

April 1, 2021

New York Department of Financial Services Issues Insurance Circular Letter on Diversity and Corporate Governance

DFS Announces New Actions to Promote Diversity, Equity and Inclusion in the Insurance Industry

SUMMARY

On March 16, 2021, the New York State Department of Financial Services (the “DFS”) issued Insurance Circular Letter No. 5 (2021) (“Circular Letter”), which stresses the importance of diverse perspectives to the continued health and wellness of the insurance industry. In the Circular Letter, the DFS also announces its decision to collect and publish data from New York domestic and foreign insurers (i.e., New York-domiciled insurance companies as well as insurance companies domiciled in another U.S. state that are licensed in New York) with more than \$100 million in annual New York premiums relating to the diversity of their corporate boards and management.¹ The Circular Letter highlights a series of studies tending to show in the view of the DFS that Diversity, Equity and Inclusion (“DEI”) yields, among other business advantages, increased profitability, better risk management and lower employee turnover.

CIRCULAR LETTER

The DFS notes that many insurance companies and trade groups have already expressed a growing commitment to DEI initiatives in recent years, and that corporate governance has been a key and growing focus of insurance regulators. As an example, the DFS cites the adoption in 2014 by the National Association of Insurance Commissioners (“NAIC”) of the Corporate Governance Annual Disclosure Act and Regulation (“CGAD Model Act”), which is now an NAIC accreditation requirement. The CGAD Model Act was adopted with modifications by New York in July 2020, and requires insurers subject to it to disclose whether they have a diversity policy and how it functions.

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The Circular Letter comes during a time of heightened scrutiny in the area of DEI. Investors, financial groups and governmental authorities are beginning to put pressure on public companies to prioritize DEI initiatives. For example, in August 2020, the SEC adopted more expansive human capital management disclosure requirements. Among other related examples cited in the Circular Letter, California has passed laws establishing DEI quotas for the boards of publicly held corporations principally located in that state and Nasdaq filed a proposal aimed at requiring listed companies to increase the diversity of their boards. According to the DFS, the Circular Letter is intended, in line with these developments, “to support the industry’s existing DEI efforts and to outline DFS’s expectation that New York-regulated insurers make the diversity of their leadership a business priority and a key element of their corporate governance.”

In issuing its challenge to “move beyond words and good intentions,” the DFS asserts that information concerning the diversity of boards and management within the insurance industry is “extremely limited.” The relatively small amount of data that is available on this topic, however, tends to suggest that women and people of color are underrepresented in senior-level positions. For example, while women and people of color accounted for roughly 57% and 24% of the industry’s entry-level workforce in 2017, respectively, the same groups accounted for only 18% and 8% of the industry’s C-suite executives. According to the Circular Letter, these figures appear to be aligned with data reported across all industries, in which women and people of color are shown to account for 22% and 15% of all C-suite talent, respectively.

According to the Circular Letter, the DFS has evaluated several potential regulatory approaches aimed at the promotion of DEI in the insurance industry including, among other strategies, exploring the possibility of imposing industry-wide quotas to further the representation of women and people of color in senior-level positions.

Ultimately, in consultation with insurers, trade groups and DEI experts (including, in particular, New York State’s Committee for the Advancement of Women in Leadership in Financial Services) the DFS has determined that as a “first step” it will collect and publish data from New York domestic and foreign insurers with more than \$100 million in annual New York premiums relating to the gender, racial and ethnic composition of their boards and management as of year-end 2019 and 2020, including information about board tenure and key board and senior management roles. The DFS expects to collect the data over the summer of 2021 and publish the results in the fall of 2021 on an aggregate basis based on the type of insurer and “other relevant factors.” The DFS expects New York-regulated insurers to “make the diversity of their leadership a business priority and a key element of their corporate governance,” and “strongly encourage[s] companies to disclose publicly the diversity composition of their boards and management as part of their DEI commitment to their stakeholders.” In addition, the Circular Letter states that questions relating to an insurer’s diversity-related efforts will be integrated into the DFS’s examination process beginning in 2022. The foregoing data collection and corporate governance and disclosure expectations

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apply at the level of the New York-regulated insurance company and would not, based on the Circular Letter, apply more broadly at the holding company level.

According to the Circular Letter, the DFS will consider “collecting and disclosing similar information in the future, including on a more granular basis, taking into account any other data collection and disclosure requirements that may be imposed on the insurance industry.” The DFS plans to organize a webinar focused on DEI best practices and addressing specific issues that companies have encountered in their diversity efforts.

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ENDNOTES

- ¹ NYDFS, Insurance Circular Letter No. 5 (2021): Diversity and Corporate Governance (March 16, 2021), *available at* https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2021_05; see also NYDFS, Press Release (March 16, 2021), *available at* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202103161.

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