

CLIENT UPDATE

NAIC PRIVATE EQUITY ISSUES WORKING GROUP DISCUSSES NEW YORK PROPOSAL AND EXPOSES PROPOSED GUIDANCE FOR FINANCIAL ANALYSIS HANDBOOK FOR INSURER ACQUISITIONS

NEW YORK

Eric R. Dinallo
edinallo@debevoise.com

Thomas M. Kelly
tmkelly@debevoise.com

Marilyn A. Lion
malion@debevoise.com

Nicholas F. Potter
nfpotter@debevoise.com

John Dembeck
jdembeck@debevoise.com

Michael D. Devins
mddevins@debevoise.com

Alexander R. Cochran
arcochran@debevoise.com

Sean P. Neenan
spneenan@debevoise.com

Emily Zand
ezand@debevoise.com

On June 11, 2014, the National Association of Insurance Commissioners' Private Equity Issues (E) Working Group held a conference call on which representatives of the New York State Department of Financial Services presented their proposed amendment to their Insurance Regulation 52 that sets forth additional filing and other regulatory requirements for the acquisition and retention of control of New York domestic and commercially domiciled insurers, as further discussed in our Client Update, dated May 19, 2014. The 45-day comment period for the proposed amendment will expire later this month.

The Working Group also voted to expose, for a 45-day comment period, proposed guidance to be added to the Holding Company System Analysis section of the NAIC Financial Analysis Handbook. The proposed additions set forth certain qualitative factors for analysts to consider when reviewing Form A acquisition of control applications to ensure that the broader risks associated with a proposed insurer acquisition are taken into account. The proposed guidance also includes certain suggested stipulations that can be agreed to by an acquiring entity to alleviate concerns with respect to such broader risks. These stipulations include, among other things, requiring:

- Risk-Based Capital to be maintained at a specified amount above Company Action Level with the proposed guidance specifically referencing 450% as an example of such specified amount,

- A capital maintenance agreement be entered into or a pre-funded trust account be established by an acquiring entity, and
- Disclosure of equity holders (both economic and voting) in all intermediate holding companies from the insurance company up to the ultimate controlling person or individual. This would include the possibility of requiring disclosure by limited partners of a limited partnership that may be in the chain of controlling entities within the holding company structure.

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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