



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
NEW YORK CITY
FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND
AS OF
JUNE 30, 2003

DATE OF REPORT:

AUGUST 7, 2009

EXAMINER:

OLANIKE ATANDA-OGUNLEYE

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

August 7, 2009

Kermitt J. Brooks
Acting Superintendent of Insurance
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 22199, dated April 5, 2004 and annexed hereto, an examination has been made into the condition and affairs of the New York City FireFighters' Variable Supplements Fund, hereinafter referred to as the "Fund," located at 9 MetroTech Center, Brooklyn, New York 11201.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

This examination covers the period from July 1, 1999 through June 30, 2003. The examination comprised a verification of assets and liabilities as of June 30, 2003 to determine whether the System's 2003 filed annual statement fairly presents its financial condition. This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

The examination revealed the following findings:

1. The Fund violated Section 312 (b) of the New York Insurance Law by failing to furnish a copy of the June 30, 1999 report on examination to each member of the board of trustees. This is a repeat violation from at least two prior reports. (See item 3)
2. The Fund violated Section 13-388 of the Administrative code by failing to publish the Annual Report in the City Record. This is a repeat violation from the prior report on examination. (See item 9)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of June 30, 1999. This examination covers the period from July 1, 1999 through June 30, 2003. As necessary, the examiner reviewed transactions occurring subsequent to June 30, 2003, but prior to the date of this report.

The examination comprised a verification of assets and liabilities as of June 30, 2003 to determine whether the Fund's income statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification and utilized such examination procedures, as deemed appropriate, in the review of the following matters:

- History of the Fund
- Management and control
- Corporate governance
- Growth of the Fund
- Accounts and records
- Financial statements
- Member benefits

The examiner reviewed the corrective actions taken by the Fund with respect to violations and recommendations contained in the previous report on examination. The results of the examiner's review are contained in item 10 of this report.

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

3. DESCRIPTION OF FUND

A. History

The Fund was established on July 1, 1970 by amendment to the Administrative Code of the City of New York (“Administrative Code”). The Fund operates pursuant to the provisions of Title 13, Chapter 3, Subchapter 5 of the Administrative Code. The Fund is administered by the New York Fire Department Pension Fund, Subchapter Two (“FIRE”) and provides supplemental benefits to retired Firefighters and Wipers of the New York Fire Department who retired on or after October 1, 1968 with 20 or more years of service. As a result of Chapter 480 of the Laws of 1993 (“Chapter 480/93”), all Wipers now receive the same benefits as Firefighters and, hereafter in this report, the term Firefighters will include Wipers. Under current law, the Fund is not to be construed as constituting a pension or retirement system. Instead, it provides supplemental payments, other than pension or retirement system allowances, in accordance with applicable statutory provisions. The New York State Legislature has reserved to itself and the State of New York the right and power to amend, modify, or repeal the Fund and the payment it provides.

Fire is the source of funding for the Fund. The Administrative Code provides that Fire transfer to the Fund an amount equal to certain excess earnings on equity investments.

Under the Administrative Code, the Fund is subject to the supervision of the Department which may examine its affairs with the same powers and jurisdiction as are applicable to a life insurance company under Article 3 of the New York Insurance Law. The Fund is also subject to assessment for expenses pursuant to Section 313 of the New York Insurance Law.

B. Management

The Fund is administered independently by a board of trustees. The members of the board are trustees of the monies that the Fund receives and have the power to invest the same in accordance with the limitations and restrictions imposed by law upon savings banks; and have the same investment powers as are vested by the Administrative Code, and the Retirement and Social Security Law in the board of trustees of FIRE. The Comptroller of the City of New York (“Comptroller”) is the custodian of the assets and also provides certain administrative services to the Fund.

The members of the board of trustees as of June 30, 2003 were as follows:

<u>Name</u>	<u>Principal Business Affiliation</u>
Martha E. Stark	Commissioner, NYC Department of Finance
William C. Thompson, Jr.	Comptroller, City of New York
James Slevin	Vice President, Uniformed Fire Fighters Association of Greater New York
Kevin McAdams	Treasurer, Uniformed Fire Fighters Association of Greater New York
Anthony Crowell	Representative of the Mayor

A review of the minutes of the board of trustees revealed that meetings were generally well attended.

Section 312(b) of the New York Insurance Law states, in part:

“A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer’s files confirming that such member has received and read such report. . . .”

The Fund did not furnish the examiner with evidence showing that each member of the board of trustees received a copy of the June 30, 1999 report on examination by the Department

and is in violation of Section 312(b) of the New York Insurance Law. This is a repeat violation from prior examination reports.

The following is a listing of the principal officers of the Fund as of June 30, 2003:

<u>Name</u>	<u>Title</u>
Stephen J. Cassidy	Chairman
Horatio H. Sparkes	Secretary
William C. Thompson, Jr.	Treasurer
Robert C. North, Jr.	Actuary

4. SIGNIFICANT OPERATING RESULTS

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

The following table indicates the Fund financial growth (decline) during the period under review:

	<u>June 30,</u> <u>1999</u>	<u>June 30,</u> <u>2003</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$637,428,130</u>	<u>\$509,507,651</u>	<u>\$(127,920,479)</u>
Net reserves	\$456,159,705	\$537,976,901	\$ 81,817,196
Other liabilities	<u>39,668,986</u>	<u>37,972,081</u>	<u>(1,696,905)</u>
Net reserves and other liabilities	<u>\$495,828,691</u>	<u>\$575,948,982</u>	<u>\$ 80,120,291</u>
Excess of admitted assets over total net reserves and all other liabilities	<u>\$141,599,439</u>	<u>\$ (66,441,331)</u>	<u>\$(208,040,770)</u>
Total	<u>\$637,428,130</u>	<u>\$509,507,651</u>	<u>\$(127,920,479)</u>

As of June 30 2003, the Fund's ledger assets were mainly comprised of stocks (48.0%), bonds (32.0%), international investment funds (14.0%), and short-term investments (8.0%).

5. FINANCIAL STATEMENTS

The following statements show the assets and liabilities of the Fund as of June 30, 2003, as contained in the Fund's 2003 filed annual statement; and the comparative statements of income and disbursements for each of the fiscal years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the June 30, 2003 filed annual statement.

A. STATEMENT OF ASSETS AND LIABILITIES FISCAL YEAR ENDED JUNE 30, 2003

Assets

Ledger assets

Bonds	\$145,557,050
Stocks	222,202,025
Short-term investment fund	33,426,521
Commercial paper	3,356,198
International investments	61,500,000
US treasury bills and discount notes	1,000,000
Cash on deposit	<u>(3,178,915)</u>
Total ledger assets	<u>\$463,865,879</u>

Non-ledger assets

Interest accrued on bonds	\$ 1,608,350
Market value of stocks over book value	39,061,086
Dividends receivable and commercial paper	294,526
Receivable for investment securities sold	<u>4,677,810</u>
Total non-ledger assets	<u>\$ 45,641,772</u>
Total admitted assets	<u>\$ 509,507,651</u>

Liabilities

Present value of benefits payable on account of beneficiaries now drawing allowances	\$404,527,452
Present value of benefits provided by employer for members now in active service	<u>133,449,449</u>
Total net reserves	\$537,976,901
Payable for securities purchased	\$ <u>37,972,081</u>
Net reserves and all other liabilities	<u>\$575,948,982</u>
Excess of admitted assets over liabilities	\$ <u>(66,441,331)</u>
Total	<u>\$509,507,651</u>

B. STATEMENT OF INCOME AND DISBURSEMENTS

FISCAL YEARS ENDED JUNE 30,

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Ledger assets at end of previous year	\$ <u>415,308,348</u>	\$ <u>445,781,640</u>	\$ <u>486,479,159</u>	\$ <u>481,590,817</u>
 <u>Income</u>				
<u>From interest:</u>				
Gross interest on bonds	8,630,712	10,418,040	8,956,328	7,773,369
Gross dividends on stocks	7,194,991	3,736,716	3,851,364	4,040,270
Commercial paper	588,146	1,876,107	180,594	144,187
Short term investment fund	861,308	2,106,700	1,233,156	308,012
 <u>From other sources:</u>				
Miscellaneous income	14,923	155,361	451,781	154,059
Gross profit on sale of investments	136,174,866	37,115,012	9,810,593	13,435,469
Gross increase by adjustment in book value of investments	1,260,908	947,769	871,391	1,299,425
Miscellaneous accounting basis	<u>0</u>	<u>32,568,806</u>	<u>6,533,352</u>	<u>0</u>
 Total income	 \$ <u>154,725,854</u>	 \$ <u>88,924,511</u>	 \$ <u>31,888,559</u>	 \$ <u>27,154,791</u>

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<u>Disbursements</u>				
Benefit payments	\$ 24,716,583	\$ 27,477,645	\$ 21,293,611	\$ 20,554,649
Investment expenses	8,021	3,315	0	241
Loss on sale of investments	69,826,057	20,440,053	15,065,392	18,053,218
Miscellaneous accounting basis	29,211,741	0	0	5,739,868
Decrease by adjustment in book value of investments	490,160	305,979	417,898	531,753
Total disbursements	\$ <u>124,252,562</u>	\$ <u>48,226,992</u>	\$ <u>36,776,901</u>	\$ <u>44,879,729</u>
Net increase (decrease)	\$ <u>30,473,292</u>	\$ <u>40,697,519</u>	\$ <u>(4,888,342)</u>	\$ <u>(17,724,938)</u>
Ledger assets at end of current year	\$ <u>445,781,640</u>	\$ <u>486,479,159</u>	\$ <u>481,590,817</u>	\$ <u>463,865,879</u>

6. FUNDING

The benefits provided by the Fund are to be funded by transferring "excess earnings" from FIRE to the Fund based on the excess, if any, of the actual FIRE earnings over a calculated amount of earnings based on ten-year United States Treasury Notes. Under this method of funding the defined benefits of the Fund, the possibility exists that after a period of low earnings the assets in the Fund could be insufficient to pay benefits that are due. However, the funding method for FIRE recognizes that possibility: the actuarially-determined unfunded liability for the Fund is added to the normal FIRE liabilities, so that any potential shortfall in the Fund transferable earnings is part of the normal required contribution for FIRE. Beginning with the June 30, 2000 actuarial valuation of FIRE, the actuarially-determined unfunded liability for the Fund was explicitly shown in the liabilities for FIRE given that the benefits of the Fund are now on a fixed, guaranteed schedule, are no longer linked to favorable earnings on FIRE investments, and are being funded within FIRE liabilities.

7. MEMBER BENEFITS

Prior to July 1, 1988, the Board of Trustees of the Fund periodically determined what benefit payments the participants were to receive. Beginning July 1, 1988, Chapter 583 of the Laws of 1989 (effective July 1, 1988) established a schedule of supplemental benefits payable each December for those who retire (or have retired) as Firefighters with service retirement benefits, and who have at least 20 years of service. These defined benefits are guaranteed by the City of New York.

The following table reflects the benefits per eligible retiree for calendar years 1988 and subsequent, based on Chapter 583 of the Laws of 1989:

<u>Calendar Year</u>	<u>Annual Supplement</u>	<u>Calendar Year</u>	<u>Annual Supplement</u>	<u>Calendar Year</u>	<u>Annual Supplement</u>
1988	\$2,500	1997	\$ 7,000	2006	\$11,500
1989	\$3,000	1998	\$ 7,500	2007 and	\$12,000
1990	\$3,500	1999	\$ 8,000	each calendar	
1991	\$4,000	2000	\$ 8,500	year thereafter	
1992	\$4,500	2001	\$ 9,000		
1993	\$5,000	2002	\$ 9,500		
1994	\$5,500	2003	\$10,000		
1995	\$6,000	2004	\$10,500		
1996	\$6,500	2005	\$11,000		

The benefit payment is prorated in the year of retirement, based on the number of full months following the month of retirement. In addition, the variable supplement payment will be offset for the amount of any applicable Cost of Living Adjustment (“COLA”) received on the retirees pension benefit. Also, variable supplement payments are not payable to disability or other vested retirees with less than 20 years of service.

In 2002, a Deferred Retirement Option Program (“DROP”) was established under Chapter 216 of the laws of 2002. The DROP provides service retirees who retire with more than 20 years of service with a single lump sum amount equal to the variable supplement payments that the member would have been paid, had the member retired upon completion of 20 years of service. Each year’s Fund benefit is “banked”, beginning with the member’s 20th anniversary date or January 1, 2002, whichever is later. Upon retirement the “banked” amounts are paid as a

lump sum along with the regular benefit payment. The regular benefit payment and the banked DROP amount are not paid to service retirees who have an application pending for disability retirement.

8. TREATMENT OF MEMBERS

The examiner reviewed various elements of the Fund's activities affecting retirees to determine compliance with statutes and the rules of the Fund. The examiner reviewed a random sample of benefit payments to retirees and beneficiaries to determine whether the members or beneficiaries were treated fairly and in accordance with the rules governing the Fund. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced accounting data to the books of account. Based on the random sample reviewed, no significant findings were noted.

9. PUBLICATION OF ANNUAL REPORTS

Section 13-388, Title 13, Chapter 3, Subchapter 5, of the Administrative Code states:

“Annual reports. - The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund certified by the comptroller and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.”

The examiner was not provided with any evidence that the Fund's Annual Reports were reported in the City Record.

The examiner recommends that the Fund comply with Section 13-388 of the Administrative Code and publish the required Annual Report in the City Record. This is a repeat recommendation from prior reports on examination.

10. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each item:

<u>Item</u>	<u>Description</u>
A	<p>The Fund violated Section 312(b) of the New York Insurance Law by failing to furnish a copy of the June 30, 1994 report on examination to each member of the board of trustees.</p> <p>The Fund responds that it will comply with Section 312(b) of the New York Insurance Law by furnishing members of the Board with a copy of the June 30, 2003 and future reports on examination.</p>
B	<p>The examiner recommended that the Fund comply with Section 13-388 of the Administrative Code and publish the Annual Report in the City Record.</p> <p>The Fund responded that it will comply with Section 13-388 of the Administrative Code by publishing the 2004 and future Annual Reports in the City Record.</p>

11. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to furnish a copy of the June 30, 1999 report on examination to each member of the board of trustees. This is a repeat violation from at least two prior reports.	5
B	The Fund violated Section 13-388 of the Administrative code by failing to publish the Annual Report in the City Record. This is a repeat violation from the prior report on examination.	13

APPOINTMENT NO. 22199

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, **GREGORY V. SERIO**, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

OLANIKE ATANDA-OGUNLEYE

as a proper person to examine into the affairs of the

FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND

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

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 5th day of April, 2004



GREGORY V. SERIO

Superintendent of Insurance

Superintendent