

ASSOCIATION REPORT ON ORGANIZATION  
OF THE  
WESTERN CONTINENTAL INSURANCE COMPANY OF NEW YORK  
AS OF  
APRIL 2, 2003

ZONES  
REPRESENTED

I  
II

STATES  
PARTICIPATING

NEW YORK  
MISSISSIPPI

EXAMINERS

ANNIE LAU, CFE  
JAMES O'SULLIVAN, CFE



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

Honorable Mike Pickens  
Chairman, Ex Committee  
Commissioner of Insurance  
State of Arkansas

April 4, 2003

Honorable Janie Miller  
Chairman, Southeastern Zone  
Commissioner of Insurance  
State of Kentucky

Honorable Gregory V. Serio  
Superintendent of Insurance  
State of New York

Sirs and Madam:

Pursuant to your instructions an examination on organization has been made of Western Continental Insurance Company of New York as of April 2, 2003. The report on organization is respectfully submitted.

The examination was conducted at the office of CDC IXIS Financial Guaranty North America, Inc. ("CIFG NA"), the Company's parent, located at 825 3<sup>rd</sup> Avenue, New York, NY 10022.

The examination was conducted by the New York Insurance Department, hereinafter referred to as "Department" with participation from the State of Mississippi representing the Southeastern Zone.

Wherever the designations "the Company" or "WCIC NY" appear herein without qualification, they should be understood to indicate Western Continental Insurance Company of New York.

REPORT ON ORGANIZATION  
OF THE  
WESTERN CONTINENTAL INSURANCE COMPANY OF NEW YORK  
AS OF  
APRIL 2, 2003

DATE OF REPORT

APRIL 4, 2003

EXAMINER

ANNIE LAU, CFE

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

April 4, 2003

Honorable Gregory V. Serio  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to your instructions contained in Appointment No. 22043 dated April 2, 2003, attached hereto, I have made an examination on organization of Western Continental Insurance Company of New York as of April 2, 2003 and respectfully submit the following report thereon.

The examination was conducted at the office of CDC IXIS Financial Guaranty North America, Inc. ("CIFG NA"), the Company's parent, located at 825 3<sup>rd</sup> Avenue, New York, NY 10022.

Wherever the designations "the Company" or "WCIC NY" appear herein without qualification, they should be understood to indicate Western Continental Insurance Company of New York.

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

## **1. SCOPE OF EXAMINATION**

The examination comprised of a complete verification of issuance of the Company's capital stock, the receipt of capital and surplus funds, and the determination of the Company's assets and liabilities as of the examination date. The records examined were the declaration of intention and charter, the by-laws, the certificate of incorporation, the corporate minutes, the stock register and the inter-company and custodial agreements entered into by the Company as of the examination date. In addition, an affidavit, appended hereto, was obtained from two officers of the Company indicating that the transactions noted in this report were lawful and bona fide.

## **2. INCORPORATION**

Western Continental Insurance Company of New York was incorporated under the laws of the State of New York on March 5, 2003. The Department approved the Company's declaration of intention and charter on the same date. The charter was amended effective March 19, 2003, to include additional lines of business and to increase the authorized capital from \$1,125,000 to \$4,700,000. The Company's office is located in New York, NY.

The Company was formed for the purpose of redomesticating Western Continental Insurance Company ("WCIC") to New York. WCIC is an affiliated property and casualty insurance company domiciled in Texas, which is also wholly-owned by the Company's parent, CIFG NA. The Company will be the surviving company upon the merger of WCIC and itself.

The Company's board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Gérard Raymond Barbot Mareil Marly, France	Director General, CDC IXIS
Jean-Jacques Marcellin Bonnaud Neuilly sur Seine, France	President, Eurotitrisation
Isabelle Marie Bouillot Paris, France	President of Executive Board, CDC IXIS
Marc de Champs de Saint Léger de Brécharde Brooklyn, NY	Head of Financial Engineering and Systems, CIFG
Michael Alan Freed New York, NY	General Counsel, CIFG Services
Steven Neil Klein Montclair, NJ	Head of Municipal Group, CIFG
Paul Christopher Kwiatkoski Glen Ridge, NJ	Head of Surveillance, CIFG
Antoine André Lissowski, Carrières sur Seine, France	Member of Executive Board, CDC IXIS
James Joseph O’Keefe, III Mount Kisco, NY	Chief Financial Officer, CIFG
Anthony Orsatelli Paris, France	Member of Executive Board, CDC IXIS
Jeremy Evans Reifsnyder New Canaan, CT	Head of US Structured Finance Group, CIFG
Jacques Raymond Laurent Rolfo New York, NY	President and Chief Executive Officer, CIFG
Charles Edward Webster, Jr. New York, NY	Chief Risk Officer, CIFG

As of April 2, 2003, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Isabelle Marie Bouillot	Chairwoman
G�rard Raymond Barbot	Vice Chairman
Jacques Raymond Laurent Rolfo	Chief Executive Officer and President
James Joseph O’Keefe, III	Managing Director and Treasurer
Michael Alan Freed	Managing Director and Secretary
Steven Neil Klein	Managing Director
Charles Edward Webster, Jr.	Managing Director

### 3. CAPITALIZATION AND SUBSCRIPTION

Western Continental Insurance Company of New York (“WCIC NY”), a wholly-owned subsidiary of CDC IXIS Financial Guaranty North America, Inc. (“CIFG NA”), a New York domiciled financial guaranty company, which is ultimately owned by Caisse de d p ts et cosignations (“CDC”), a French insurance company.

WCIC NY’s authorized capital is \$4,700,000, consisting of 4,700 shares of common stock with par value of \$1,000 per share. On April 1, 2003, the Company issued 4,700 shares of its common stock to CIFG NA for a consideration of \$7,500,000 of which \$4,700,000 was allocated to common stock and \$2,800,000 was paid in and contributed surplus.

In order to fulfill the deposit requirements of Section 4104 of the New York Insurance Law, the Company has placed securities with a par and market value of \$500,000 in a custodial account in the name of “the Superintendent of Insurance of the State of New York” in trust for the security of the policyholders of WCIC NY. The deposit was made subsequent to the examination date and confirmed by this Department.

#### 4. BALANCE SHEET

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of April 2, 2003 and as reported by the Company:

##### Assets

Cash and short-term investments		<u>\$7,500,000</u>
Total admitted assets		<u>\$7,500,000</u>

##### Liabilities

Other expenses		<u>\$ 0</u>
Total liabilities		\$ 0

##### Capital and Surplus

Common capital stock	\$4,700,000	
Gross paid in and contributed surplus	2,800,000	
Unassigned funds (Surplus)	<u>0</u>	
Total surplus as regards policyholders		<u>7,500,000</u>
Total liabilities and surplus as regards policyholders		<u>\$7,500,000</u>

## 5. CUSTODIAL AGREEMENT

The custodial agreement entered into between the Company and Bank of New York is missing the following protective covenants set forth in Part 1-General, Section IV, Subsection J - Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook:

1. The agreement should state that certificated securities of the insurance company shall be held separate from all other securities or in a fungible bulk. A fungible bulk of securities consists of classes of securities that are substitutable or interchangeable with others of the same class, such as bearer securities or common stocks of the same denomination. Those securities held in a fungible bulk by the custodian, in a clearing corporation, or in the Federal Reserve book-entry system, shall be separately identified on the custodian's official records as being owned by the insurance company.
2. That the national bank, state bank, or trust company, as custodian is obligated to indemnify the insurance company for any insurance company's loss of securities in the custodian's custody, except that, unless domicile state law, regulation, or administrative action otherwise require a stricter standard (Section 2.b. sets forth an example of such a stricter standard), the bank or trust company shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian;
3. That in the event of a loss of the securities for which the custodian is obligated to indemnify the insurance company, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced; and may provide;
4. That in the event that the custodian gains entry in a clearing corporation through an agent, there should be a written agreement between the custodian and the agent that the agent shall be subjected to the same liability for loss of securities as the custodian. If the agent is governed by laws that differ from the regulation of the custodian, the Commissioner of Insurance of the state of domicile may accept a standard of liability applicable to the agent that is different from the standard liability;
5. That 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 domicile commissioner;
6. The custodian and its agents, upon reasonable request, shall be required to send all reports which they receive from a clearing corporation or the Federal Reserve book-entry system which the clearing corporation or the Federal Reserve permits to be redistributed and reports prepared by the custodian's outside auditors, to the insurance company on their respective systems of internal control;

Therefore, it is recommended that the Company amend the custodial agreement with Brown Brothers Harriman & Co. to comply with the guidelines set forth in the NAIC Examiners Handbook.

## 6. AUTHORIZATION POWERS AND MINIMUM CAPITAL REQUIRED

The Company is authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

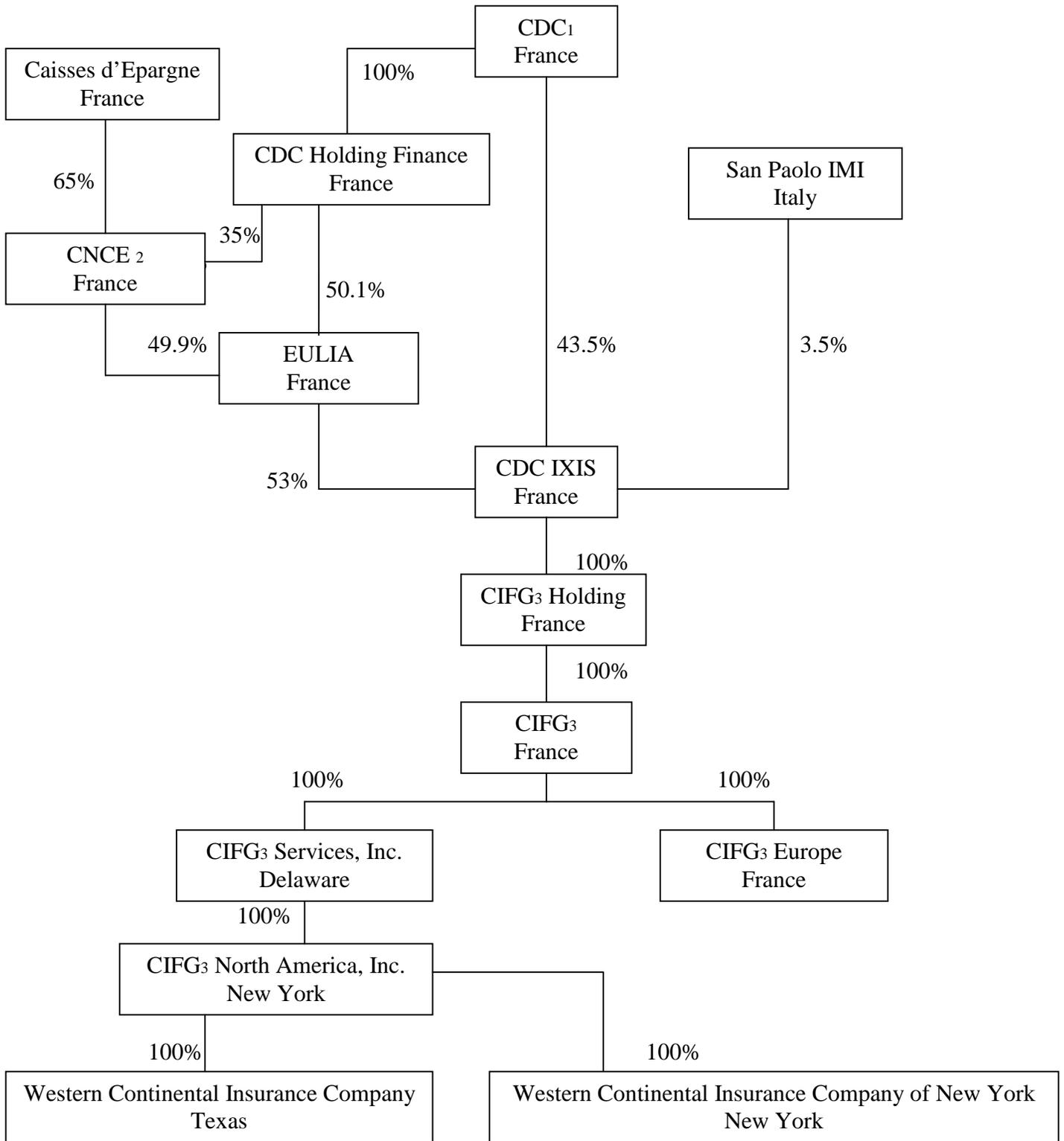
<u>Paragraph</u>	<u>Line of Business</u>
16	Fidelity and surety
17	Credit
30	Substantially similar kind of insurance

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 \$1,400,000.

## 7. HOLDING COMPANY SYSTEM

Western Continental Insurance Company of New York is a wholly owned by CDC IXIS Financial Guaranty North America, Inc. ("CIFG NA"), a New York domiciled financial guaranty insurer, which is ultimately owned by Caisse de dépôts et consignations ("CDC"), a French insurance company.

The following is a chart of the holding company system at April 2, 2003:



- (1) Caisse des dépôts et cosignations
- (2) Caisse Nationale des Caisses d'Epargne
- (3) CDC IXIS Financial Guaranty

## 8. CONCLUSION

Based on the foregoing examination, it is concluded that the Company sold 4,700 shares of common stock with a par value of \$1,000 per share. These shares represented the total authorized and issued stock for which the Company received a consideration of \$7,500,000, of which \$4,700,000 represents common stock capital and \$2,800,000 represents gross paid in and contributed surplus.

## 9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Custodial Agreement</u>	
	It is recommended that the Company amend the custodial agreement with Brown Brothers Harriman & Co. to comply with the guidelines set forth in the NAIC Examiners Handbook.	6

AFFIDAVIT

The undersigned, James J. O'Keefe, III and Michael A. Freed are the duly appointed Treasurer and Secretary, respectively, of WESTERN CONTINENTAL INSURANCE COMPANY OF NEW YORK, a New York corporation (the "Company"). In such capacity, each of the undersigned hereby declares under penalty of perjury as follows:

1. The paid-in capital and surplus of the Company, in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000), have not been withdrawn, pledged or in any way impaired.
2. The paid-in capital and surplus of the Company are not to be invested or otherwise legitimately used or appropriated except for the sole and exclusive use and benefit of the Company.
3. There is no agreement or understanding, express or implied, made or existing between the Company and its officers, or any of them, or any person or persons, to the effect or import that the money paid in by any stockholder shall be loaned or returned to him.
4. Neither the Company nor any of its officers is in any way, manner, or form pledged or committed to make any investment, loan or disposition of said paid in capital and surplus, or any part or portion thereof, which is not in strict conformity in all respects with the provisions of the New York Insurance Law of the State of New York.
5. The said capital and surplus are the property of the Company and possessed by it in its corporate name and capacity for the benefit of the policyholders.

IN WITNESS WHEREOF, the undersigned have executed this Affidavit as of this 2<sup>nd</sup> day of April, 2003.

*James J. O'Keefe, III*  
James J. O'Keefe, III  
Treasurer

*Michael A. Freed*  
Michael A. Freed  
Secretary

ACKNOWLEDGEMENT

State of New York        )  
  )  
County of New York     )

On April 2, 2003, the foregoing Affidavit was executed in my presence by James J. O'Keefe and Michael A. Freed, who are personally known to me, and whom I acknowledge to be the persons who executed the foregoing instrument.

My Commission Expires: 04.10.2006

*Kathleen G. Cully*  
Kathleen G. Cully, Notary Public  
NOTARY PUBLIC - STATE OF NEW YORK  
EASTERN GLAZON CULY  
My Commission Expires: 04.10.2006

Respectfully submitted,

\_\_\_\_\_/s/  
Annie Lau, CFE  
Senior Insurance Examiner

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

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

\_\_\_\_\_/S/  
Annie Lau

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

State of New York  
County of New York

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES  
USED IN AN EXAMINATION

James F. O'Sullivan, BEING DULY SWORN, STATES AS FOLLOWS:

1. I have authority to represent the State of Mississippi in the examination of Western Continental Insurance Company of New York.
2. Mississippi is accredited under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards.
3. I have reviewed the examination work papers and examination report and the examination of Western Continental Insurance Company of New York was performed in a manner consistent with the standards and procedures required by the State of Mississippi.

The affiant says nothing further.

  
Examiner's Signature

Subscribed and sworn before me by James F. O'Sullivan on this 10th day of April 2003.

  
Notary Public

My commission expires APRIL 27, 2005 [date].  
**WYELLEN CARSON**  
Notary Public, State of New York  
No. 01CA508825  
Qualified in Queens County  
Commission Expires October 27, 2005

Appointment No 22043

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:

**Annie Lau**

as proper person to examine into the affairs of the

**WESTERN CONTINENTAL INSURANCE COMPANY OF NEW YORK**

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

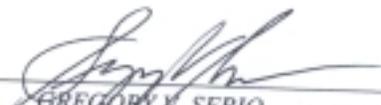
**Company**

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 2nd day of April, 2003



  
GREGORY V. SERIO  
Superintendent of Insurance