

## Show Us the Numbers!

Ah, Spring! The long, torturous winter with its seemingly endless cold and snow is behind us and we can look forward to warmer days, greening trees, blooming flowers and the beginning of Derek Jeter's retirement tour. Spring is also reporting season for the insurance industry. Just about everyone

Until a new class was added in 2011, there were two classes of risks that could be written in the Free Trade Zone: risks with an annual premium in excess of \$100,000, and those "special" or hard-to-place risks listed by regulation. According to the 2010 Annual Report of the Insurance Department – the last time such

was amended last year to eliminate the most onerous one: the requirement for filing a certificate within 24-hours of binding. The legislation and the regulation implementing this change were not accompanied by any press releases or fanfare. In fact, the amended regulation was considered by the DFS to be "a consensus rule-making" exempt from filing a Regulatory Impact Statement and other normally required studies, and became effective upon publication in the State Register in December 2013.

We do not know why the DFS pursued eliminating the onerous certificate condition, or why it did not go further in improving the utility of the law and regulation. We do know, however, that the DFS routinely collects data that would show the volume and scope of writings in the Free Trade Zone including the new class.

Every year the DFS (and the Insurance Department before it) requires all licensed insurers to complete an insurance availability survey, a detailed Excel-based form designed specifically to collect data "to determine the state of markets for difficult-to-place or complex insurance coverages." As stated in the December 2013 cover letter to licensees for the 2013 survey: "We rely on insurers' responses to the annual survey to obtain meaningful and timely information on insurance market conditions and trends." The survey includes specific schedules on each class of Free Trade Zone business and the lines of business within each class.

Because the survey is in electronic format, the DFS clearly has the ability to determine from the survey results whether or not the new class is expanding availability for New York insureds. Confirming that the DFS actually does so, however, is a different matter! For some inexplicable reason — the DFS's "observations of an ever changing marketplace" based on the data collected from these annual surveys are not publicly available.

The logical place to make such information available would be through a special Free Trade Zone report or through the DFS annual report. Over the past two years, however, the annual report has been

***We do not know why the DFS pursued eliminating the onerous certificate condition, or why it did not go further in improving the utility of the law and regulation. We do know, however, that the DFS routinely collects data that would show the volume and scope of writings in the Free Trade Zone including the new class.***



Peter H. Bickford

in the industry is engaged in preparing and issuing their annual reports and other regulatory filings: everyone, that is, except for our overseers at the NY Department of Financial Services. The DFS reporting season does not occur until the "dog days" of summer when, of course, the information is mostly stale and — because of the DFS's incredible shrinking reports — of limited value. To appreciate the significance of the DFS's failure to provide complete and timely information as a matter of course, let's take a look at one small part of our business: special risk insurance.

Since 1978 New York insurance consumers and domestic companies have benefited from a great little article of the insurance law, Article 63, with the sterile moniker "Special Risks; Filing Exemption" but more commonly referred to as the "Free Trade Zone." Under Article 63, domestic NY insurers that purchase an annual special risk license for a nominal fee can insure certain hard to place or other risks that would normally be written by non-admitted insurers in the surplus lines markets. The key is the exemption from prior rate and form filing requirements that would otherwise prevent a domestic insurer from responding to these "special" risks in a timely and meaningful manner.

information was publicly available — the premiums written in the Free Trade Zone for the year 2009 was about \$1.8 billion, roughly the same as the premiums on New York risks written in the surplus lines market. In response to the passage in 2010 of the Non Admitted and Reinsurance Reform Act (part of the Federal Dodd-Frank legislation), a third class of risks was added to the Free Trade Zone: "large commercial insureds" employing or retaining a professional risk manager and with a modest \$25,000 premium threshold.

The legislation and the subsequent regulations, however, included some conditions that seemed counter-intuitive to the flexibility intended by the law. For instance, the law required an insurer of a risk under the new class to file a certificate of insurance "evidencing the existence and terms of the policy within one business day of binding the insurance coverage," and to file any policy form "for informational purposes" within three business days of first use, or not later than 60 days after inception. Conditions like these raised the concern of whether the new class would actually be a beneficial addition for insurance buyers and writers.

Possibly in recognition of the stifling effect of these conditions, the legislation

**What is the purpose of collecting – in electronic format – the detailed information on the writings by class and by line of business if it is not going to be consolidated into a summary schedule? How else is the DFS to achieve the stated purpose of the annual surveys to “obtain meaningful and timely information on insurance market conditions and trends”?**

so diminished and its due date pushed back to the point of becoming largely irrelevant as a meaningful resource. In these last two DFS annual reports (for the years 2011 and 2012) there is no mention of the Free Trade Zone at all. Likewise, based on unsuccessful Freedom of Information Law (FOIL) requests, it does not appear that a summary report has even been prepared from the annual insurance availability surveys. In response to my latest attempt at obtaining a summary of special risk placements by class and by line of business, while not denied, I was advised that: “The information that you request is contained in many different - and a voluminous number of - electronic records. It will take several weeks, if not months, to pull the information you seek into a usable record.”

But why is such a summary not being prepared as a matter of course? What is the purpose of collecting – in electronic format – the detailed information on the writings by class and by line of business if it is not going to be consolidated into a summary schedule? How else is the DFS to achieve the stated purpose of the annual surveys to “obtain meaningful and timely information on insurance market conditions and trends”? What was the basis for determining that the Free Trade Zone regulation needed amending? What kind of volume has been written in the new class? Will the change in the regulation be enough to make the new class a meaningful addition to the law? And if this information is already available to the DFS, why not share it with the industry? What is there to hide?

Why not show us the Numbers?

# INSURANCE ADVOCATE®

Serving New York,  
New Jersey, Pennsylvania  
and Connecticut  
Since 1889

[www.insurance-advocate.com](http://www.insurance-advocate.com)

## SIMPLIFYING IT

Our award-winning Aspire Information System is real-time... web-based... a complete end-to-end scalable solution custom configured to address all of your business requirements for policy, claims and reinsurance transactional administration.



CUSTOM CONFIGURED SOLUTIONS  
INFORMATION TECHNOLOGY SOLUTIONS  
THAT WORK FOR YOUR BUSINESS

ASPIRE®  
Information Systems

### SYSTEM FEATURES

Software as a Service  
Rating Engine  
Forms Generation Engine  
Automated Batch Processing  
Bulk Payment Processing  
Accounting (premium and loss)  
Financial Analytics  
Data Migration Services  
3rd Party Service Integrations  
Portable Data Analytics  
Agent/Broker Profiles

### TRADING PORTALS

Company  
Producer  
Consumer

### SUPPORTED

P&C - All  
A&H  
AD&D

### BUREAUS

ISO  
AAIS  
& all other  
Stat Plans

### CORE MODULES

Policy  
Claims  
Reinsurance

### SUPPORTED

Admitted  
Surplus Lines  
Risk Retention Groups  
Captives  
Self Insureds

**Maple  
Technologies**  
A Limited Liability Company  
*...building technology solutions to grow your business...*

500 Craig Road  
Second Floor  
Manalapan, NJ 07726

Tel: (732) 863-5523  
Web: [www.maple-tech.com](http://www.maple-tech.com)