

REPORT ON EXAMINATION

OF THE

EVEREADY INSURANCE COMPANY

AS OF

DECEMBER 31, 2009

DATE OF REPORT

SEPTEMBER 17, 2010

EXAMINER

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

September 17, 2010

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30445 dated December 10, 2009, attached hereto, I have made an examination into the condition and affairs of Eveready Insurance Company as of December 31, 2009, and submit the following report thereon.

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

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at the Company's home office located at 59 Maiden Lane New York NY 10038.

## **1. SCOPE OF EXAMINATION**

The Department has performed a risk-focused examination of Eveready Insurance Company. The previous examination was conducted as of December 31, 2004. This examination covered the five year period from January 1, 2005 through December 31, 2009. 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, 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 when appropriate.

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

- Company history
- Corporate records
- Territory and plan of operation
- Reinsurance
- Holding Company system
- Accounts and records
- Financial statements
- Loss and loss Adjustment expenses
- Asset and liability
- Summary of recommendations

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

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

## **2. DESCRIPTION OF COMPANY**

Eveready Insurance Company was incorporated under the laws of the State of New York on August 8, 1963 and commenced business on May 1, 1965.

Capital paid in is \$350,000 consisting of 700,000 shares of \$.50 par value per share common stock. Gross paid in and contributed surplus is \$490,000 and had 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 not less than thirteen. The board meets five times during each calendar year during the examination period. At December 31, 2009, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Abraham Baum Bosque De Las Lomas, Mexico	Retired
David Burns New York, NY	Vice President, Nova Offset Corporation
Gudeilo Friedstadt Corona Del Mar, CA	Retired
Herbert Futoran New York, NY	Vice President, Director and Officer, Eveready Insurance Company
Jeffrey Futoran Bayside, NY	Secretary and Treasurer, Eveready Insurance Company
Ivan Gefen Boca Raton, FL	Vice President, V Finance Inc.
Edward Charles Harrison New York, NY	Chief Information Officer, Eveready Insurance Company

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Eileen Mueller Hackensack, NJ	Accounting Manager, Eveready Insurance Company
Malcolm Robinson Hampton Bays, NY	Vice President, Profile Agency Inc.
Alan Wollerstein Westbury, NY	Vice President, Eveready Insurance Company
Andrew Wollerstein Brooklyn, NY	Customer Service Manager, Eveready Insurance Company
Marc Wollerstein New York, NY	President, Eveready Insurance Company
Neil Wollerstein New York, NY	Attorney, Eveready Insurance Company

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

As of December 31, 2009, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Marc Wollerstein	President
Jeffrey Futoran	Secretary and Treasurer
Alan Wollerstein	Vice President

B. Territory and Plan of Operation

As of December 31, 2009, the Company was licensed to write business in New York only.

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

<u>Paragraph</u>	<u>Line of Business</u>
13	Personal injury liability
14	Property damage liability
19	Motor vehicle and aircraft physical damage

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 \$350,000.

The Company is a property and casualty insurer writing primarily private passenger automobile liability and physical damage coverage with a small amount of commercial automobile business in the downstate area of New York. Auto physical damage and private passenger auto liability made up 48.9% and 46.7%, respectively, of gross premiums written in 2009. All policies are written in downstate New York and are sold exclusively through brokers. The Company also utilizes two of its affiliates, Profile Agency Inc. and The Wallace Brokerage Corporation to generate business. Profile Agency Inc. produced the majority of the Company's premium writings.

The following schedule shows the Company's direct premiums written in the State of New York for the examination years:

<u>Calendar Year</u>	<u>Direct Premiums Written</u>
2005	\$18,563,434
2006	\$15,882,626
2007	\$13,646,287
2008	\$12,804,947
2009	\$14,007,741

#### C. Reinsurance

The Company did not assume any business during the examination.

The Company has no reinsurance protection in place for its automobile physical damage business. This coverage was terminated by Eveready in 2007.

The Company has structured its ceded reinsurance program to limit its maximum liability exposure on any one occurrence, for its automobile liability business, to \$100,000. The Company's reinsurance program for 2009 is structured as follows:

<u>Type of Coverage</u>	<u>Cession</u>
Excess of Loss Reinsurance Automobile Liability Business	<u>Automobile Bodily Injury Liability</u> \$900,000 excess of \$100,000
	<u>Automobile Property Damage Liability</u> \$900,000 excess of \$100,000
	<u>Uninsured or Underinsured Motorists Coverage</u> \$200,000 excess of \$100,000
	<u>Automobile Personal Injury Protection</u> \$900,000 excess of \$100,000

The ceded reinsurance agreement in effect as of December 31, 2009 was reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

Examination review of the Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions with the exception of Schedule F-part 8. The Company failed to restate the related information from the balance sheet, in Schedule F-part 8, as required by the annual statement instructions. The 2009 Annual Statement Instructions state the following with respect to column 2 of Schedule F-part 8:

Enter adjustments to eliminate the effect of ceded reinsurance on balance sheet assets and liabilities except reinsurance ceded to statutorily mandated pools, associations, and similar underwriting facilities. The result will be to report the net balance sheet impact of reinsurance in a single asset, "net amount recoverable from reinsurers."

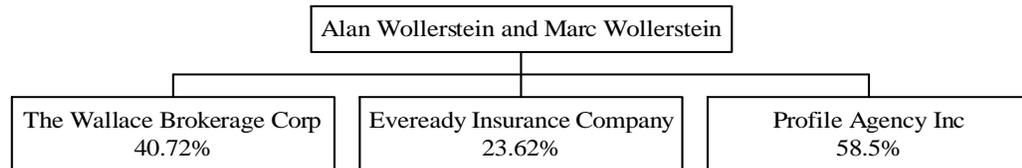
It is recommended that the Company complete Schedule F-part 8 in accordance with the annual statement instructions.

D. Holding Company System

Alan Wollerstein and Marc Wollerstein have been deemed the ultimate controlling persons of Eveready Insurance Company by reason of ownership of 23.62% of Eveready's common stock. They are also the controlling persons of The Wallace Brokerage Corp. ("Wallace") and Profile Agency Inc. ("Profile"). Alan Wollerstein and Marc Wollerstein, together with the three controlled entities, constitute a holding company system as defined in Section 1501(a)(6) of the New York Insurance Law.

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

The following is a chart of the holding company system at December 31, 2009:



At December 31, 2009, the Company was party to the following two agreements with other members of its holding company system:

1. Profile Agency Agreement

The Company and its affiliate, Profile Agency Inc. ("Profile"), entered into an agency agreement effective July 22, 1987. Pursuant to the terms of the agreement, Profile shall receive a commission of not less than 15% and not greater than 25%. However, upon review it was noted that the actual commission paid by the Company varied from 10% to 25% depending on the type of business. There is also an 8% commission on all renewal policies.

It is recommended that the Company adhere to the terms of the non-disapproved agency agreement with Profile, or amend the agreement to reflect the commission rates it is actually paying

and submit the amended agreement to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.

## 2. The Wallace Brokerage Agreement

Effective July 22, 1983, the Company entered into a brokerage agreement with its affiliate, The Wallace Brokerage Corp (“Wallace”).

The agreement indicated that Wallace is to be compensated as follows:

As full compensation for services where Company has received payment, Company shall pay twelve percent Broker commission unless stated otherwise in writing by the Company prior to the binding of insurance. Broker shall pay company return commission at the same rate on any return premiums, including return premium on cancellations ordered or made by the Company. The rate of commission allowable shall be subject to change by Company at any time by written notice to Broker respecting insurance written or renewed thereafter.

A review of the Company’s commission schedule revealed that the Company is paying Wallace a commission rate of 8%, rather than the 12% stated in the agreement. While it is noted that the agreement provides that the commission rate is subject to change at any time by the Company upon written notice to the Broker, this provision does not relieve the Company from its obligation to submit such change to the Department for non-disapproval at least 30 days prior to implementation pursuant to Section 1505(d)(3) of the New York Insurance Law. It is recommended that the Company submit any changes to the brokerage agreement with Wallace to the Department for non-isapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.

## 3. Sublease Agreement with the Profile Agency Inc. and Wallace Brokerage Corp.

The Company has an agreement in place, pursuant to which it subleases space to its affiliates, Profile Agency Inc. and The Wallace Brokerage Corp. As of the examination date, the Company had not submitted the agreement to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law, which requires that:

The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period: rendering of services on a regular or systematic basis.

On August 20, 2010, the Company submitted for the Department's non-disapproval the sublease agreement between Eveready Insurance Company and its affiliates, Profile Agency Inc. and The Wallace Brokerage Corporation and the agreement was subsequently non-disapproved. It is recommended that the Company submit any agreements between itself and any affiliates to the Department for non-disapproval at least thirty days prior to implementation, pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2009, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	300.11%*
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	77.75%
Premiums in course of collection to surplus as regards policyholders	16.00%

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.

\*It is noted that the net premiums written to surplus as regards policyholders ratio falls just at the benchmark ratio of 300%. It is therefore recommended that the Company monitor its net premiums written to surplus as regards policyholders ratio and endeavor to keep the net premium writings to within three times surplus.

It is further noted that the Company's net premium writings have risen significantly in 2010.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$47,955,337	65.42%
Other underwriting expenses incurred	34,049,014	46.45
Net underwriting loss	<u>(8,695,807)</u>	<u>(11.87)</u>
Premiums earned	<u>\$73,308,544</u>	<u>100.00%</u>

During the examination period, the Company reported ratios of other underwriting expenses to net premiums written as follows:

<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
32.6%	39.2%	45.1%	47.4%	43.8%

It is noted that the ratios reported in the three most recent years appear to be relatively high compared to the industry. In response to an inquiry by the Department regarding this issue, the Company stated "We believe that in 2010 Eveready's business will grow through an increase in Black Car Auto Physical Damage business coupled with stand-alone Auto Physical Damage business. This should reduce the expense ratio. Moreover, the Company intends to reduce commissions and pare its expenses as well."

F. Accounts and Records

i. Custodian Agreement

The Company's management answered affirmatively to question 26 of the General Interrogatory section of the Annual Statement as of December 31, 2009, which says:

Excluding items in Schedule E, real estate, mortgage loans and investments held physically in the reporting entity's offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to a custodial agreement with a qualified bank or trust company in accordance with Section 3, III Conducting Examinations, F-Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook?

The Company also indicated in general interrogatory 26.01 of its 2009 annual statement that its agreement with Citibank complied with the requirements of the NAIC Financial Conditions Examiners Handbook.

However, the examination review indicated that the Company's custodian agreement with Citibank did not include provisions 2f, 2h, and 2i as set forth in Section 3(III)(F)(2) of the 2009 NAIC Financial Condition Examiners Handbook. Such provisions provide that:

2f. If the custodial agreement has been terminated or if 100% of the account assets in any one custody account have been withdrawn, the custodian shall provide written notification, within three business days of termination or withdrawal, to the insurer's domiciliary commissioner.

2h. The custodian and its agents, upon reasonable request, shall be required to send all reports which they receive from a clearing corporation which the clearing corporation permits to be redistributed and reports prepared by the custodian's outside auditors, to the insurance company on their respective systems of internal control.

2i. To the extent that certain information maintained by the custodian is relied upon by the insurance company in preparation of its annual statement and supporting schedules, the custodian agrees to maintain records sufficient to determine and verify such information.

It is recommended that the Company amend its custodian agreement to incorporate all of the protective covenants included in the NAIC Financial Condition Examiners Handbook.

ii. Annual Statement Preparation Issues

The Company failed to complete Schedule Y-part 2 of the annual statement in each of the examination years. The annual statement instructions require the insurer to report in column 8 of Schedule Y part 2, expenses for services provided by affiliates. The Company failed to report the commissions paid to its affiliates Profile Agency Inc. and The Wallace Brokerage Corp.

It is recommended that the Company complete Schedule Y-part 2 in accordance with the annual statement instructions.

At December 31, 2009, the Company had a New York State Financial Securities Assessment recoverable in the amount of \$37,451, which it included as an admitted asset under the caption "Current federal and foreign income tax recoverable and interest thereon." Pursuant to the NAIC Annual Statement Instructions, this item should not have been included as part of the federal income tax recoverable, but rather reflected separately as a write-in asset.

There is no surplus effect as a result of this misclassification; however, it is recommended that the Company properly classify all assets in accordance with the annual statement instructions.

iii. Premiums Receivable

Upon review of the premium balances included in the Company's not admitted asset for "Uncollected premiums and agents' balances in the course of collection," it was noted that some of these items had been outstanding for several years; therefore, there is no reasonable expectation that these premiums will ever be collected. Pursuant to paragraph 10 of Statement of Statutory Accounting Principles ("SSAP") No. 6, if it is probable the balance is uncollectible, any uncollectible receivable shall be written off and charged to income in the period the determination is made.

There is no surplus effect as a result of this misclassification; however, it is recommended that the Company write off any premium receivable balances that are deemed to be uncollectible through the income statement rather than non-admit them in future annual statements.

iv. Information Technology ("IT") Controls

It was noted that the Company does not have a written disaster recovery or business contingency plan in place. It was additionally noted that the Company does not have written information technology policies.

It is recommended that the Company develop a formal disaster recovery/ business contingency plan and create formal information technology policies.

v. Derivative Investments

The examinations review of the Company's investments revealed that the Company engaged in the sale of covered calls, which is a type of derivative investment. The Company has engaged in these transactions without receiving approval for a derivative use plan from the Department. This is in violation of Section 1410(b)(3)(C) which states in part:

"Prior to entering into any derivative transaction authorized pursuant to this section: the superintendent shall approve the insurer's written derivative plan for engaging in derivative transactions and investment practices related to derivative transactions. . . ."

It is recommended that the Company cease engaging in derivative transactions until the Company has an approved derivative use plan in place.

### **3. FINANCIAL STATEMENTS**

#### A Balance Sheet

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

<u>Assets</u>	<u>Examination</u> <u>Net admitted assets</u>	<u>Company</u> <u>Net Admitted assets</u>	<u>Surplus</u> <u>Increase(decrease)</u>
Bonds	\$7,037,750	\$7,037,750	\$ 0
Preferred stocks	349,390	363,666	(14,276)
Common stocks	1,878,783	1,878,783	0
Cash, cash equivalents and short-term investments	1,478,676	1,478,676	0
Investment income due and accrued	61,493	61,493	0
Uncollected premiums and agents' balances in the course of collection	730,437	730,437	0
Deferred premiums, agents' balances and installments booked but deferred and not yet due	5,512,486	5,512,486	0
Amounts recoverable from reinsurers	29,069	29,069	0
Current federal and foreign income tax recoverable and interest thereon	761,225	1,311,974	(550,749)
Net deferred tax asset	407,757	537,681	(129,924)
Electronic data processing equipment and software	62,575	96,744	(34,169)
NYS Financial Security Assessment receivable	37,451	0	37,451
Pooling income receivable	<u>0</u>	<u>67,376</u>	<u>(67,376)</u>
Total assets	<u>\$18,347,092</u>	<u>\$19,106,135</u>	<u>\$(759,043)</u>

Liabilities, Surplus and Other Funds

	<u>Examination</u>	<u>Company</u>	<u>Surplus</u> <u>Increase(Decrease)</u>
<u>Liabilities</u>			
Losses and loss adjustment expenses	\$ 6,127,926	\$ 5,387,926	\$ (740,000)
Other expenses (excluding taxes, licenses and fees)	59,350	(15,674)	(75,024)
Current federal and foreign income taxes	0	110,732	110,732
Unearned premiums	7,384,593	7,384,593	0
Ceded reinsurance premiums payable (net of ceding commissions)	167,349	167,349	0
Amounts withheld or retained by company for account of others	33,874	33,874	0
Payable for securities	<u>26,100</u>	<u>26,100</u>	<u>0</u>
Total liabilities	<u>\$13,799,192</u>	<u>\$13,094,900</u>	<u>\$ (704,292)</u>
<u>Surplus and Other Funds</u>			
Common capital stock	\$350,000	\$350,000	\$ 0
Gross paid in and contributed surplus	490,000	490,000	0
Unassigned funds (surplus)	<u>3,707,900</u>	<u>5,171,235</u>	<u>(1,463,335)</u>
Surplus as regards policyholders	<u>4,547,900</u>	<u>6,011,235</u>	<u>(1,463,335)</u>
Total liability, surplus and other funds	<u>\$18,347,092</u>	<u>\$19,106,135</u>	<u>\$ (759,043)</u>

NOTE: The Internal Revenue Service has not audited tax returns covering tax years 2005 to 2009. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Income

Underwriting Income

Premiums earned		\$73,308,544
Deductions:		
Losses incurred	\$28,803,713	
Loss adjustment expenses incurred	19,151,624	
Other underwriting expenses incurred	<u>34,049,014</u>	
Total underwriting deductions		<u>82,004,351</u>
Net underwriting gain or (loss)		\$(8,695,807)

Investment Income

Net investment income earned	\$ 3,421,036	
Net realized capital gain	<u>393,162</u>	
Net investment gain or (loss)		3,814,198

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ ( 487,828)	
Finance and service charges not included in premiums	4,316,856	
Aggregate write-ins for miscellaneous income	<u>276,828</u>	
Total other income		<u>4,105,856</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$ (775,753)
Federal and foreign income taxes incurred		<u>(391,893)</u>
Net income		\$ <u>(383,860)</u>

C. Capital and Surplus Account

Surplus as regards policyholders decreased \$2,944,868 during the five-year examination period January 1, 2005 through December 31, 2009, detailed as follows:

Surplus as regards policyholders per report on examination as of December 31, 2004			\$7,492,768
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income		\$383,860	
Net unrealized capital gains or (losses)		463,633	
Change in net deferred income tax		273,404	
Change in nonadmitted assets		406,471	
Dividends to stockholders		<u>1,417,500</u>	
Total losses		<u>\$2,944,868</u>	
Net increase (decrease) in surplus			<u>(2,944,868)</u>
Surplus as regards policyholders per report on examination as of December 31, 2009			<u>\$4,547,900</u>

**4. PREFERRED STOCK**

The examination admitted asset for the captioned item of \$349,390 is \$14,276 less than the \$363,666 reported by the Company as of December 31, 2009. The examination change is due to the fact that the Company reported its preferred stocks at cost rather than at fair market value, which is contrary to the provisions of Section 1414(b)(1) of the New York Insurance Law, which states in part:

Except securities subject to amortization and except as otherwise provided in this chapter, the investment of all insurers authorized to do business in this state shall be valued, in the discretion of the superintendent, at their market value, or at their appraised value, or at price determined by him as representing their fair market value.

It is recommended that the Company value its preferred stocks in accordance with Section 1414(b)(1) of the New York Insurance Law.

## 5. FEDERAL INCOME TAX RECOVERABLE

The examination admitted asset for the captioned item of \$761,225 is \$550,749 less than the \$1,311,974 reported by the Company as of December 31, 2009, as follows:

	<u>Examination</u>	<u>Company</u>	<u>Change</u>
2004-2007 Net operating loss carry-backs	\$ 678,803	\$ 718,215	\$ (39,412)
2008 Net operating loss carry-back	41,888	41,888	0
2008 refund applied to 2009	40,534	40,534	0
2009 Net operating loss carry-forward	0	152,948	(152,948)
Section 332 Assessment recoverable	0	320,938	(320,938)
NYS Financial Security Assessment recoverable	<u>0</u>	<u>37,451</u>	<u>(37,451)</u>
Total	<u>\$ 761,225</u>	<u>\$1,311,974</u>	<u>\$(550,749)</u>

The change to the 2004-2007 net operating loss carry-backs in the amount of \$39,412 represents the actual amount of loss carry-backs for those years as verified upon examination and is net of the liability for federal income taxes payable in the amount of \$110,732, which has been eliminated as noted in item 12 of this report.

The 2009 net operating loss carry-forward in the amount of \$152,948 represents the anticipated value of the Company's carry-forward tax loss as of December 31, 2009, which may be used to offset future taxable income. There is no provision in Section 1301 of the New York insurance law that recognizes the potential tax benefit of a carry-forward loss as an admitted asset; therefore, this amount has been not admitted.

The Section 332 Assessment recoverable in the amount of \$320,938 is based on an anticipated court ruling which may or may not happen. Neither a court victory nor the amount of the settlement is certain. There is no provision in Section 1301 of the New York Insurance Law for admitting an asset of such uncertain value; therefore, this amount has been not admitted.

It is recommended that the Company only include as admitted assets such assets as are defined in Section 1301 of the New York Insurance Law.

The NYS Financial Security Assessment recoverable in the amount of \$37,451 does qualify as an admitted asset; however, it does not belong on the "Federal income tax recoverable" line of the annual statement. This item has been reclassified as an admitted asset as a write-in item under the caption "NYS Financial Security Assessment recoverable." There is no surplus effect as a result of this reclassification.

## 6. NET DEFERRED TAX ASSET

The examination admitted asset for the captioned item of \$407,757 is \$ 129,924 less than the \$537,681 reported by the Company as of December 31, 2009.

Pursuant to the provisions of Section 1301(a)(16)(B)(ii) of the New York Insurance Law, the amount of the net deferred tax asset that can be admitted is limited to:

Ten percent of the insurer's statutory capital and surplus as required to be shown on its statutory balance sheet for its most recently filed statement with the superintendent adjusted to exclude any net positive goodwill, electronic data processing apparatus and related equipment, operating system software and net deferred tax assets.

The reduction in the net deferred tax asset is based on the Company's December 31, 2009 surplus as regards policyholders as adjusted by this examination and was calculated as follows:

Examination surplus before adjustment to deferred tax asset	\$4,677,824
EDP equipment	62,575
Deferred tax asset	<u>537,681</u>
Adjusted examination surplus as regards policyholders	<u>\$4,077,568</u>
10% limitation of adjusted examination surplus	\$ <u>407,757</u>

## 7. ELECTRONIC DATA PROCESSING

The examination admitted asset for the captioned item of \$62,575 is \$ 34,169 less than the \$96,744 reported by the Company as of December 31, 2009.

The non-admitted items represent non-operating system software and service contracts, which are not considered admitted assets pursuant to Section 1301(a)(13)(A) of the New York Insurance Law, which provides that only the following electronic data processing items may be allowed as an admitted asset:

“Electronic data processing apparatus and related equipments constituting a data processing, record keeping, or accounting system and operating system software.... Nonoperating system software shall be non-admitted and depreciated over the lesser of its useful life or five years.”

It is recommended that the Company only admit electronic data processing assets in accordance with Section 1301(a) (13) (A) of the New York Insurance Law.

It is noted that the same recommendation was included in the prior report on examination.

## **8. NEW YORK STATE FINANCIAL SECURITY ASSESSMENT RECOVERABLE**

The Company reported no admitted asset under this caption as of the examination date. This examination has established the captioned admitted asset in the amount of \$37,451. This item represents a reclassification from the asset captioned "Current federal and foreign income tax recoverable and interest thereon." There is no surplus effect as a result of this reclassification.

## **9. POOLING INCOME RECEIVABLE**

The Company reported an admitted asset in the amount of \$67,376 for the captioned item as of December 31, 2009. Pursuant to this examination, the admitted asset has been eliminated.

The amount reported by the Company represents its estimate of the amount it will receive for the sale of its 2009 excess territorial credits. The Company did not have a contract in place that guaranteed the price or the number of credits it would be able to sell; therefore, there was no certainty as to the value of its excess territorial credits. Therefore, the receivable is of doubtful value and should be non-admitted pursuant to the provisions of Section 1302(b) of the New York Insurance Law, which provides that:

"All non-admitted assets and all other assets of doubtful value or character included as ledger or non-ledger assets in any statement by an insurer to the superintendent, or in any examiner's report to him, shall also be reported, to the extent of the value disallowed, as deductions from the gross assets of such insurer except where the superintendent permits a reserve to be carried among the liabilities of such insurer in lieu of any such deduction."

It is recommended that, in the future, the Company only admit territorial credit receivables where the pricing and number of credits it can sell is clearly defined in a contract.

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

The examination liability for the captioned items of \$6,127,926 is \$740,000 more than \$5,387,926 reported by the Company as of December 31, 2009. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial

principles and was based on the Company's actuarial information contained in the Statement of Actuarial Opinion.

#### **11. OTHER EXPENSES**

The examination liability for Other Expenses of \$59,350 is \$75,024 more than (\$15,674) reported by the Company as of December 31, 2009. The examination liability was determined by a review of bills paid subsequent to the examination date.

Section 1306 of the New York Insurance Law states in part:

“In addition to liabilities and reserves on contracts of insurance issued by it, every insurer shall be charged with the estimated amount of all its other liabilities, including taxes, expenses, other obligations due or accrued at the date of statement. . . .”

The Company made no provision for unpaid expenses incurred prior to the examination date. It is recommended that the Company include a liability for estimated accrued expenses in future financial statements pursuant to the provisions of Section 1306 of the New York Insurance Law.

#### **12. CURRENT FEDERAL AND FOREIGN INCOME TAXES**

The Company reported a liability in the amount of \$110,732 as of the examination date. As examination review indicated that there is no actual federal income tax liability, this liability has been eliminated. The elimination of this liability increases surplus by \$110,732.

### 13. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It is recommended that the Company comply with its charter and by laws and with Section 1201(a)(5)(B)(v) of the New York Insurance Law by ensuring that it maintains at least thirteen members on its board of directors.	4
The Company has complied with this recommendation.	
ii. It is recommended that the Company retain statements confirming that each board member has received and read the report on examination pursuant to Section 312(b) of the New York Insurance Law.	5
The Company has complied with this recommendation.	
B. <u>Reinsurance</u>	
It is recommended that the Company amend its reinsurance agreement to include wording which states that in the event of the insolvency of either party to the agreement then offset shall be allowed to the extent permitted by the provisions of Section 7427 of the New York Insurance Law.	7
The Company has complied with this recommendation.	
C. <u>Holding Company System</u>	
i. It is recommended that the Company ensure that Profile provide the proper written notice to its insureds pursuant to the provisions of Part 80-2.3(b) of Department Regulation 52-A.	10
The Company has complied with this recommendation.	
ii. It is recommended that the Company adhere to the provisions in its brokerage agreement with Wallace Brokerage Corporation by providing the Broker with written notice prior to changing the commission rate.	10
The Company has complied with this recommendation.	

<u>ITEM</u>	<u>PAGE NO.</u>
iii. It is recommended that the Company notify this Department of any changes to the approved brokerage agreement pursuant to the provisions of Section 1505(d) of the New York Insurance Law.	10
The Company has not complied with this recommendation. A similar recommendation is included in this report.	
D. <u>Abandoned Property Law</u>	
It is recommended that the Company comply with Section 1316(3) of the New York Abandoned Property Law and publish its unclaimed property in the County of Nassau, New York.	11
The Company has complied with this recommendation.	
E. <u>Accounts and Records</u>	
i. <u>Investments</u>	
It is recommended that the Company divest itself of the prohibited investment and refrain from investment in derivative transactions without the approval of its board of directors and without an approved derivative use plan pursuant to Section 1410(b)(3)(B) of the New York Insurance Law.	13
The Company divested the investment referenced in the prior examination report. It has, however, continued to engage in derivative transactions without having an approved derivative use plan. A recommendation referencing the failure to obtain an approved derivative use plan is included in this report.	
ii. It is recommended that the Company hold all of its investments in a custodial account.	13
The Company has complied with this recommendation.	
<u>Investments-NAIC Securities Valuation Office</u>	
It is recommended that the Company comply with Section 1414(g) of the New York Insurance law and value its securities in accordance with the guidelines established by the National Association of Insurance Commissioners.	13
The Company has complied with this recommendation.	

ITEMPAGE NO.Annual Statement Reporting

- i. It is recommended that the Company accurate complete Note 8 of the Notes to Financial Statement in its future filed annual statements. 13

The Company has complied with this recommendation.

- ii. It is recommended that the Company accurately complete Note 10 of the Notes to Financial Statement in future filed annual statements. 14

The Company has complied with this recommendation.

Authorized Signatures

- It is recommended that the Company amend its threshold for requiring two signatures on checks written to vendors from \$25,000 to no more than \$10,000. 14

The Company has complied with this recommendation.

Department Regulation 30-Classification of Expenses

- It is recommended that the Company comply with Department Regulation 30, Part 105 and classify only postage, telephone and telegraph expenses as it related to this category. 14

The Company has complied with this recommendation.

Uncollected Premiums and Agents' Balances in the Course of Collection

- It is recommended that the Company comply with Section 1301(a)(6) of the New York Insurance Law and SSAP No. 6 to determine its non-admitted asset for uncollected premiums and agents' balances in the course of collection. 15

The Company has complied with this recommendation.

Electronic Data Processing

- It is recommended that the Company non-admit all non-operating system software pursuant to the provisions of Section 1301(a)(13)(A) of the New York Insurance Law and Part 83.4 (c)(3)(i) of Department Regulation 172. 15

The Company has not complied with this recommendation. A similar recommendation is included in this report.

<u>ITEM</u>	<u>PAGE NO.</u>
F. <u>Custodian Agreement</u>	
i. It is recommended that the Company enter into a custodial agreement with the Bank of New York which complies with the provisions prescribed in the National Association of Insurance Commissioners Financial Condition Examiners Handbook.	16
As of December 31, 2009, the Company did not hold securities with the Bank of New York.	
ii. It is recommended that the Company amend its custodial agreement to include provisions pursuant to the National Association of Insurance Commissioners Financial Condition Examiners Handbook guidelines in order to ensure the necessary safeguard of its assets.	17
As of December 31, 2009, the Company did not have a custodial agreement with the Bank of New York. The Company now has a custodial agreement with Citibank, but the agreement does not comply with the guidelines required by the NAIC handbook. A similar recommendation is included in this report.	

#### **14. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Reinsurance</u>	
i. It is recommended that the Company complete Schedule F-part 8 in accordance with the annual statement instructions.	6
B. <u>Holding Company System</u>	
i. It is recommended that the Company adhere to the terms of the non-disapproved agency agreement with Profile, or amend the agreement to reflect the commission rates it is actually paying and submit the amended agreement to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.	7
ii. It is recommended that the Company submit any changes to the brokerage agreement with Wallace to the Department for non-disapproval pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.	8

<u>ITEM</u>	<u>PAGE NO.</u>
iii. It is recommended that the Company submit any agreements between itself and any affiliates to the Department for non-disapproval at least thirty days prior to implementation, pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.	9
C. <u>Significant Operating Ratios</u>	
i. It is recommended that the Company monitor its net premiums written to surplus ratio and endeavor to keep the net premium writings to within three times surplus.	9
D. <u>Accounts and Records</u>	
i. It is recommended that the Company amend its custodian agreement to incorporate all of the protective covenants included in the NAIC Financial Condition Examiners Handbook.	11
ii. It is recommended that the Company complete Schedule Y-part 2 in accordance with the annual statement instructions.	11
iii. It is recommended that the Company properly classify all assets in accordance with the annual statement instructions.	11
iv. It is recommended that the Company write off any premium receivable balances that are deemed to be uncollectible through the income statement rather than non-admit them in future annual statements.	12
v. It is recommended that the Company develop a formal disaster recovery/business contingency plan and formal information technology policies.	12
vi. It is recommended that the Company cease engaging in derivative transactions until the Company has an approved derivative use plan in place.	12
E. <u>Preferred Stock Valuation</u>	
i. It is recommended that the Company value its preferred stocks in accordance with Section 1414(b)(1) of the New York Insurance Law.	16
F. <u>Federal Income Tax Recoverable</u>	
i. It is recommended that the Company only include as admitted assets such assets as are defined in Section 1301 of the New York Insurance Law.	17
G. <u>Electronic Data Processing</u>	

<u>ITEM</u>		<u>PAGE NO.</u>
i.	It is recommended that the Company only admit electronic data processing assets in accordance with Section 1301(a)(13)(A) of the New York Insurance Law.	18
H.	<u>Pooling Income Receivable</u>	
i.	It is recommended that, in the future, the Company only admit territorial credit receivables where the pricing and number of credits it can sell is clearly defined in a contract.	19
I.	<u>Other Expenses</u>	
	It is recommended that the Company include a liability for estimated accrued expenses in future financial statements pursuant to the provisions of Section 1306 of the New York Insurance Law.	20

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 \_\_\_\_\_, 2011.

Appointment No. 30445

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, James J. Wrynn Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Wei Cao**

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

**EVEREADY INSURANCE COMPANY**

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

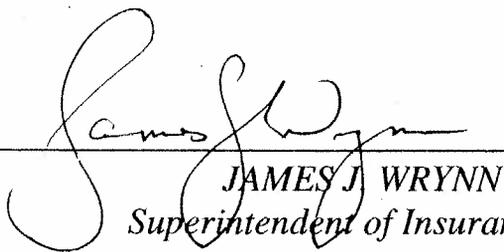
**Company**

*with such other information as she shall deem requisite.*

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

*this 10th day of December, 2009*



  
\_\_\_\_\_  
JAMES J. WRYNN  
Superintendent of Insurance