[INSIGHT] By Peter H. Bickford

Tea Leaves and Press Releases

My very first Insight column (IA, May 21, 2012) took a look at the press releases issued by the new Department of Financial Services for the first four months of 2012. I pointed out that not one of the 27 DFS press releases issued in that period related to support for or growth of the insurance industry in the State, although I acknowledged that four months may be too short a time frame to be significant, and recognized it might take some time for the new agency to get comfortable in its new clothes. Press releases, whether corporate, political or governmental, provide a window to what is important to the issuer, or how it wants to be seen by others. Equally important is the intended audience. While a statement about a particular event or happening may be considered important to one set of eyes, others may not be that interested or impressed with the released information, and the issuer may not care what certain readers may think or understand. But whether or not the issuer cares about how one audience reacts, press releases can provide significant insight into its intent and focus, and perhaps a precursor to future courses of action. Therefore, even if the intended audiences of DFS releases are other than the insurance industry, and even if they are not intended to satisfy or inform regulated entities, they can provide critical predictors – or tells - of current and future attitudes.

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What, then, do DFS press release tea leaves tell the industry about the DFS since that original 3-month period? For one thing, they tell us that the Governor believes it is important to be the face of the DFS! During the full calendar year 2013 the DFS issued 93 press releases. Of those 93, close to 60% were issued in the name of Governor Cuomo or his office rather than the DFS or Superintendent Lawsky. Take away the 37 releases announcing the deployment of the DFS mobile command center to various sites throughout the State in response to Sandy or other emergencies, only 15 of the remaining 56 releases were issued in the name of the DFS or Superintendent Lawsky, and of those 15, three were pure banking issues and three were regarding the recovery of lost art. There were a number of releases announcing investigations, fines, punitive actions or increased oversight of regulated entities, most issued in the Governor's name, but once again there was not a single release relating to support for or growth of the insurance industry in New York during the entire year 2013.

Providing support and comfort to the industry is obviously not an intended function of DFS press releases, and the industry should have no expectation for public expressions of such solace. However, the statutory charge to the DFS specifically includes supporting the growth and health of the insurance and banking industries and once in a while it would be hoped that the DFS would acknowledge and act upon that statutory function.

Judging from the subject matter and tenor of DFS releases, the main function of DFS public pronouncements may be perceived as showing the public that the Governor and the DFS are protecting them by diligently pursuing all avenues to ensure compliance with the law and regulations and punishing any miscreants. But is the protection of the public truly at the heart of DFS releases? Another sign – or tell – may also lead to the conclusion that a main purpose of many of these releases is to provide a pat-on-the-back to the administration and the DFS rather than in support of a meaningful regulatory effort. Before totally scoffing at such a suggestion - that the administration and the DFS are more interested in bolstering their own stature than the needs of the consumer they profess to protect - consider a recent release announcing a $20 million fine against giant insurer AXA.

A press release posted on the DFS web site in March 2014 trumpeted: "Cuomo Administration announces AXA to Pay DFS $20 Million Fine Over Insurance Violations for Retirement Product." According to the release, a DFS investigation "uncovered that AXA made changes to certain variable annuity products that limited the potential returns for existing customers without adequate notice to DFS." The release went on to explain that the failure of adequate notice "limited DFS' ability to put in place important consumer protections" such as an "opt in" provision for existing customers. It also scolded AXA and lectured the industry on the importance of "being clear and upfront" with the DFS regarding any changes in such filings that affect "the retirement savings of tens of thousands of New Yorkers."

OK. Sounds appropriate. However, other than a $20 million payment into the DFS coffers, the release mentioned no form of relief or options being enforced or imposed on AXA for the benefit of the affected annuitants. Perhaps this was skipped over in the release and that the actual consent order includes such options or protections. Not the case: the consent order is also devoid of any remedial action for the benefit of the "tens of thousands of New Yorkers" affected by AXA's actions.

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Nowhere in either the release or the consent order, for instance, is there any requirement that AXA retroactively provide affected annuitants with an "opt in" choice that seemed so relevant as a basis for the fine. In fact there are no required communications with "affected" annuitants at all. What then was the purpose of all the noise other than to impose a *de facto* tax on AXA.

Could it be that the displeasure of the DFS - or perhaps the Governor's office - was not that AXA somehow jeopardized the value of its customers' investments but that AXA failed to give full deference to their authority? Were the release and the consent order more about AXA ignoring the DFS' authority than about providing a remedy for affected annuitants?

We cling to a hope that this is not the case, but the tea leaves continue to point toward a growing disregard by the administration for the insurance industry. Add this to the growing list of tells that includes, among others, the incredible shrinking annual report, discontinuance of opinion letters, a disregard for timely and open reporting, attacks on equity capital, and an inordinate focus on punishment over support and leadership.

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It may not be necessary for the administration and the DFS to show love for the insurance industry, but at least show it some respect.[IA]

[FOREWORD]

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IIAB that came out 25 years ago. With some amendments and updating, it is still relevant to today's need for confidence in the property-casualty insurance business. It is worth a read. Interestingly, an individual who was among the architects of this document is **Mr. Jeff Yates**, former IIAA chief executive, who has just retired from service. Jeff, like so many of his peers in the IIAA and in other trade associations, has served the industry faithfully, well beyond the simple carrying out of their duties. The scope of the task is often as large as the scope of this policy statement may 25 years ago. Leaders of the independent insurance agents and professional insurance agents associations are left to deal, when the volunteers go back to work in their offices, with the broad issues of sustaining credibility for the system they represent. We admired them. Jeff Yates deserves our applause and thanks.[IA]