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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 21, 1999

Mr. Neil D. Levin
Superintendent
New York State Insurance Department
25 Beaver Street
New York, NY 10004

Re: Report 99-F-36

Dear Mr. Levin:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Insurance Department (Department), as of September 28, 1999, to implement the recommendations contained in our audit report, *Monitoring the Financial Solvency of Foreign, Alien and Health Insurers* (Report 97-S-23). Our report, which was issued on August 14, 1998, examined the procedures used by the Department to monitor the financial solvency of foreign insurers, alien insurers, excess line insurers, and health insurers doing business in the State.

Background

The New York State Insurance Department (Department) is responsible for licensing, monitoring, and regulating the activities of more than 800 property, casualty, and health insurance companies, which wrote a total of approximately \$68 billion of insurance premiums in New York State during calendar year 1997. The Department's principal goals and responsibilities are to monitor the financial solvency of insurers, to maintain a competitive marketplace, and to ensure that all legitimate policy holder claims are paid. Department examiners monitor insurer solvency by reviewing insurer financial statements, performing on-site examinations of insurer financial records, and reviewing actuarial opinions and memoranda. They also perform desk reviews of financial statements for all New York-licensed insurers. The Department's on-site examinations focus on domestic insurers (those domiciled in New York). Insurance companies domiciled in a state other than New York are classified as foreign insurers; while insurance companies domiciled outside the United States are classified as alien insurers. Insurance companies providing coverage to hard-to-place risks not covered by the standard market are called excess line insurers.

Summary Conclusion

In our prior audit, we found that foreign and alien insurers were subject to the same degree of Department supervision as insurers domiciled in New York State. However, excess line insurers were not subject to the same degree of supervision; as a result, if one of these insurers defaulted, its policyholders were subject to the additional risk that their valid claims would not be paid. We also found that the financial statements required by the Department were often submitted late by health insurers. In our follow-up review, we found that Department officials have taken steps to address most of these concerns.

Summary of Status of Prior Audit Recommendations

Of the seven prior audit recommendations, Department officials have implemented four recommendations, partially implemented two recommendations, and have not implemented one recommendation.

Follow-up Observations

Recommendation 1

Monitor the examination process to maintain similar overall supervision for all licensed insurers.

Status - Implemented

Agency Action - Department officials are monitoring the examination process for all licensed insurers in a similar manner. Our sample review of examiner files found that required regulatory documents, including desk reviews of quarterly and annual financial statements, certified financial reports, and home-state regulator examination reports, were on hand and evidenced as being reviewed.

Recommendation 2

Continue to enhance the Department's supervisory activities so that potential solvency problems can be identified promptly and corrected.

Status - Implemented

Agency Action - The Department is continuing to enhance its supervisory activities as evidenced by its recent reorganization, which combined all of the supervisory responsibilities for property casualty companies into one Bureau. In addition, Department officials have enhanced their examiner training curriculum and have employed new examiner tools, such as "risk-based capital requirements," to enhance their regulatory supervision.

Recommendation 3

Work with the Legislature to ensure passage of legislation to increase the excess line insurer trust fund.

Status - Implemented

Agency Action - Department officials have been able to increase the trust fund reserves significantly without legislative intervention. Pursuant to his authority under Department Regulation 41, the Superintendent now requires excess line carriers to deposit 30 percent of their gross liability - from a minimum of \$5.4 million to a maximum of \$60 million - into their respective trust funds.

Recommendation 4

Study our proposals to license excess line insurers and to establish an assigned risk pool for this unique insurance market. Document the results of the study.

Status - Not Implemented

Agency Action - Department officials have not performed a study. They indicate it would not be practical to license the excess line insurers because the excess line market, by definition, consists of unlicensed insurers who underwrite coverages that licensed insurers cannot or will not write. They believe that the primary reason excess line insurers choose not to be licensed is that they want to be able to write business that is generally free of policy adherence, rate compliance, and participation in security funds and residual markets.

Recommendation 5

Assess penalties on Article 42 and 43 companies that submit their annual statements late. Propose legislation that would allow the Department to penalize Article 44 insurers, as well.

Status - Partially Implemented

Agency Action - Beginning with the 1997 annual statement filing deadline, the Department has been assessing penalties on Article 42 and 43 insurers (Accident and Health Insurers and Not-for-Profit Medical/Dental Insurers, respectively), that submit their statements late. The Department has also prepared a proposal for subsequent submission to the legislature that would authorize the Superintendent to penalize Article 44 insurers (Health Maintenance Organizations). In the interim, Department officials have been assessing limited penalties on Article 44 companies pursuant to Department of Health authorization.

Recommendation 6

Require HCFU supervisors to review and sign off on desk audits performed by examiners.

Status - Implemented

Agency Action - The Department now requires Health Care Finance Unit (HCFU) supervisors to review and sign off on desk audits performed by examiners. We selected a judgmental sample of ten audits performed since our prior audit, and found that the respective supervisors had signed off on each of them.

Recommendation 7

Implement a system to track the efficiency of examiner-health insurer correspondence.

Status - Partially Implemented

Agency Action - Department officials are in the process of implementing a system to track the efficiency of the correspondence between examiners and health insurers. They have hired a consultant to review their operation and propose an effective system.

Major contributors to this report were Frank Patone, Myron Goldmeer, and Jennifer Murrell.

We would appreciate your written response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of the New York State Insurance Department for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

Frank J. Houston
Audit Director

cc: Charles Conaway
Phyllis Linker