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GIBSON DUNN

New York State Department of Financial Services Round-Up

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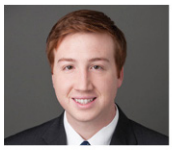

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The New York State Department of Financial Services ("DFS") is the state's primary regulator of financial institutions and activity, with jurisdiction over approximately 1,500 financial institutions and 1,800 insurance companies. Heading into 2021, DFS stands ready to expand its regulatory footprint, with increased efforts in new areas following the 2020 Presidential Election and a consistent focus on regulating emerging issues of significance such as financial technology and data privacy.

This year was of course marked by the sweeping COVID-19 pandemic, which affected financial institutions, insurers, and consumers around the world. That was nowhere more true than in New York, which sat at an epicenter of the crisis. As expected, DFS was active throughout the year, taking a preeminent role in mitigating the effects of the disaster by imposing new measures in a dizzying array of areas ranging from health and travel insurance to mortgages and student loans. Unfortunately, the crisis is unlikely to abate in the immediate future. Despite the preliminary rollout of a COVID-19 vaccine, the agency's efforts are likely to continue into 2021. Just this month, Governor Andrew Cuomo proposed "comprehensive reforms to permanently adopt COVID-19-era innovations that expanded access to physical health, mental health and substance use disorder services," including requiring commercial health insurers to offer a telehealth program, ensuring that telehealth is reimbursed at rates that incentivize use when appropriate, and mandating that insurers offer e-triage platforms, all of which could fall within the regulatory ambit of DFS.[1]

More broadly, the agency has continued its focus on areas that it previously expressed were principal concerns. This Spring, for example, DFS will host a "Techsprint" in order to promote digital reporting for virtual currency companies.[2] The agency also will continue expanding consumer protection through increased focus on prescription drug prices and has continued to increase pressure on companies regarding data protection.[3] Looking forward this year, DFS has been signaling that it expects a change in tone and agenda on environmental matters from the new federal administration, and that it will stay the course on increasing efforts to mitigate the effects of climate change.[4] Indeed, DFS has indicated that it is "developing a strategy for integrating climate-related risks into its supervisory mandate" and that it intends to publish detailed guidance and best practices with input from industry in the future.[5]

This DFS Round-Up summarizes recent key developments regarding the agency. Those developments are organized by subject.

The American Lawyer named Gibson Dunn its **2020 Litigation Department of the Year**, an unprecedented achievement as the firm's fourth win in the last six years of the publication's biennial competitions and the sixth time in a row the firm has been a finalist. The firm also was named a finalist in the White Collar/Regulatory Department of the Year.

Gibson, Dunn & Crutcher LLP

Chambers USA 2020 ranked Gibson Dunn among **The Elite for Litigation: General Commercial in New York** and **Tier 1 Nationwide for Corporate Crime & Investigations**.

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I. New Leadership and Organizational Structure

In the past year, DFS underwent several changes in leadership and organization to meet evolving challenges, including the appointment of two new agency officials and creation of offices tasked with investigating pharmaceutical prices in New York.

a. New General Counsel – Richard Weber

In April 2020, Superintendent Lacewell announced the appointment of Richard Weber to the position of General Counsel. Prior to Mr. Weber's appointment, he held leadership positions relating to financial-crime prevention in two financial institutions as well as in numerous government agencies, including the New York County District Attorney's Office, the United States Department of Justice, the United States Attorney's Office, and the Internal Revenue Service, where he was Chief of the Criminal Investigation Division.[6]

b. New Director of Climate Initiatives – Nina Chen

In May 2020, Superintendent Lacewell announced the appointment of Nina Chen as DFS's first-ever Sustainability and Climate Initiatives Director. Ms. Chen will focus on continuing the agency's efforts to combat climate change by developing initiatives involving sustainability, green financing, and climate mitigation. Prior to joining DFS, Ms. Chen served as the Nature Conservancy's Director of Conservation Investments in New York, among other positions.[7]

This new position is likely to see increased emphasis in 2021. As Superintendent Lacewell has stated, "[t]he global pandemic, the financial crisis and the racial justice movement have gripped the world this year, knocking climate change out of the spotlight. But in these conjoined crises lies a glimmer of hope: The opportunity to build back our economy, nation and world better by creating a blueprint for a sustainable future."[8] Moreover, DFS has indicated that it now sees "renewed opportunity" to "manage the financial risks from climate change" following a federal change in policy from the Biden administration.[9]

c. New Offices – Pharmaceutical Benefits and Accountability

DFS recently announced two organizational changes to address rising drug prices affecting New York consumers and insurance companies. First, DFS formed an Office of Pharmacy Benefits, which will monitor the market and investigate allegations of dramatic spikes in prescription drug prices. The Office is authorized to conduct investigations by requiring sworn statements, demanding documents, examining witnesses under oath, and subpoenaing relevant parties.[10]

To facilitate the Office's new role, DFS further announced appointments to a new Drug Accountability Board, which will be comprised of outside experts who advise on drug pricing issues.[11] DFS has proposed a regulation formalizing the Office of Pharmacy Benefits and setting rules for the Accountability Board.[12]

Global Investigations Review 2020 ranked Gibson Dunn **Number 1 in its "GIR 30" annual guide to the world's top cross-border investigations practices**, the fourth time we have been so honored in the last five years.

Law360 named Gibson Dunn a **Firm of the Year for 2020** and a **2020 Trials Group of the Year** honoring firms for "scoring victories in high-profile disputes and helping companies navigate uncharted legal seas made rough by the coronavirus pandemic."

II. COVID-19 Regulations and Oversight

The biggest story of this year was the devastating development of the global pandemic. Throughout 2020, DFS was extremely active in meeting the crisis's demands, regulating everything from health, travel, property and casualty, and life insurance, to mortgage foreclosures, credit reporting agencies, student loans, and reporting and meeting requirements for financial institutions.

a. Health Insurance Coverage and Other Obligations

Since March 2020, DFS took a number of measures to help insurance consumers. For example, DFS partnered with private health insurers to maintain special enrollment periods throughout the emergency.[13] These measures were necessary, according to DFS, so that "individuals do not avoid seeking testing or medical care for fear of cost."[14] As a result, enrollment was continuously available throughout 2020, with the final period applying to a January 1, 2021 coverage start date.[15]

DFS also issued an emergency regulation in March requiring insurers to waive cost-sharing associated with COVID-19 testing.[16] This mandate was soon expanded to require waiver of cost-sharing for in-network telehealth visits.[17] And the agency further required insurers to waive cost-sharing for in-network outpatient mental health services required by essential workers.[18] Likewise, in August 2020, DFS responded to consumer complaints by issuing guidance directing health and dental insurers to ensure that providers have not collected or failed to refund fees for providers' use of personal protective equipment such as masks, gowns, and gloves.[19]

More recently, in December 2020, DFS issued an emergency regulation requiring health insurers to immediately provide coverage for approved COVID-19 vaccinations without cost-sharing upon the earlier of several events. DFS advised insurers to distribute timely information regarding claim reimbursement, and to furnish DFS with contact information of a person responsible for communicating with DFS regarding regulatory compliance.[20]

As for proper payment of premiums by insureds, in April 2020, DFS issued an emergency regulation directing health insurers to defer payments due under individual and small group commercial health plans upon a showing of financial distress caused by the pandemic.[21] Insurers also were required to waive fees associated with late payment and to abstain from reporting insured individuals' late payments to credit reporting agencies because of the effects of the crisis.

Looking forward, DFS additionally exercised its prior approval authority over health insurance rates in 2021 by drastically reducing health insurers' requested increases for this year. According to DFS, rates in the individual market will increase by only 1.8% (the lowest increase since DFS regained prior approval authority a decade ago), and rates for small group plans will increase by only 4.2% (the second lowest ever approved during that period). "Our number one job is consumer protection and ensuring that quality, affordable health care is available to everyone in the state," Superintendent Lacewell explained.[22]

More broadly, DFS has sought to protect consumers by easing the burdens of insurance on the health care system. As the first wave of the pandemic struck New York, DFS directed insurers to pay hospital claims immediately and to temporarily suspend preauthorization requirements for hospital services. These measures were intended to "provide much-needed cash flow to hospitals at a critical time" and to "help hospitals to meet increased demand for inpatient care."[23] When faced with a winter surge in December, DFS provided similar relief a second time, directing insurers to suspend preauthorization requirements for urgent or non-elective inpatient surgeries, hospital admissions, hospital transfers, and other related inpatient services, to provide flexibility to hospitals in meeting the current, heightened demands of the crisis. During the current period, insurers are prohibited from denying as medically unnecessary any emergency department or inpatient hospital service certified as provided to treat COVID-19.[24]

b. COVID-19 and Other Insurance

DFS's efforts were not limited to health insurance. In March 2020, the agency responded to complaints by clarifying that travel insurers and property/casualty insurers may offer "cancel for any reason" travel policies in addition to standard policies that allow for cancellation based on fortuitous events but typically exclude epidemics or pandemics. These benefits must be necessarily or properly incidental to the kinds of business the insurer is authorized to write in New York, and when sold alongside a standard travel insurance policy, they must be reflected in a standalone contract. Six global and national insurance companies agreed to offer such policies.[25]

DFS also adopted an emergency regulation mandating that insurers defer premium payments for life and property and casualty insurance for 90 and 60 days, respectively. The mandate provided for, among other things, a grace period for payments and fees, waiver of late fees, and payment in installments of amounts due during that period. The grace periods received significant industry support from the Life Insurance Council of New York ("LICONY").[26]

c. COVID-19 and Financial Institutions

Outside of insurance, DFS provided relief to financial institutions and affected individuals. Soon after the pandemic took hold in March, DFS provided prompt relief to "regulated institutions so they can continue their operations with minimal disruption."[27] DFS, for example, directed that during the state-declared emergency and for 60 days thereafter, financial institutions may conduct virtual meetings. DFS also waived various reporting requirements for 45 days[28] and extended the deadline for certain annual stockholder meetings.[29]

DFS also took action to protect consumers. In March 2020, DFS adopted emergency regulations requiring mortgage providers to provide 90-day mortgage relief, including waiver of payments due to financial hardship, abstaining from late payment fees and negative reporting to credit bureaus, and postponing foreclosures. DFS also required banks to eliminate ATM, overdraft, and credit card late fees for those who could demonstrate financial hardship.[30]

The New York Law Journal named Gibson Dunn as the **General Litigation Winner in its 2020 Litigation Department of the Year** contest.

U.S. News – Best Lawyers® awarded Gibson Dunn **2020 Law Firm of the Year for Appellate Practice**.

The Legislature subsequently enacted Banking Law § 9-x, which requires mortgage lenders to provide similar relief, *i.e.*, a forbearance of payments for up to 180 days with an option to extend, for mortgagors who "demonstrate financial hardship as a result of COVID-19," subject to safety and soundness of the institution until there are no restrictions applicable to businesses, public places, or non-essential gatherings in the mortgagor's county of residence.[31]

In September 2020, DFS also issued guidance instructing mortgage lenders and servicers not to collect fees collected by municipalities for registering mortgages in default. DFS explained that applicable regulations permit mortgagees to collect only certain specified types of fees, but that the list does not include registration fees.[32] In issuing this guidance, DFS noted that such fees are not only impermissible by law, but also "particularly troubling for consumers who are already grappling with the financial hardship arising from the pandemic."[33]

DFS's reach extended beyond mortgages as well. In June 2020, for example, DFS reached an agreement with credit reporting agencies to provide relief to consumers, including by providing them with at least one free credit report per month through November 2020. The agency provided additional guidance urging financial institutions to take measures such as using reporting that minimizes impact on credit histories and scores, promptly investigating disputes, and ensuring compliance with federal reporting obligations.[34]

Finally, DFS reached agreement in April 2020 with the bulk of the private student loan industry to permit borrowers facing hardship due to COVID-19 to obtain temporary relief such as a forbearance on payments, late fees, negative credit reporting, and debt collection.[35] DFS additionally urged regulated lenders to assist borrowers in numerous ways such as providing information and alerting them to potential options to weather the crisis.[36] DFS has continued to take an active role in the area, recently leading a multi-state effort to lobby the federal government to extend certain relief afforded to federal student loan borrowers under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.[37]

III. Insurance

There also were significant developments in insurance-related matters outside of immediate responses to the pandemic, including mental health coverage, the agency's "best interest" rule, unauthorized insurance activity, and other enforcement matters.

a. New Regulations Regarding Mental Health Coverage

In October 2020, DFS adopted final regulations pertaining to coverage of mental health and substance use disorders.[38] The regulations contemplate "disorder parity compliance programs" through which insurers will seek to treat mental health and substance use disorders comparably to how they treat medical or surgical care.[39]

Under the new regulations, insurers must designate an appropriately experienced individual to manage compliance; adopt written policies to implement and monitor the program; educate and train employees; and implement procedures for identifying and reporting improper practices. The regulations prohibit a number

of practices that insurers must remedy within 60 days of discovery, including differential treatment in areas relating to utilization review standards, reimbursement rates, and approvals through auto-adjudication. Insurers must also submit an annual electronic certification of compliance.[40]

b. Enforcing DFS's Best-Interest Rule

DFS also continued to take steps to enforce its new "best-interest" rule, which as we have previously explained, went into effect in August 2019. Insurance Regulation 187 requires insurers to establish procedures to supervise recommendations with respect to life insurance policies and annuity contracts so that any transaction will be in the "best interest" of the consumer and appropriately address the consumer's insurance needs and financial objectives.[41]

Moreover, DFS has continued to be engaged in an industrywide investigation regarding disclosure and suitability failures in the context of "deferred" to "immediate" annuity replacements.[42] In April 2020, Lincoln Life & Annuity Company of New York, MassMutual Life Insurance Company, and Pacific Life & Annuity Company agreed to pay more than $2 million in restitution and penalties for violations of Insurance Regulation 187 by allegedly persuading consumers to switch from deferred to immediate annuities without properly disclosing suitability information and income comparisons.[43]

Similarly, in October 2020, DFS entered into a consent order with Principal Life Insurance Company, which agreed to pay $6 million in penalties and restitution for failure to properly disclose income comparisons and suitability information in the context of such transactions. In each of these cases, the insurers agreed to take corrective actions, including revising disclosure statements and suitability procedures, in order to comply with the new best interest rules.[44]

c. Unauthorized Activity

Unauthorized insurance activity has additionally continued to draw DFS's attention, resulting in several enforcement actions and settlements.

In November 2020, for example, DFS entered into a consent order with the National Rifle Association ("NRA"), with the NRA agreeing to pay a $2.5 million penalty and accept a five-year ban from marketing insurance in New York. DFS found that the NRA, among other things, had acted as an unauthorized insurance producer by accepting royalties in exchange for helping offer and market certain insurance products.[45] Such products included a "Carry Guard" insurance program that violated the Insurance Law by offering coverage for losses that were associated with the intentional use of a firearm, such as defense costs in a criminal prosecution and liability for expected bodily injury or property damage.[46]

In April 2020, DFS also announced that Athene Holding Ltd. and Athene Annuity & Life Company will pay a $45 million penalty for alleged unauthorized pension risk transfer business conducted in New York. According to DFS, Athene entered into fourteen large-scale pension risk transfer transactions involving thousands of New York policyholders while engaging in thousands of unauthorized

communications with New York-based plan sponsors.[47] The settlement followed DFS's new guidance, discussed in last year's DFS Round-Up, regarding life insurers and producers in New York's pension risk transfer market.[48]

Finally, DFS brought charges in October 2020 against Aliera Companies and Trinity Healthcare for conducting an illegal health insurance business and operating as "sham insurers."[49] DFS alleges that the companies sold the equivalent of traditional health insurance products in insurance marketplaces but overstated coverage that consumers would receive or fraudulently diverted consumer premiums rather than providing reimbursement for legitimate medical expenses.[50]

d. Other Enforcement Actions

Aside from unauthorized insurance activity, DFS deployed its significant enforcement resources to address numerous other insurance-related violations.

In February 2020, DFS entered into a consent order with Asurion Insurance Services, Inc. and Asurion Protection Services LLC, pursuant to which the companies agreed to pay $4 million for failure to provide adequate consumer disclosures in insurance offerings for wireless equipment and improper bundling practices relating to the wireless communications industry.[51]

Five months later, in July 2020, two student health insurers, CDPHP Universal Benefits Inc. and MVP Health Services Corp., agreed to pay $1.6 million for charging premium rates pursuant to an unapproved methodology to college students who were covered by blanket health insurance contracts.[52] As part of the settlement, they agreed to pay more than $480,000 to aggrieved students.[53]

In November 2020, DFS also announced that it fined four property and casualty insurers a $2.1 million and secured $10.6 million in restitution for violations pertaining to auto claims practices.[54] According to DFS, the insurers committed numerous statutory violations, including failing to pay no-fault claims in a timely manner, failing to pay statutory interest on overdue no-fault payments, and failing to correctly calculate no-fault payments for loss of earnings.[55]

Finally, in September 2020, DFS brought charges against Johnson & Johnson and certain subsidiaries for allegedly contributing to the growing opioid crisis.[56] DFS claims that the companies fraudulently mischaracterized the safety and efficacy of opioids, causing materially false information to be submitted to insurers or in connection with commercial health insurance plans. DFS is seeking civil monetary penalties of up to $5,000 for each fraudulent prescription.[57]

IV. Data Privacy

Cybersecurity issues have drawn increasing attention at the state and federal level in the last few years.[58] Indeed, DFS recently noted that the COVID-19 pandemic has heightened already severe risks for data privacy,[59] and the agency continued its efforts to increase protections of regulated entities throughout last year.

a. Cybersecurity Regulations

As we explained last year, DFS's groundbreaking cybersecurity regulations went into full effect in March 2019 and require covered entities to fortify their protections by establishing a detailed data security plan, increasing monitoring of third-party vendors, appointing chief information security officers, and promptly reporting breaches to DFS. Covered entities also must monitor vulnerability and implement control measures such as multi-factor authentication and encryption of nonpublic information.[60] And the regulations require them to conduct reviews and certify compliance on an annual basis.[61]

In 2020, DFS brought its first enforcement action under the new cybersecurity regime against First American Title Insurance Company, the second largest title insurance provider in the U.S. DFS alleges that a website vulnerability exposed millions of documents containing consumer information, including bank account numbers, Social Security Numbers, and financial records. DFS has alleged that First American failed to adhere to internal policies, conduct a reasonable investigation, and follow recommendations of its own internal cybersecurity team, leading to six regulatory violations.[62] The enforcement action is ongoing.

Small businesses may be exempt from the cybersecurity regulations,[63] but DFS recently partnered with the Global Cyber Alliance to develop a free cybersecurity toolkit for such businesses that is intended to cover areas like identifying hardware and software, updating defenses, strengthening passwords and authentication, backing up and recovering data, and protecting email systems.[64] As DFS has explained, while small businesses are the "backbone of the economy," more than 40% of cyberattacks are targeted at such businesses.[65]

b. Twitter Hack

DFS also devoted significant resources in 2020 to investigating a large-scale Twitter hack and its implications for future data security, despite the lack of clear legal authority or jurisdiction.[66] As DFS has explained, perpetrators gained access to Twitter's internal tools and user accounts by contacting employees and impersonating members of Twitter's IT Department, duping them into revealing their log-in credentials. The perpetrators then took control of high-profile accounts, including those of cryptocurrency companies regulated by DFS. After gaining access, hackers tricked other users into sending cryptocurrency and proceeded to steal more than $118,000 worth of Bitcoin, among other scams. DFS quickly informed regulated companies to block the hackers' addresses, thereby preventing thousands of attempted transfers.[67]

In a final report, DFS concluded that, unlike DFS-compliant cryptocurrency companies, Twitter lacked sufficient protections and discussed best practices for cryptocurrency companies to prevent fraud, including blocking scammers, restricting transfers to pre-approved addresses, improving legitimate marketing, educating consumers, monitoring scams, and sharing information. DFS also concluded that social media companies warrant additional oversight, likely at the federal level, by a "regulator for systemically important social media" that has "deep expertise in areas such as technology, cybersecurity, and disinformation."

Moreover, DFS concluded, such companies should be governed by even more stringent rules than DFS's "effective" but flexible approach for financial institutions.[68] The message was clear: according to DFS, federal and state regulators should take on more aggressive oversight of data privacy, and companies should take steps to live up to DFS's data protection standards.[69]

V. Fintech and Cryptocurrency

Over the past year, DFS also made significant efforts to encourage "fintech" innovation in New York and development of virtual currencies.

a. New Initiatives

As explained in last year's Round-Up, DFS has been actively exercising its authority over the years with respect to contemporary trends in financial services. This year was no different, as the agency continued to implement new initiatives designed to foster innovation in financial services and products.

In June 2020, DFS launched a new program, DFS FastForward, to support innovators "in the COVID-19 era."[70] The program seeks to attract companies with innovative ideas for financial products—especially those focused on economic and health recovery—by offering communications with DFS to explore how agency regulations may impact their businesses, reducing administrative barriers and speeding up the regulatory process. The program follows an InsurTech pilot, "Project Whitehall," which launched last February.[71]

In addition, DFS signed a memorandum of understanding ("MOU") with France's Autorité de Contrôle Prudentiel et de Résolution ("ACPR"), which supervises France's banking and insurance sectors, to facilitate the entry of fintech innovators into the New York and French markets. DFS is the first U.S. financial services regulator to reach an agreement like this with the ACPR. The two agencies will, among other things, mutually refer fintech innovators, provide equivalent levels of support, and engage in sharing of information, expertise, and best practices.[72]

More recently, in October 2020, DFS announced that it will collaborate with the Conference of State Bank Supervisors and the Alliance for Innovative Regulation to sponsor a "Techsprint," an initiative to convene regulators and industry members to work toward increased digital regulatory reporting. The Techsprint's first area of focus will be virtual currency companies due to their advanced digital capabilities, but the agency has indicated that it will develop additional techsprints in the future for "other types of nonbank entities subject to financial regulation."[73] The Techsprint will occur in March 2021.[74]

b. New Approvals

DFS has continued to approve virtual currencies under its BitLicense regime. In May 2020, DFS announced that it had approved Eris Clearing, LLC, for virtual currency and money transmitter licenses. These licenses will permit New York consumers to transact in virtual currency on the ErisX platform.[75]

Last month, DFS also announced that it had granted a trust charter to GMO-Z.com Trust Company Inc., which will issue, administer, and redeem novel Yen- and Dollar-pegged stablecoins. GMO received the agency's 27th charter or license to engage in virtual currency activity in New York.[76]

c. Self-Certification

DFS also has promulgated important new procedures with respect to virtual currencies. Through new guidance, DFS accounted for comments by experts and the industry in order to "provide regulatory clarity and efficiency" and to "make it easier for virtual currency companies to successfully operate in New York."[77]

In June 2020, DFS issued final guidance on the ability of virtual currency licensees to use currencies without DFS's prior approval.[78] BitLicensees and virtual currency trust companies ("VC entities") can seek approval of policies for listing new coins, provided that their policies meet certain governance, risk assessment, and monitoring requirements. If DFS approves such policies, licensees can then self-certify the use of new coins provided they comply with the approved policies and they provide advance written notice to DFS.[79]

The new guidance further provides for a list of commonly approved virtual currencies in order to facilitate broad use on a streamlined basis. Under the guidance, a public "Greenlist" reflects currencies that have been approved for use by three VC entities either by approval or self-certification. Once listed, currencies may be used by others without prior approval by the agency.[80]

d. Conditional BitLicense

Finally, in June 2020, DFS proposed a new conditional licensing framework in order to expand the range of businesses that can engage in virtual currency activity in New York.[81] As DFS explained, "some firms may face actual or perceived hurdles in obtaining a BitLicense," including a "rigorous application process" and various regulatory requirements. Under the proposed framework, however, entities may apply for a conditional license if they partner with an entity already authorized to engage in virtual currency business activity.[82] The licensed partner of the conditional licensee would provide operational, staffing, and other support until the licensee could obtain full DFS approval.[83]

In October 2020, DFS announced that PayPal would be the first company to receive an official, conditional BitLicense. DFS will allow PayPal customers to buy, sell, and hold four virtual currencies in partnership with Paxos, a chartered trust company, that will provide trading and custodial services.[84]

In June 2020, DFS also signed a memorandum of understanding with the State University of New York ("SUNY") to create a virtual currency program known as "SUNY BLOCK." Under that program, SUNY will create a new entity authorized to conduct virtual currency business activity in the state. SUNY campuses will then partner with other entities from local communities—including businesses started or run by SUNY students or alumni—so they can apply for and receive

conditional BitLicenses in collaboration with SUNY, which in turn will provide capital, structure, systems, personnel, and other support.[85]

VI. Climate Change

As discussed above, this year DFS hired Nina Chen as its first Director of Sustainability and Climate Initiatives, signaling "the importance" of climate issues to the agency.[86] DFS then announced a number of new actions taken to "bolster DFS's commitment to addressing financial risks from climate change" in the future.[87] The coming year is likely to indicate an increased focus by the agency in this emerging area.

a. Industry Guidance and Recommendations

In September 2020, DFS issued a circular outlining the increasing cost of climate change and its impact on insurers and the financial system.[88] DFS advised insurers to begin integrating consideration of such risks into governance frameworks, risk management processes, and business strategies, and to start developing an approach to climate-related financial disclosure. Toward that end, DFS recommended a "proportionate approach" that reflects not only their exposure to risks but also the "nature, scale, and complexity of their businesses."[89]

The next month, in October, DFS issued similar guidance to New York-regulated financial institutions, advising regulated organizations among other things to conduct an "enterprise-wide assessment" to evaluate the impact of climate change on "risk factors, such as credit risk, market risk, liquidity risk, operational risk, reputational risk, and strategy risk"; and advising non-depositories to conduct a comprehensive assessment of a variety of risks and to develop a mitigation plan. DFS again recommended a "proportionate approach" that accounts not only for these risks but also for the nature of each entity's business.[90]

b. Other Agency Action

In addition to such guidance, DFS announced that it has become a supporting institution of the United Nations Environment Programme Finance Initiative ("UNEP FI") Principles for Sustainable Insurance ("PSI") to demonstrate its support for "sustainable insurance aims." The agency also entered into an MOU with the New York State Energy Research and Development Authority to "accelerate the creation of innovative insurance and financial products to speed up the development and development of key low-carbon technologies by providing technical support, regulatory guidance, and facilitating market access."[91] These initiatives follow the agency's previous decisions to join other networks, including the Network of Central Banks and Supervisors for Greening the Financial System ("NGFS") and the Sustainable Insurance Forum ("SIF").[92]

VII. Other Enforcement News

Finally, we highlight a number of other significant enforcement developments relating to legal compliance and monitoring efforts by regulated entities.

As discussed last year, DFS launched an investigation into the student "debt relief" industry in 2019. Consistent with the agency's focus on that industry, the Financial Services Law has since been amended to empower DFS to regulate and sanction student loan consultants in the industry.[93] The new statutory provisions require student loan consultants to enter into formal contracts (with certain disclosures), permit cancellations, and refrain from an array of abusive practices.[94] Violations can result in rescission of agreements, imposition of civil penalties, and awards of damages.[95] We will continue to report on further enforcement efforts in this area.

This Fall, Superintendent Lacewell also expressed a desire for increased accountability by financial institutions with respect to serious crimes, as she emphasized that regulators and banks share a goal of "protect[ing] society from the devastating impact of money laundering, drug trafficking, terrorist financing, human trafficking and other serious crimes.[96] DFS's enforcement efforts have been consistent with those goals.

In April 2020, for example, DFS entered into a consent order in which Industrial Branch of Korea and its New York branch agreed to pay $35 million for violating Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") laws by failing to maintain an effective transaction monitoring system and failing to capture large fraudulent and money-laundering schemes.[97] Bank Hapoalim B.M. and its New York branches similarly agreed to pay a $220 million penalty for knowingly facilitating domestic clients' tax evasion by conducting an illegal cross-border banking business that concealed customers' off-shore assets and income from state and federal authorities.[98] And in July 2020, DFS reached a settlement with Deutsche Bank for $150 million because of alleged compliance and monitoring failures.[99]

VIII. Conclusion

In the past year, DFS took active measures in responding to the pandemic and continued to expand its regulatory footprint in areas of principal concern, including data privacy, financial technology, and consumer protection. Heading into 2021, the agency is poised to take expansive efforts in new areas such as climate change as it adapts to a change in administration and other new developments around the world.

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