

REPORT ON EXAMINATION

OF

WEST 34TH STREET INSURANCE COMPANY NEW YORK

AS OF

DECEMBER 31, 2017

DATE OF REPORT

DECEMBER 13, 2019

EXAMINER

WEI CAO

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of examination	2
2.	Description of Company	2
	A. Articles of incorporation	2
	B. By-laws	3
	C. Capital structure	3
	D. Corporate records	3
	E. Operations	3
	F. Management and control	4
	G. Certified public accountant	6
3.	Financial statements	7
	A. Balance sheet	7
	B. Statement of income	8
	C. Capital and surplus account	9
4.	Losses and loss adjustment expenses	9
5.	Article 70 compliance	9
6.	Summary of comments and recommendations	10



Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Acting Superintendent

November 15, 2021

Honorable Adrienne A. Harris
Acting 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 32007 dated October 8, 2019, attached hereto, I have made an examination into the condition and affairs of West 34th Street Insurance Company New York as of December 31, 2017, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate West 34th Street Insurance Company, New York. Wherever the designation “the Parent” appears herein without qualification, it should be understood to indicate Macy’s Inc.

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

1. SCOPE OF EXAMINATION

The examination covers the period from the incorporation of the Company on April 4, 2012, through December 31, 2017, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis. Transactions occurring subsequent to this period were reviewed where deemed appropriate. The examination included a review of Company records deemed necessary to accomplish such analysis or verification. Additionally, a review was performed to determine whether the captive insurer was operating within its by-laws, conforming with its plan of operation, as submitted to the New York State Department of Financial Services, and was in compliance with Article 70 of the New York Insurance Law (“the Law”).

Comments and recommendations are limited to those items requiring financial adjustment, procedural recommendations, or instances where the Company was not conforming to the application submitted to the Department of Article 70 of the Law.

The report utilized work performed by the Company’s independent certified public accountant and its opining actuary to the extent considered appropriate.

2. DESCRIPTION OF COMPANY

The Company was incorporated under the laws of New York State as a captive insurance company on April 4, 2012, and commenced business on May 27, 2013. The Company was a wholly-owned subsidiary of West 34th Street Insurance Company (“West 34th Street Vermont”), a Vermont corporation, with the ultimate parent being Macy’s Inc.

On August 27, 2016, West 34th Street Vermont transferred reserves, notes with affiliates, and some cash to the Company. West 34th Street Vermont was consolidated with the Parent on October 1, 2016, leaving Macy’s Inc. as the direct parent of the Company.

A. Article of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 1113(a) of the New York Insurance Law, subject at all times to the limitations on the business of pure captive insurance companies set forth in Article 70 of the Law.

B. By-Laws

The examination found that the Company was in compliance with its by-laws in all material respects.

C. Capital Structure

As a pure captive insurance company incorporated as a stock insurer, the Company is required to maintain a total surplus as regards policyholders of not less than \$250,000, of which \$100,000 shall represent paid-in capital pursuant to the provisions of Section 7004(a)(1) of the Law.

As of December 31, 2017, the Company's paid-in capital was \$1,815,425,857, consisting of 100,000 shares of common stock with a par value of \$1.00 per share and an additional paid-in capital amount of \$1,815,325,857. The Company had retained earnings of \$22,289,815 for a total capital and surplus (surplus as regards policyholders) of \$1,837,715,672.

D. Corporate Records

The corporate records reviewed appeared to be substantially accurate and complete in all material respects.

E. Operations

As of December 31, 2017, the Company insured the Parent and certain subsidiaries with the following policies:

- Workers' Compensation Deductible Reimbursement: The limit was \$1,000,000 per occurrence. The premium for the period of January 29, 2017, to February 4, 2018, was \$96,163,872. The Company ceded 100% of the first \$300,000 of losses of specific Macy's entities to the Green Island Reinsurance Treaty for 2017. The Treaty allows companies to diversify their underwriting and assumes unrelated risks. Through the Treaty agreement, the Company cedes a portion of its workers' compensation losses; in turn, it agrees to assume its proportionate share of losses incurred by all Treaty participants.
- General Liability Deductible Reimbursement: The limit was \$1,000,000 per occurrence. The premium for the period of January 29, 2017, to February 4, 2018, was \$31,167,060. The Company ceded 100% of the first \$300,000 of losses of specific Macy's entities to the Green Island

Reinsurance Treaty for 2017. The Company assumed an agreed upon percentage of risk back from the reinsurance treaty.

- Excess earthquake policy: The limit of liability in excess of \$450,000,000 any one occurrence and in the aggregate annually.
- Master Property Insurance Policy: The Company shall not be liable for more than its proportion of \$1,500,000 per occurrence, subject to various sub-limits. The premium for the period of February 1, 2017, to February 1, 2018, was \$21,848,666.
- Deductible Buydown Insurance Policy: The limit of liability is \$14,000,000 per occurrence, in excess of \$1,000,000. The premium for the period of February 1, 2017, to February 1, 2018, was \$4,500,000. All risks were reinsured by a panel of unrelated reinsurers.
- Difference-in-conditions conventional terrorism insurance policy: The limit of liability was \$750,000,000, in excess of \$250,000,000 per occurrence and \$250,000,000 in the aggregate. The premium for the period of February 1, 2017, to February 1, 2018, was \$375,000.
- Terrorism Risk Insurance Acts of 2015 Certified Acts of Nuclear, Biological, Chemical, or Radiological Terrorism: The Company shall not be liable for more than its proportion of US \$1,000,000,000 for anyone Certified Act of Terrorism. The premium for the period of February 1, 2017, to February 1, 2018, was \$375,000.

During the period covered by this examination, the Company has a Green Island Reinsurance Treaty Agreement. Green Island is a risk pool which includes many entities. Through the Green Island risk pool, the captive assumes and cedes premiums and losses among a group of participants.

In 2012, West 34th Street Vermont contributed \$45,000,000 in capital to the Company in the form of cash of \$7,175,000 and related party loans of \$37,825,000. After formation of the Company, West 34th Street Vermont paid \$40,200,000 to transfer an equal amount of unpaid losses and loss adjustment expenses via a loss portfolio transfer, including general liability and workers' compensation policies. The Company assumed risks under the Green Island and Reinsurance Treaty.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the Law provides that no captive insurer shall do any captive insurance business in this State unless it utilizes a captive manager resident in this State that is licensed as an agent or broker under the provisions of Article 21 of the Law, or any other person approved by the Superintendent.

During the period covered by this examination, the Company was managed by Marsh Management Services, Inc. (“Marsh”), which is authorized to act as a manager for captive insurance companies by the Department.

Pursuant to a management agreement, effective February 3, 2013, Marsh has the responsibility for providing the Company with underwriting, policyholder, claims, and other general management and operational services for a fee. These responsibilities include assisting the Company in complying with the rules, regulations and requirements of the Law and maintaining true and complete books of account and records of all business conducted under this agreement.

(ii) Board of Directors

Pursuant to the Company’s by-laws, the business and affairs of the Company shall be managed under the direction of the Board of Directors. The number of directors shall not be fewer than three nor more than ten (two of whom shall be residents of New York State). At December 31, 2017, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Douglas Brauch Cincinnati, Ohio	Vice President, Treasury & Insurance, Macy’s Inc.
Inger A. Kessler New York, NY	Senior Manager Business Resiliency, Macy’s Inc.
Peter McDougall Burlington, VT	Director, Paul Frank & Collins
Daniella Miller New York, NY	Assistant Manager BC, Macy’s Inc.
Ed Precourt Burlington, VT	Senior Vice President, Marsh Management Services, Inc.

In accordance with its by-laws and Section 7003(b)(2) of the Law, the board of directors met once annually. A review indicated that the meetings were well attended.

(iii) Officers

As of December 31, 2017, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Douglas S. Brauch	President
David C. Kanarek	Vice President & Treasurer
Ann K. Back	Vice President
Peter J. McDougall	Secretary
Edward F. Precourt	Assistant Secretary

G. Certified Public Accountant

KPMG LLP (“KPMG”) was the Company’s independent certified public accounting firm for the period covered by the examination. As of December 31, 2017, KPMG issued an adverse opinion, concluding that the Company’s financial statements did not present fairly its financial position or the results of its operations or its cash flows. KPMG provided the following “Basis for Adverse Opinion” in its audited financial statements as of December 31, 2017, and 2016:

[T]he Company has not consolidated the financial statements of a subsidiary as required by U.S. generally accepted accounting principles. Also ... the Company has recorded a note receivable of \$1.9 billion for a capital contribution from an affiliate as an asset. U.S. generally accepted accounting principles requires this note receivable to be classified as a reduction of stockholder’s equity. In addition, ... the Company has omitted the incurred and paid claims development information and the historical claims duration information that U.S. generally accepted accounting principles requires to be presented in the notes to the financial statements.

The Company failing to observe the above-mentioned generally accepted accounting principles are not inconsistent with Article 70 of the Law or the Department’s regulation of captive insurance companies.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America.

Assets

Cash	\$172,335,164	
Notes receivable	1,940,675,950	
Investment in affiliate	43,592,934	
Letter of Credit	36,805,959	
Premium Receivable	10,610,911	
Accrued investment income	34,055,625	
Deferred tax assets	8,949,174	
Reinsurance recoverable	78,216,506	
Prepaid reinsurance premium	1,995,616	
Due from affiliate	17,527	
Other assets	<u>65,445</u>	
Total assets		<u>\$2,327,320,811</u>

Liabilities

Unpaid losses and loss adjustment expenses	418,201,495	
Unearned premiums	14,643,857	
Due to affiliate	159,315	
Accounts payable	264,549	
Income taxes	14,277,070	
Dividend payable	30,000,000	
Losses payable	<u>12,058,853</u>	
Total liabilities		<u>\$489,605,139</u>

Capital and Surplus

Common stock	\$100,000	
Paid-in capital	1,815,325,857	
Retained earnings	<u>22,289,815</u>	
Total capital and surplus		<u>\$1,837,715,672</u>
Total liabilities, capital, and surplus		<u>\$2,327,320,811</u>

B. Statement of Income

The Company's net income for the period covered by the examination was \$148,789,815, as detailed below:

Underwriting Income

Premiums earned		\$837,036,395
Deductions		
Loss and loss adjustment expenses	\$677,033,428	
General and administrative expenses	2,621,696	
Risk management fee	103,930,429	
Premium tax	<u>3,176,747</u>	
Total underwriting deductions		<u>786,762,300</u>
Net underwriting income		\$50,274,095
Interest income		<u>195,165,509</u>
Net income before tax		\$245,439,604
Income taxes		<u>96,649,789</u>
Net income		<u>\$148,789,815</u>

6. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

There are no comments or recommendations in this report.

Respectfully submitted,

_____/S/
Wei Cao
Senior Insurance Examiner

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

WEI CAO, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/S/
Wei Cao

Subscribed and sworn to before me

this _____ day of _____, 2022.

APPOINTMENT NO. 32007

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:

Wei Cao

as a proper person to examine the affairs of the

West 34th Street Insurance Company New York

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

COMPANY

with such other information as she 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 8th day of October, 2019

LINDA A. LACEWELL
Superintendent of Financial Services



By:

Joan P. Riddell

Joan Riddell
Deputy Bureau Chief