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Insurance and Banking Departments Merge in New York; New Department of Financial Services Starts Operating

As of today, the New York Insurance Department and New York Banking Department have ceased operating as separate agencies, and a new Department of Financial Services ("DFS") has begun to function which will regulate both banking and insurance in New York. New York thus joins Florida, Minnesota, New Jersey, and Vermont in merging banking and insurance regulation into one department. The departments were merged pursuant to legislation adopted earlier this year (Chapter 62 of New York Laws of 2011).

The new agency is headed by a Superintendent of Financial Services. Following his appointment by Governor Cuomo and confirmation by the Senate earlier this year, Benjamin Lawsky leads the new Department. Superintendent Lawsky previously served as the Governor Cuomo's Chief of Staff, and before that he was the Deputy Counselor and Special Assistant to the Attorney General serving then-Attorney General Cuomo. He also spent more than five years as an Assistant United States Attorney in the Southern District of New York prosecuting securities fraud, organized crime and terrorism cases.

DFS will have at least two divisions, one for insurance headed by a Deputy Superintendent, and one for banking, also headed by a Deputy Superintendent. Both the current Insurance Law and Banking Law remain in force, as do all licenses, regulations, Circular Letters, determinations previously issued by the Insurance Department, and stipulations executed by the Insurance Department.

Former Superintendent of Insurance James Wrynn (the last person to hold such position prior to the effectiveness of the new legislation) has become Deputy Superintendent of DFS following his appointment by Superintendent Lawsky. The preexisting Insurance Department bureaus, such as the Life Insurance, Property Insurance and Health Insurance Bureaus, are expected to remain as separate units within the Insurance Division, with the same Bureau Chiefs in charge, at least for the time being. There will likely be one Office of General Counsel, but it is not clear that former Banking Department lawyers will immediately be prosecuting and adjudicating enforcement matters involving insurers, producers and other insurance licensees.

The former Insurance Frauds Bureau will now operate as part of an expanded financial frauds and consumer protection unit formed by the merger legislation and residing within the new combined department. DFS will have unprecedented powers to investigate and penalize misconduct by anyone providing a "financial product or service", particularly intentional misrepresentations in selling one to an investor or consumer. For the first time in the State's history, an insurance regulator in New York can impose, following a hearing at DFS, a civil penalty of up to $5,000 for such misconduct without having to prove a case in court. Certain exceptions and limitations apply, such as where an activity is exclusively regulated by the federal government, *e.g.*, the sale of swaps, or where another state agency, such as the Department of State, is already regulating the activity, *e.g.*, sales of real estate. Also, as to persons already subject to Insurance Law provisions, such as licensed insurers and producers, DFS cannot impose a penalty different from that set forth in the Insurance Law for the same violation; and the new civil penalty cannot be in addition to the penalty already provided in the Insurance Law for the same violation.

Nevertheless, with new statutory powers and a former prosecutor at its helm who remains a close confidant of Governor Cuomo, DFS may well take a more activist stance towards consumer and investor protection. Those who were not within the Insurance Department's jurisdiction, such as unlicensed reinsurers, could be subject to DFS enforcement proceedings if colorable allegations are made that they engaged in intentional misrepresentations in dealing with insurance policies or reinsurance contracts involving New York consumers or New York-based insurers.

The new agency also enjoys greater power than did the Insurance Department to penalize other kinds of misconduct, besides intentional misrepresentations. Maximum administrative penalties for violating Insurance Law provisions and insurance regulations have been increased to $1,000 per offense. Chapter 62 added several other new enforcement powers. For example, DFS can now issue "cease and desist" orders administratively against an unlicensed insurer-- or anyone illegally aiding an unlicensed insurer-- without needing to obtain a court injunction.

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For More Information

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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