

## Healthy Competition

New York's superintendent of financial services, Benjamin Lawskey, spoke recently about healthy competition. Before you get too excited about a new direction for the DFS, I should point out that he was talking about competition among financial regulators, not among insurance companies or

they're getting a fair deal. They'll do more business here." While hard to argue with the concept, to date the "fair deal" for insurers remains difficult to find. In fact, superintendent Lawskey's outlook is a scary one, not just for insurers doing business or seeking to do business in New York, but also for the "consumers, entrepreneurs, and

interesting condition in the settlement with Assurant is that it agrees to file new rates). If forced placed insurance is a failure to properly protect consumers, isn't it as much a regulatory failure as a company failure? And if the business was so lucrative, why is it that only two companies wrote 90% of the business? How is this over-the-top negative branding of the industry in any way helpful to the development and growth of the insurance business in NY?

(The irony is not lost that the superintendent's zealotry to hold insurance companies accountable for their misdeeds -- as perceived by him -- does not apply to entities under his direct supervision, e.g. Executive Life, whose failed rehabilitation under the management of the NY Liquidation Bureau has cost policyholders close to \$2 billion to date.)

The second example used by Superintendent Lawskey (its actually the third example, but I am saving the best for last) is the transfer of books of business to special vehicles -- usually offshore captives -- where reserve and oversight requirements are "looser." Again, this is a meaningful regulatory inquiry, and is one that is being considered nationally by the NAIC. If the rules need to be changed to address a legitimate issue not currently or adequately addressed, it is an appropriate regulatory topic. *The problem is when a regulator's legitimate inquiry is prefaced by punishing players who are following existing rules.*

Interestingly, at its most recent meeting, the NAIC adopted a recommended course of action to investigate and pursue the issue, but NY abstained in the vote. One would hope that this failure to support the NAIC initiative was not for fear that the NAIC's action on the topic would take away from NY's "leadership" on the issue.

The third example used by Superintendent Lawskey is the most fascinating, not so much for what he is trying to say, but for his apparent lack of understanding of the business and history of the insurance industry. Superintendent Lawskey is concerned about "private equity firms . . . becoming active in the acquisi-



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other industry participants (*see related article this issue*).

Speaking at a highly-regarded conference on the state of the US and world economies held in NYC in April, Superintendent Lawskey stated, "[a] dose of healthy competition among regulators is helpful and necessary to safeguarding the stability of our nation's financial system. Not just today -- but for the long term."

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Oh sure, there were the perfunctory statements that one of the purposes of the merger of the banking and insurance departments into the department of financial services was to help those industries thrive and "to keep New York the financial capital of the world." He also justified the DFS enforcement approach by stating: "When consumers, entrepreneurs, and investors have confidence in the integrity -- the safety and the soundness -- of their banks and insurers. When they know

investors" he purportedly seeks to entice through his words and DFS's actions.

Superintendent Lawskey used three insurance related examples in his talk: forced-placed insurance, captives as a vehicle to move reserves off-shore, and the acquisition of insurance books of business -- particularly annuity books -- by private equity firms.

We have all read about the forced-placed insurance issue -- the DFS has made sure of that! *Insurance Advocate* itself ran a feature on the \$14 million settlement with Assurant, the largest writer of the product in NY, in the April 8, 2013 issue. Without minimizing the consequences to certain borrowers -- the issue is certainly a legitimate one for regulatory consideration -- the zealotry and anti-industry vitriol with which the DFS has pursued the topic seems out of proportion. In his speech, for instance, Superintendent Lawskey refers to the problem as "a dirty little secret in the insurance industry," and urged other states to follow NY's lead to "help end the kickback culture that has pervaded this industry . . ." These are amazing statements coming from our chief regulator, particularly when there was no allegation of an actual violation of existing laws or regulations. This product, at least when written in New York, must be on forms and at rates approved by the New York regulators (an

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[INSIGHT]

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tion of insurance companies.” Why? Because “these private equity firms are more short-term focused – when [insurance] is a business that’s all about the long haul.” The incredible thing about this view is that he sees it as an emerging trend! There is not enough room in this short column to present Superintendent Lawsky and his colleagues with a history of the insurance business, but to think that this tension between short term gains v. long term commitments is something new to the industry is beyond amazing!

I apologize in advance for any condescending tone, but really! Perhaps someone from Lloyd’s could explain to him how for over 300 years it has managed capital coming into and leaving the market in a controlled, financially sound manner. Perhaps his own staff could explain to him the insurance laws providing for regulatory control over investments, reserves, dividends and transfers of interest. And perhaps some major company leaders, particularly those with offshore operations, could explain the explosion of alternative markets and products designed to draw the very type of investment he is con-

cerned about, and that have resulted in the flight of capital from the New York and US insurance markets for decades.

(This position also gave me my one Aha! moment from the speech. It has long been a mystery to me why, with all the momentum created by his two predecessors -- Messrs. Dinallo and Wrynn -- for a new, modern, financially sound but flexible insurance risk exchange, the new administration has remained totally silent about the topic. Mystery solved!)

In his conclusion, Lawsky returned to his theme of healthy competition among regulators, using a range of terms from “collaborative or cooperative federalism”, to “persuasive federalism” to “coercive federalism.” These are fascinating terms, but I will leave parsing them to others or until another day. *For the moment, my main concern with Superintendent Lawsky’s speech and the actions of the DFS reflected in it, is the chilling effect they will have on the very entrepreneurs and investors he states are so important to “keep New York the financial capital of the world.”* [IA]

(A copy of Superintendent Lawsky’s speech is accessible from the DFS website at [http://www.dfs.ny.gov/about/speeches\\_testimony/sp130418.htm](http://www.dfs.ny.gov/about/speeches_testimony/sp130418.htm))

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