

December 20, 2011

Comment Letter to Federal Insurance Office Addresses Potential Issues in Any Federal Role in Insurance Regulation

On December 13, 2011, the Insurance Law Committee of the New York City Bar Association responded¹ to a Request for Comment² by the new Federal Insurance Office ("FIO") of the U.S. Treasury Department. The FIO request was made pursuant to the FIO Director's statutory obligation under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank")³ to report to Congress on "how to modernize and improve the system of insurance regulation in the United States."⁴ The FIO Director's report is due on January 21, 2012⁵, and current FIO Director Michael McRaith has indicated publicly that he will meet that deadline⁶.

Chadbourne partner Dan Rabinowitz is Chair of the Insurance Law Committee, and special counsel Richard Liskov, a former Deputy Superintendent and General Counsel of the New York Insurance Department, has served as chair of the Committee's Subcommittee on Legislation. Mr. Rabinowitz and Mr. Liskov both served on the working group within the Committee that prepared the comment letter. The comment letter was approved by the New York City Bar Association.

The broad range of topics raised in the FIO's Request for Comment largely tracked the categories of topics which Dodd-Frank requires the FIO Director to consider in preparing his report. These include, among others, the following:

- the degree of national uniformity of state insurance regulation;
- international coordination of insurance regulation; and
- the potential consequences of subjecting insurance companies to a "Federal resolution authority," including the effects of any Federal resolution authority
 - on the operation of state insurance guaranty funds, including the "loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority";
 - on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

¹ The Committee's comment letter is available on the Federal government's website for regulatory activity, [regulation.gov](http://www.regulation.gov).

² 76 Fed. Reg. 200, October 17, 2011, at 64174-75.

³ Public Law 111-203.

⁴ *Id.*, §313(p)

⁵ *Id.*

⁶ Elizabeth D. Festa and Arthur D. Postal, "Industry Reps Agree FIO Important, but Disagree on Role it Should Play," [Property casualty 360](http://www.property-casualty.com), December 9, 2011.

- in the case of life insurance companies, on the loss of "the special status" of separate account assets and liabilities; and
- on the "international competitiveness" of insurance companies.⁷

In its comment letter, the Committee addressed the above topics by reference to six key areas, features or goals of existing insurance regulation. Specifically disclaiming any view as to whether any Federal regulation of insurance is desirable, the Committee articulated some of the key considerations that should inform any potential Federal role in these six areas. The six areas comprised the following:

- obstacles to enforcing foreign judgments against off-shore reinsurers in connection with disputed reinsurance coverage, given that collateral security requirements benefitting U.S. cedents are generally being relaxed.⁸ The Committee comment letter specifically urges the FIO to engage international regulators in an effort to facilitate the enforcement of foreign judgments;
- market conduct and solvency regulation, which the Committee maintains should be managed by a single regulator and not bifurcated between the state and Federal levels;
- the desirability of uniformity across state insurance laws as opposed to discrepancies from state to state on important compliance matters;
- some of the unique characteristics of insurance company receiverships, which historically have been the exclusive province of state governments. The Committee opposes the wholesale application of federal bankruptcy laws to insurers;
- policyholder priority over other claimants in a liquidation of an insurer and the need to continue according protected status to separate accounts underlying variable insurance and annuity products; and
- the need for any Federal regulatory function (should one develop) to work collaboratively with regulated companies.

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⁷ *Id.*, §313(p)(2)-(3).

⁸ See "[NAIC Relaxes Collateral Requirements for Non-admitted Reinsurance](#)," Chadbourne & Parke client alert, November 14, 2011.

For More Information

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