reporting by the McNeil Agency of the amount of business placed by ESIP agents.

Due to Mr. McNeil's subsequent resignation, items 4 and 5 of this recommendation are no longer applicable.

It is noted that the Director of Information Technology at the McNeil Agency has administrative rights to the Company's integrated underwriting, claims and accounting system (referred to as the "ConceptOne" system). While it may not be unusual for the agency to have "read only" access to the Company's systems, it is not appropriate for the agency to have administrative rights to the Company's underwriting, claims and account systems.

It is recommended that the Company terminate the administrative rights of person(s) who are employee(s) of the McNeil Agency to the Company's integrated underwriting, claims, and accounting system.

2. Underwriting

Prior to the formation of FDI and FPI, FDM used the same base rates for all of its insureds. As noted in the Company's 2014 Management Discussion & Analysis, "the unintended consequence of this was that the very best, most profitable insureds subsidized other insureds who did not perform as well, to such a degree that it simply was not fair." As stated previously, FDM formed the Company and FDI in order to write policies at three different pricing points: standard, discounted and surcharged. FDM's Business Plan, which was submitted to the Department as part of the approval process for the formation of the Company, noted that the pricing structure will "create greater fairness in the way FDM charges its insureds. It will give FDM the ability to charge lower premiums to insureds who have fewer losses and less exposure. At the same time insureds who have higher losses and more exposure will be charged higher premiums commensurate with their risk."

The examination team reviewed a judgmentally selected sample of new issues and renewals to ensure compliance with the Company's underwriting guidelines and with Section 2314 of the New York Insurance Law, which states:

"No authorized insurer shall, and no licensed insurance agent, no employee or other representative of an authorized insurer, and no licensed insurance broker shall knowingly, charge or demand a rate or receive a premium which departs from the rates, rating plans, classifications, schedules, rules and standards in effect on behalf of the insurer, or shall issue or make any policy or contract involving a violation thereof."

Based on the review, the examiner determined that the Company violated Section 2314 of the New York Insurance Law in that the Company did not consistently adhere to its underwriting guidelines, which were established to provide more appropriate pricing for its insureds. For instance, in 2015, there were a total of 21 carrier changes within FDG. A carrier change means that an insured, at renewal, is written in a different company. The examiner reviewed the files of seven carrier changes. Two insureds were placed in a carrier even though they did not meet the underwriting criteria for that carrier: one of the insureds was placed in FPI, but in accordance with the underwriting guidelines, should have been placed in FDM; the other was placed in FDM, but in accordance with the underwriting guidelines, should have been placed in FDI. In both instances, the insured received a better rate in the new carrier. By not abiding by the underwriting guidelines that were established to create greater fairness in pricing, the Company, FPI in the first instance

and FDM in the second, received a premium that departed from the rules and standards in effect on its behalf. In addition, the examination review revealed other instances where there were exceptions to the underwriting guidelines.

It is recommended that the Company comply with Section 2314 of the New York Insurance Law. Additionally, it is recommended that the Company form an Underwriting Committee, whose responsibilities would include, at a minimum, the following:

- 1) Review and approve all proposed carrier changes prior to policy issuance;
- 2) Approve all renewals prior to issuance, ensuring that each insured is placed in the proper carrier upon renewal and that underwriting guidelines are properly applied.
- 3) Review and approve new business prior to issuing the policy;
- 4) Review and approve all changes to the Company's Underwriting Manual;
- 5) Approve all prospective/new agencies, prior to the issuance of the contract.

Further, it is recommended that the Underwriting Committee include proper documentation of the review process in all underwriting files and policy applications. Activities of the Underwriting Committee should be presented to the board of directors for approval, with sufficient documentation noted in the board minutes. Finally, in order to provide adequate oversight indicative of proper corporate governance, and to avoid any perceived or real conflicts of interest, it is recommended that the Company exclude agents, marketing representatives, or employees of any agency that does business with FDG, from the composition of the Underwriting Committee.

In summary, it is recommended that the board of directors exercise its fiduciary responsibilities to ensure that management is operating in the best interest of the Company and its policyholders.

E. Reinsurance

The Company participates in a pooling agreement with its parent, FDM, and affiliate, FDI, wherein FDM assumes 100% of its subsidiaries' written premium (net of external reinsurance), and cedes back 15% and 10% of the premium (net of external reinsurance) to FDI and FPI, respectively.

The Company utilizes reinsurance accounting as defined in Statement of Statutory Accounting Principle ("SSAP") No. 62R for all of its assumed reinsurance business.

The Company has an excess of loss treaty in place with the following coverage: \$19,600,000 in excess of \$400,000. The agreement is comprised of five layers with a different limit within each layer. Additionally, each layer is further subject to an aggregate limit with respect to losses arising from an act of terrorism.

During the examination period, the Company ceded more than 50% of its written premium. The Company received approval to do so, pursuant to the provisions of Section 1308(e)(1)(A) of the New York Insurance Law.

All significant ceded reinsurance agreements in effect as of the examination date were reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

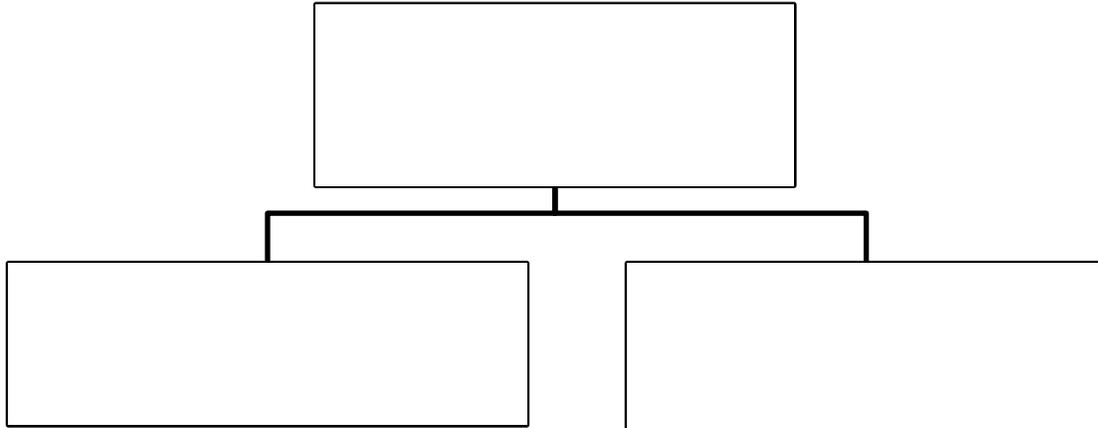
The examination review of Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62R. Representations were supported by an attestation from the Company's chief executive officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Company was not a party to any finite reinsurance agreements. Ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62R.

F. Affiliated Group

FDM wholly owns FDI and FPI. Prior to this examination, the Company was exempt from the requirements of Article 15 of the New York Insurance Law and Department Regulation 52-A, since FDM was reported as the ultimate controlling party of the affiliated group. However, based on the examination findings as described in Section 2C of this report, the Company is a controlled insurer and part of a holding company system ultimately controlled by Mr. McNeil. Due to Mr. McNeil's subsequent resignation, the Company is exempt from the requirements of Article 15 of

the New York Insurance Law and Department Regulation 52-A because FDM is the ultimate controlling party of the affiliated group.

The following is a chart of the affiliated group as presented by the Company in its' 2014 annual statement:



In addition to an inter-company pooling agreement, the Company was party to the following agreement with the other members of its affiliated group as of December 31, 2014:

Inter-Company Cost Allocation Agreement

Effective January 30, 2009, the Company entered into a service and cost allocation agreement with FDM and FDI, whereby FDM agrees to provide personnel services, and makes available its property, equipment and facilities. Pursuant to the agreement, FPI and FDI agree to reimburse FDM in accordance with the requirements of Department Regulation 30. This agreement was filed with this Department pursuant to Article 16 of the New York Insurance Law and was non-disapproved.

G. Significant Operating Ratios

The following ratios have been computed as of December 31, 2014, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	112%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	81%
Premiums in course of collection to surplus as regards policyholders	23%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$5,410,666	82.17%
Other underwriting expenses incurred	1,246,320	18.93
Net underwriting loss	<u>(72,176)</u>	<u>(1.10)</u>
Premiums earned	<u>\$6,584,810</u>	<u>100.00%</u>

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2014 as reported by the Company:

<u>Assets</u>	<u>Assets</u>	Assets Not <u>Admitted</u>	Net Admitted <u>Assets</u>
Bonds	\$4,173,695	\$0	\$4,173,695
Common stocks (stocks)	885,046		885,046
Cash, cash equivalents and short-term investments	1,187,672		1,187,672
Investment income due and accrued	27,702		27,702
Uncollected premiums and agents' balances in the course of collection	389,213		389,213
Deferred premiums, agents' balances and installments booked but deferred and not yet due	224,240		224,240
Amounts recoverable from reinsurers	<u>129,899</u>	<u>0</u>	<u>129,899</u>
Total assets	<u>\$7,017,467</u>	<u>\$0</u>	<u>\$7,017,467</u>

Liabilities

Losses and loss adjustment expenses	\$4,152,941
Reinsurance payable on paid losses and loss adjustment expenses	61,803
Commissions payable, contingent commissions and other similar charges	28,045
Other expenses (excluding taxes, licenses and fees)	4,200
Taxes, licenses and fees (excluding federal and foreign income taxes)	8,093
Unearned premiums	545,720
Ceded reinsurance premiums payable (net of ceding commissions)	378,157
Payable to parent, subsidiaries and affiliates	<u>148,452</u>
Total liabilities	\$5,327,411

Surplus and Other Funds

Common capital stock	\$600,000
Unassigned funds (surplus)	420,036
Gross paid in and contributed surplus	<u>670,020</u>
Surplus as regards policyholders	<u>1,690,056</u>
Total liabilities, surplus and other funds	<u>\$7,017,467</u>

B. Statement of Income

Net income for the four-year examination period, January 1, 2011 through December 31, 2014, as reported by the Company was \$391,825 detailed as follows:

Underwriting Income

Premiums earned		\$6,584,810
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Deductions:

Losses and loss adjustment expenses incurred	\$5,410,666	
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Other underwriting expenses incurred	<u>1,246,320</u>	
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Total underwriting deductions		<u>6,656,986</u>
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Net underwriting loss		\$ (72,176)
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Investment Income

Net investment income earned	\$ 311,520	
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Net realized capital gain	<u>152,481</u>	
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Net investment gain		<u>464,001</u>
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Net income		<u>\$391,825</u>
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C. Capital and Surplus

Surplus as regards policyholders increased \$510,162 during the four-year examination period January 1, 2011 through December 31, 2014, detailed as follows:

Surplus as regards policyholders as reported by the Company as of December 31, 2010			\$1,179,894
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$391,825		
Net unrealized capital gains	118,341		
Change in non-admitted assets	<u>0</u>	\$4	
Total gains or losses in surplus	<u>\$510,166</u>	<u>\$4</u>	
Net increase in surplus			<u>510,162</u>
Surplus as regards policyholders as reported by the Company as of December 31, 2014			<u>\$1,690,056</u>

4. **LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$4,152,941 is the same as reported by the Company as of December 31, 2014. 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 the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55 (“SSAP No. 55”).

5. **COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

There were no comments or recommendations in the prior report on examination.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A	
<u>Holding Company Analysis</u>	
i.	7
The Company is a controlled insurer and part of a holding company system.	
Due to Mr. McNeil's subsequent resignation, the Company is no longer deemed a controlled insurer and, therefore, is no longer part of a holding company system.	
ii.	7
Mr. McNeil is deemed to be the ultimate controlling party.	
Due to his subsequent resignation, Mr. McNeil is no longer deemed to be the ultimate controlling party.	
iii.	8
It is recommended that the Company amend its registration with the superintendent to reflect that it is a controlled insurer.	
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
iv.	8
It is recommended that the Company update and revise its formal enterprise risk management function and prospectively file an enterprise risk report which recognizes Mr. McNeil as the ultimate controlling party and includes material risks associated with the affiliated entities.	
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
v.	9
It is recommended that the Company comply with all of the provisions in Section 1505 of the New York Insurance Law.	
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
vi.	9
It is also recommended that the Company file with this Department any service contracts between it and any member of its holding company system pursuant to Section 1505(d)(3) of the New York Insurance Law.	
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
vii.	9
It is further recommended that the Company provide prior notification to the superintendent of any material transaction entered into with the	

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McNeil Agency, pursuant to Section 1505(d)(4) of the New York Insurance Law.	
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
viii. It is recommended that the Company comply with all provisions of Regulation 52-A.	10
Due to Mr. McNeil's subsequent resignation, this recommendation is no longer applicable.	
B <u>Corporate Governance</u>	
i. It is recommended that the board revoke the waivers previously issued, and in the future, as a matter of policy, no longer issue any blanket waivers of the Company's entire Code of Business Conduct and Ethics.	11
ii. It is recommended that the board take various actions to ensure it has the comprehensive knowledge necessary to fully exercise its fiduciary responsibilities to the policyholders of the Company, as follows:	11
1) Require an annual full written disclosure of real, apparent or perceived conflicts of interest from all directors, officers, and employees.	
2) Review sufficiently waivers to provisions of the Code of Business Conduct and Ethics.	
3) If it deems that a conflict of interest exists, the board takes steps to ensure that the conflict does not adversely affect the position of the Company or its policyholders.	
4) That Mr. McNeil recuse himself from any involvement on decisions regarding the placement of any new or renewal business in any of the three insurance companies in the holding company system.	
5) Require quarterly reporting by the McNeil Agency of the amount of business placed by ESIP agents.	
Due to Mr. McNeil's subsequent resignation, items 4 and 5 of this recommendation are no longer applicable.	
iii. It is recommended that the Company terminate the administrative rights of person(s) who are employee(s) of the McNeil Agency to the Company's integrated underwriting, claims, and accounting system.	12
iv. It is recommended that the Company comply with Section 2314 of the New York Insurance Law.	14

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v. It is recommended that the Company form an Underwriting Committee, whose responsibilities would include, at a minimum, the following: <ol style="list-style-type: none"> 1) Review and approve all proposed carrier changes prior to policy issuance; 2) Approve all renewals prior to issuance, ensuring that each insured is placed in the proper carrier upon renewal and that underwriting guidelines are properly applied. 3) Review and approve new business prior to issuing the policy; 4) Review and approve all changes to the Company's Underwriting Manual; 5) Approve all prospective/new agencies, prior to the issuance of the contract. 	14
vi. It is recommended that the Underwriting Committee include proper documentation of the review process in all underwriting files and policy applications.	14
vii. It is recommended that the Company exclude agents, marketing representatives, or employees of any agency that does business with FDG, from the composition of the Underwriting Committee.	14
viii. It is recommended that the board of directors exercise its fiduciary responsibilities to ensure that management is operating in the best interest of the Company and its policyholders.	14

APPOINTMENT NO. 31363

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **ANTHONY ALBANESE**, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

Karen Gard

as a proper person to examine the affairs of the

FDM Preferred Insurance Company, Inc.

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 17th day of August, 2015

ANTHONY ALBANESE
Acting Superintendent of Financial Services

By:



Rolf Kaumann
Deputy Chief Examiner

