

Summer Refreshments

Every once in a while it seems like a good idea to take a refresher course on the wonderful world of insurance regulation from our state regulators, to our national overlords, to the international financial wannabe wizards: a little bit of summer school, if you will, to catch up on all the developments that we were too busy or too uninterested to keep track of during the rest of the year.



Peter H. Bickford

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It is always helpful for the upcoming fall cocktail circuit to sound like we know who or what **FSOC**, **IAIS**, **FSB**, **SIFI**, **IAIG**, or the innumerable other acronyms and initializations flooding the insurance regulatory lexicon, actually stand for or mean for our business - if anything. So here is my third annual update of the march of letters. As always, this summer lesson is best consumed while lounging next to the pool with a tall, cold concoction of one's liking, rimmed with a grain of salt.

At the bottom of the regulatory food chain is the little dog with the big bite: the NY Department of Financial Services (**DFS**). In four short years the **DFS** has successfully eviscerated the old insurance department, ridding it of almost every semblance of an insurance-oriented agency. Veteran insurance regulators with decades of experience have been replaced by a legion of prosecutors with no insurance business or regulatory experience. After four years and a string of financial coups for the state's budget, the superintendent of financial services leaves his post before the reality sinks in that continuing

to balance the budget through fines and penalties against banks and insurers is not a sustainable model.

Even before the superintendent's highly visible departure, however, the deputy in charge of insurance had already quietly left, and as of this writing no replacement for either post has been designated. But no worries: the state's insurance police are firmly ensconced with or without new

leadership.

Upstream from the local state regulator is the National Association of Insurance Commissioners (**NAIC**), which when we visited last August was plodding along with its promotion and development of its various ongoing initiatives including **ORSA** (Own Risk Solvency Assessment), and enhancements to group (i.e., holding company) reporting requirements, including **ERM** (Enterprise Risk Management). It still is.

In addition, since last summer the **NAIC**, among other things, thanked the Feds for clarifying the capital requirements for insurance companies subject to Federal Reserve oversight (i.e., **SIFIs** - Systematically Important Financial Institutions), praising the adoption of **NARAB II**, the federal legislation that would establish a national producer licensing system, railed at the **IAIS** (International Association of Insurance Supervisors) for its increasingly closed-door deliberations, and through testimony by its former president before Congress boldly declared "We will not implement any international standard that is inconsistent with our time-tested solvency regime that puts policyholders

first." Good luck with that!

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At the Federal level the **FIO** (Federal Insurance Office) keeps toying with state regulators. It certified that, for the year ended September 30, 2014, "FIO did not take any actions regarding the preemption of any State insurance measure." It then issued an academically titled report on "The Breadth and Scope of the Global Reinsurance Market and the Critical Role such Market Plays in Supporting Insurance in the United States" in which it teases the states about inconsistent credit for reinsurance requirements, hinting that "Treasury and the **USTR** [United States Trade Representative] are considering a covered agreement with respect to collateral requirements for reinsurers." **FIO's** chief, Michael McRaith, also publicly expressed dissatisfaction with states' progress in dealing with captives, citing disparity in treatment and concerns for solvency. He also failed to support the **NAIC's** criticism of the **IAIS** lack of openness. Stay on your toes, **NAIC!** Preemption can take so many shapes.

Meanwhile, Met Life sued to overturn its designation as a **SIFI** by the **FSOC** (Financial Stability Oversight Council) arguing, among other things, that the Fed has not yet written the rules that systemically important nonbank companies, like insurers, will ultimately have to follow - kind of like the Queen in Alice in Wonderland declaring "Sentence first - verdict afterwards!"

Internationally, as the 2016 implementation of the EU's new prudential regulatory regime, **Solvency II**, approaches, the European Commission determined that of all non-EU countries, only the Swiss insurance regulatory regime was fully equivalent to **Solvency II**. Not to worry, however. The EU also granted equivalency to six other countries - Australia, Bermuda, Brazil, Canada, Mexico and the US - but

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only for one of its three parts: solvency calculation, yet not for group supervision or reinsurance. So take heart, US regulators, you are right up there with Mexico and Brazil, but a little short of Switzerland.

Then there is the continuing work by the IAIS (International Association of Insurance Supervisors) to impose on the world its assessment methodology and policy measures for G-SIIs (global systemically important insurers – including Met

Life, AIG and Prudential Financial). Last year the IAIS developed – and the Financial Stability Board (FSB) and G20 endorsed – Basic Capital Requirements (BCR) for G-SIIs, the first stage of its planned three stages. This summer it has issued for public comment a draft of its next stage: requirements for Higher Loss Absorbency (HLA), which it expects to be approved by the G20 in November (another Lewis Carroll moment?). This is all a build up to a grandiose phase III by the end of 2016: a risk-based group-wide glob-

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al insurance capital standard (ICS) to be applied to internationally active insurance groups (IAIGs).

Finally, more bad news for supporters of state regulation of insurance. The protector of the world's economic health, the IMF (International Monetary Fund), released its Financial System Stability Assessment of the US in which it concluded: "An independent national regulator is an imperative for the insurance sector to address gaps with international standards (including weaknesses in valuation and solvency requirements) and to ensure consistency in regulation and supervision." So much for 150 years of state-based regulation of insurance, and so much for its successes during the Great Recession. The glorious omnipotent IMF has spoken!

It's OK if you want to tune out again. I'll fill you in again next summer, preferably over a nice, tall mojito! [A]

Peter Bickford has over four decades of experience in the insurance and reinsurance business, with particular focus on regulatory, solvency, agency, alternative market and dispute resolution issues. In addition to his experience as a practicing attorney, he has been an executive officer of both a life insurance company and of a property/casualty insurance and reinsurance facility. A complete biography for Mr. Bickford may be accessed at www.pbnylaw.com.

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