

CLIENT UPDATE

NEW YORK DEPARTMENT OF FINANCIAL SERVICES ISSUES A REPORT ON THE USE OF CAPTIVE INSURERS

NEW YORK

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On June 11, 2013, the New York State Department of Financial Services (“DFS”) issued a report setting forth its findings to date relating to its inquiry into the life insurance industry’s use of captive insurance companies in connection with insurance reserve financing transactions. In its report, the DFS recommended that (i) the National Association of Insurance Commissioners (“NAIC”) develop enhanced disclosure requirements for reserve financing transactions involving captive insurers, (ii) the Federal Insurance Office, Office of Financial Research, the NAIC and state insurance commissioners conduct inquiries similar to the New York inquiry and (iii) state insurance commissioners consider an immediate national moratorium on new reserve financing transactions involving captive insurers until these inquiries are complete. The report also stated that the DFS will begin to require detailed disclosure of captive insurance transactions by New York domiciled insurers and their affiliates.

The issuance of the DFS report followed a July 2012 inquiry by the DFS to 80 New York-domiciled life insurance companies under section 308 of the New York Insurance Law. That inquiry requested information about the use of captive insurance companies by the insurers and their affiliates.

The DFS inquiry has been proceeding at the same time as the NAIC has been studying the use of captive insurers through the NAIC Captives and Special Purpose Vehicles (SPV) Use (E) Subgroup, which was created in late 2011. On June 6, 2013, that subgroup adopted a white paper making certain recommendations regarding the use of captive insurers, including enhanced disclosure. It is expected that this white paper will be considered for adoption by a wider group of the NAIC at the NAIC's national meeting in August.

We will continue to monitor these developments and provide updates as appropriate.

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Please do not hesitate to contact us with any questions.

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