

REPORT ON EXAMINATION

OF THE

AGGREGATE TRUST FUND

AS OF

DECEMBER 31, 2009

DATE OF REPORT

DECEMBER 15, 2010

EXAMINER

MOSES EGBON

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsy  
Superintendent

December 15, 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 30397 dated November 15, 2009, attached hereto, I have made an examination into the condition and affairs of the Aggregate Trust Fund as of December 31, 2009, and submit the following report thereon.

Wherever the designations "Fund" or "ATF" appear herein without qualification, they should be understood to indicate the Aggregate Trust Fund.

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

## 1. SCOPE OF EXAMINATION

The Department has performed an examination of the Aggregate Trust Fund. The previous examination was conducted as of December 31, 2003. This examination covered the six-year period from January 1, 2004 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 Fund by obtaining information about the Fund including corporate governance, identifying and assessing inherent risks within the Fund 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 Fund were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the Fund’s own control environment assessment. The examiners also relied upon audit work performed by the Fund’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:

- Significant subsequent events
- Fund history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Fund
- Loss experience
- Accounts and records
- Statutory deposits
- Financial statements
- Summary of recommendations

## 2. DESCRIPTION OF FUND

The Aggregate Trust Fund was created pursuant to the provisions of Section 27 of the New York Workers' Compensation Law. The present Fund is the third formed since the passage of the enabling legislation. The current fund was established in 1920, following the dissolution of the predecessor Fund.

The purpose of the Fund is to assure and oversee the regular payment of benefits on adjudicated death cases and certain permanent disability cases. The Fund derives its revenue from insurance carriers and self-insured employers who, since 1935, have been required by the above law to deposit into the Fund the present value equivalent of all such adjudicated cases.

Deposits paid into the Fund represent the actuarially computed present value of awards made by the Workers' Compensation Board. The amount is calculated by the Workers' Compensation Fund's actuarial department and approved by the New York State Workers' Compensation Board using legally prescribed mortality and remarriage rates based upon the Dutch Royal Insurance Institution tables with an assumed interest rate of 5% for deposits relating to accidents occurring on and after January 1, 2001, 6% for deposits relating to accidents occurring before January 1, 2001 and after August 31, 1983, and 3% for deposits on accidents on and prior to August 31, 1983, plus provisions for administrative expenses.

The Aggregate Trust Fund assumes the risk that the present value amounts calculated to fund the awards are correct and will adequately fund the required payments.

Should the deposited award be modified upward, the amount of the increase must be borne by the employer or insurance carrier. Conversely, should the deposited award be modified downward, the amount of the decrease will be refunded by the Fund.

Comprehensive workers' compensation reform legislation was enacted on March 13, 2007 under Chapter 6 of the Laws of 2007. This reform legislation includes various provisions that affect the ATF. The legislation requires, applicable to cases with classification dates on or after July 1, 2007, all permanent partial disability cases to be paid into the ATF on a mandatory basis. As of December 31, 2009, there has been minimal activity under this requirement. Additionally the law retroactively replaced, as of January 1, 2001, the discount rate in Section 27 of the New York Workers' Compensation law with the "industry standard rate" as determined by the Superintendent of

Insurance. Finally the legislation authorized the ATF to enter into waiver agreements with claimants making final settlements of the right to further benefits as provided under Workers' Compensation Law Section 32 for cases deposited into the ATF. The aggregate affect of these changes have not been quantified.

A total of 4,602 cases were outstanding at December 31, 2009, with an aggregate value of \$155,592,000.

A. Management

The State Insurance Fund Workers' Compensation Fund ("Workers' Compensation Fund") acts as the administrator for the ATF and pays awards on the ATF's behalf. The ATF uses the facilities and employees of the Workers' Compensation Fund and pays the Workers' Compensation Fund an administrative fee. The ATF pays the Workers' Compensation Fund an amount equal to three percent of the annual awards paid to cover administrative costs.

B. Significant Operating Ratios

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

Investment yield	3.75%
Liabilities to liquid assets	113%

The investment yield each year during the examination period of 2004 through 2009 were 4.67%, 4.63%, 4.81%, 5.54%, 4.71% and 3.75%, respectively. It is noted that the investment yield is lower than the 5 percent discount rates used in computing the unpaid award liability.

The liabilities to liquid assets ratio is above the usual value recommended by the NAIC. The ATF posted an unusual value for this ratio because the contingent receivable from New York State was not included in the above calculation as it is not a liquid asset.

C. Accounts and Records

i. Contingent Receivable from New York State

The Fund reported an admitted asset in the amount of \$220,000,000 for the captioned item as of December 31, 2009. The Fund was required to transfer the \$220,000,000 to the State over the course of several years, pursuant to the following statutes:

Chapter 55 of the Laws of 1982	\$ 50,000,000
Chapter 7 of the Laws of 1989	110,000,000
Chapter 62 of the Laws of 1990	<u>60,000,000</u>
Total funds transferred	<u>\$220,000,000</u>

The statutes require New York State to appropriate \$220,000,000 annually for the potential repayment of any portion of the aggregate contingent receivable. Such repayment by the State is required only to maintain the solvency of the Fund. These statutes specifically direct the contingent receivable to be an admitted asset. The receivable is non-interest bearing.

ii. Custodial Agreement

The examiner noted that the custodian agreement between the Fund and JP Morgan Chase lacked the following protective covenant set forth in Section 3-56 of the 2009 NAIC Financial Condition Examiners Handbook (“Handbook”), which states as follows:

“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.”

It is recommended that the Fund amend its custodian agreement with JP Morgan Chase to include the above protective covenant set forth in Section 3-56 of the 2009 Handbook.

### 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 Aggregate Trust Fund:

##### Admitted assets

Bonds	\$113,589,000	
Preferred stocks	2,089,000	
Common stocks	222,000	
Cash and short-term investments	19,881,000	
Accrued investment income	1,133,000	
Award payments rec. from supp. benefit fund	4,874,000	
Contingent receivable from NYS	<u>220,000,000</u>	
Total admitted assets		<u>\$361,788,000</u>

##### Liabilities and Surplus

##### Liabilities

Unpaid awards (loss reserves)	\$155,592,000	
Unpaid administrative fees	4,668,000	
Due to Workers' Compensation Fund	<u>45,000</u>	
Total liabilities		\$160,305,000

##### Surplus

Security fluctuation surplus	\$ 15,000,000	
Unassigned funds (surplus)	<u>186,483,000</u>	
Total surplus		<u>201,483,000</u>
Total liabilities and surplus		<u>\$361,788,000</u>

NOTE: The Fund is exempt from federal and state income taxes.

B. Summary of Operations

Revenues

Awards received \$ 41,004,000

Benefits and expenses

Awards paid \$111,502,000

Increase in liability for unpaid awards and  
administrative fees 10,301,000

Total Benefits and expenses (121,803,000)

Net operating gain or (loss) \$(80,799,000)

Investment income

Net investment income earned \$36,455,000

Net realized capital gains 24,313,000

Net investment gain or (loss) 60,768,000

Net loss from operations \$(20,031,000)

C. Surplus Account

The Aggregate Trust Fund's total surplus decreased \$19,726,000 during the six-year examination period, detailed as follows:

Surplus funds per report on examination as of  
December 31, 2003 \$221,209,000

Net gain ( loss) \$(20,031,000)

Net unrealized capital gains or (losses) 305,000

Net increase (decrease) in surplus (19,726,000)

Surplus funds per report on examination as of  
December 31, 2009 \$201,483,000

#### 4. UNPAID LOSSES

The liability for unpaid losses of \$155,592,000, as determined by this examination, is the same as reported by the Fund as of December 31, 2009.

This liability represents the present value of individual case estimates at year-end with mortality and remarriage rates based upon the 1914 Dutch Mortality and Remarriage Tables as required by the Workers' Compensation Law of the State of New York. The Fund uses an interest rate of five percent to estimate the present value for unpaid losses.

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

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

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Abandoned Property Law</u></p> <p>It is recommended that the Fund comply with the provisions of Section 1316 of the New York Abandoned Property Law and file the abandoned property reports on a timely basis.</p> <p>The Fund has complied with this recommendation.</p>	<p>4</p>
<p>B. <u>Custodial Agreement</u></p> <p>It is recommended that the Fund update its custodial agreement to reflect the correct name of its current custodian.</p> <p>It is recommended that the Fund amend its custodial agreement to include the required protective covenant and provisions.</p> <p>The Fund has complied with these recommendations.</p>	<p>4</p> <p>5</p>

**6. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Custodial Agreement</u>	
	It is recommended that the Fund amend its custodian agreement with JP Morgan Chase to include the protective covenant set forth in Section 3-56 of the 2009 Handbook.	5

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Moses Egbon, CFE  
Senior Insurance Examiner

STATE OF NEW YORK    )  
                                  )SS:  
                                  )  
COUNTY OF NEW YORK )

MOSES EGBON, being duly sworn, deposes and says that the foregoing report, subscribed by him,  
is true to the best of his knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Moses Egbon

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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:

**Moses Egbon**

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

**AGGREGATE TRUST FUND**

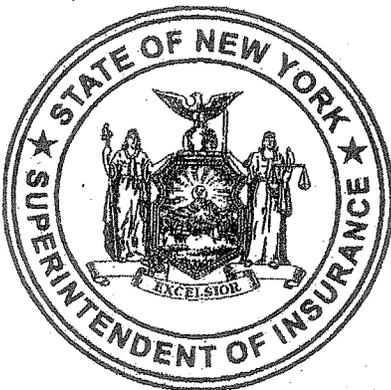
*and to make a report to me in writing of the condition of the said*

**Fund**

*with such other information as he 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 15th day of November, 2009*



*James J. Wrynn*  
\_\_\_\_\_  
JAMES J. WRYNN  
Superintendent of Insurance