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GIBSON DUNN

New York State Department of Financial Services Round-Up

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The New York State Department of Financial Services ("DFS") is the state's primary regulator of financial institutions and activity, with jurisdiction over approximately 1,500 financial institutions and 1,400 insurance companies. Moving into 2020, the agency appears poised to make a mark, with its new leadership focused heavily on consumer protection in the absence of federal regulation,[1] and asserting its authority over emerging areas of significance to New York's banking and insurance industries.

Last month, Governor Andrew Cuomo proposed "sweeping" consumer protection measures as part of his 2020 agenda,[2] including budget legislation that would significantly expand DFS's mandate.[3] The bill would authorize DFS to license consumer debt collection entities and empower DFS to examine and investigate abuses.[4] It would also authorize minimum standards for student debt consultants[5] and vest DFS with expanded enforcement authority, which could extend into consumer-protection areas that more traditionally fall within the mandate of the New York State Attorney General.[6] For example, the bill would expand the definition of "financial products or services" to include products or services offered or sold to small businesses, and also to include any "security, investment advice, or money management device" offered or sold to consumers or small businesses.[7] The bill in addition would expand DFS's enforcement authority generally, permitting the agency to award restitution, levy larger civil penalties, and impose fines for conduct that, although perhaps not intentional fraud, would constitute an "unfair, deceptive, or abusive act or practice."[8]

The agency has been actively focused on consumer protection and regulating cutting-edge technologies. The agency recently announced that it was creating a new Consumer Protection Task Force to help build support for and implement the Governor's proposals.[9] It also recently held consumer protection hearings to "hear directly from New York consumers about their experiences with financial products and services."[10] In April, it will host a "Symposium on Financial Innovation and Inclusion," with the aim of bringing together stakeholders to explore new developments and risks relating to emerging financial technology.[11]

This DFS Round-Up summarizes other recent key developments regarding the agency. Those developments are organized by subject.

I. New Leadership and Organizational Structure

In the past year, DFS has undergone significant structural changes, including the confirmation of Linda Lacewell as its third Superintendent and the creation of two new divisions, which will be focused on emerging trends in financial services, such as threats to cybersecurity and the development of virtual currencies.

a. New Superintendent – Linda Lacewell

Perhaps the most important development for the agency within the last year has been the appointment and confirmation of Linda Lacewell as its new superintendent.[12] Superintendent Lacewell became acting head of DFS in February 2019[13] and was confirmed in June 2019.[14] Prior to assuming that position, she was a longtime aid to Governor Andrew Cuomo, most recently serving as his chief of staff. She previously served as the State's first chief risk officer and spent nine years as an Assistant United States Attorney in the Eastern District of New York.[15]

As the agency's new head, Superintendent Lacewell has emphasized a number of initiatives and priorities. She has announced that DFS will bring its investigative and regulatory resources to bear on the financial technology industry, commonly known as "fintech." In New York State Senate testimony, she explained that DFS would "keep an eye out for emerging products like bitcoin, fintech and other areas" and would regulate these emerging products "in a careful manner."[16] She has also signaled an emphasis on curbing new threats to data privacy and technological infrastructure. For example, she has stated that cybersecurity is "the number one threat facing all industries and governments globally,"[17] and that "DFS is evolving to meet the challenges and opportunities of the new landscape."[18]

b. New Divisions – Cybersecurity and Research and Innovation

Consistent with her public statements, Superintendent Lacewell has overseen the creation of two new divisions focused on emerging trends and areas of concern in the financial industry. In May 2019, she announced the creation of a Cybersecurity Division. Led by Justin Herring, former Chief of the Cyber Crimes Unit at a United States Attorney's Office, the unit will "focus on protecting consumers and industries from cyber threats" and will be tasked with regulating and overseeing a wide range of cyber matters.[19] In addition to disseminating information on current trends concerning cyber threats and attacks, the unit will seek to enforce DFS's recent cybersecurity regulations, which went into full effect in March 2019.[20]

In July 2019, DFS also announced the formation of a new Division of Research and Innovation, which is intended to keep DFS abreast of developments in the financial services industry and supervise and license virtual currencies on the heels of DFS's 2015 BitLicense regime. "The financial services regulatory landscape needs to evolve and adapt as innovation in banking, insurance and regulatory technology continues to grow," Lacewell said.[21] Led by Matthew Homer, the former head of policy and research at a New York fintech company, the division will review novel technology and aims to protect consumer rights.[22]

c. **New Executive Deputy Superintendent – Katherine Lemire**

In April 2019, Superintendent Lacewell also announced the appointment of Katherine Lemire as Executive Deputy Superintendent of DFS's newly created Consumer Protection and Financial Enforcement Division, which combines the Enforcement and Financial Frauds and Consumer Protection Divisions. Before her appointment, Executive Deputy Superintendent Lemire was a partner at a compliance and investigative consulting firm, and previously served as a prosecutor in the Manhattan District Attorney's Office and the United States Attorney's Office for the Southern District of New York, among other positions.[23]

II. Insurance

There have been significant developments for DFS in insurance-related matters, including a new head of the Insurance Division, updated guidance and regulatory amendments, and enforcement actions.

a. **Superintendent of Insurance**

In November 2019, DFS announced that My Chi To would become the new Executive Deputy Superintendent of the agency's Insurance Division. Superintendent To was previously a partner in a large New York law firm and has spoken about the division's commitment to "protecting consumers while encouraging growth in the insurance industry."[24]

b. **Guidance Regarding Unlicensed Insurance Sales Activity**

DFS issued new guidance to life insurers and producers, with the goal of "protect[ing] New York pension holders from unlicensed activity in New York's pension risk transfer market."[25] DFS alleged that certain unauthorized practices had been conducted by life insurers and their agents and brokers out of New York offices. In a letter, DFS reiterated that an insurer's employees or representatives may not solicit, negotiate, sell, or service group annuity contracts through in-person meetings, phone calls, mail, emails, access to web portals, or in any other manner from any location in New York if the insurer is unauthorized to do so in the State. Moreover, DFS warned that an insurance producer or other person may not aid or call attention to any unauthorized life insurer in New York, with potential penalties including fines, license suspension, and license revocation. DFS did note, however, that this rule contains a limited exception for certain "back office" activities in New York, such as gathering information about the insurance industry or assembling policies on non-New York risks, but such actions are not permitted to the extent they constitute solicitation or sale of insurance.[26]

c. **Amendments to Insurance Regulation 187**

In August 2019, a new DFS regulation went into effect establishing the agency's best-interest rule.[27] The new Insurance Regulation 187 requires insurers to establish standards and procedures to supervise recommendations by agents and brokers with respect to life insurance policies and annuity contracts so that any

transaction with respect to such policies will be in the "best interest" of the consumer and appropriately address the consumer's insurance needs and financial objectives at the time of the transaction. According to DFS, one goal of the amendment was to "fill in regulatory gaps" resulting from the recent elimination of a conflict of interest rule at the federal level.[28]

The final regulatory amendment provides for a best interest standard of care for most sales of life insurance and annuity products.[29] Producers of such insurance products (*i.e.*, insurance agents and brokers) will have expanded obligations requiring them to act in the consumer's "best interest" when making recommendations regarding product purchase or replacement, as well as for certain post-issuance transactions such as modifications or effectuations of in-force policies.[30] A transaction is considered in the best interest of a consumer when it is in furtherance of a consumer's needs and objectives and where only the interests of the consumer are considered in making the recommendation.[31]

The regulation established certain criteria for producers in order to satisfy the "best interest" standard. Under the regulation, their commission-based recommendations must be prudently based on evaluating the customer's relevant suitability information (*e.g.*, age, income, and objectives), consider only the consumer's interests—not financial incentives—and be premised upon a reasonable belief that (1) the consumer has been reasonably informed of various features and consequences of the transaction; (2) the consumer would benefit from certain policy features; and (3) the policy is actually suitable for the consumer.[32] The new regulation imposes less demanding standards for a producer who may be recommending post-issuance transactions that do not trigger any commissions. For example, there is no obligation that such a producer evaluate the consumer's suitability information or ensure that the transaction is suitable.[33]

The regulation also expands the supervisory obligations of insurers by requiring them to, among other things, develop and maintain certain procedures to prevent financial exploitation and decline to effectuate a transaction unless there is a reasonable basis to believe the transaction is suitable based on the suitability information of the consumer.[34] Moving forward, insurers must maintain supervisory procedures reasonably designed to ensure that producers meet this best interest standard, confirm that producers are adequately trained to comply with the regulation, and develop systems for collecting consumer suitability information.[35] The regulation permits insurers to contract with third parties such as brokers to establish and maintain a system for such supervisory obligations.[36]

Following these amendments, various insurance agents and brokers challenged the new regulation in New York Supreme Court, asserting among other things that it exceeded DFS's authority and was vague and confusing. The court upheld the amendments, finding that they were "a proper exercise of the powers granted to the DFS Superintendent," that they were "not an attempt by DFS to improperly legislate," and that they were "neither arbitrary [nor] capricious."[37] The case has been appealed to the Appellate Division, but it has not yet been briefed.

d. Insurance Regulation Enforcement Actions and Defense

DFS undertook several significant actions to enforce or defend its insurance regulations.

In January 2019, for example, DFS entered into a consent order with Metlife Insurance Co., under which Metlife would pay a $19.75 million penalty and more than $189 million in retroactive benefits for its alleged 2017 self-report that it had not sufficiently located and notified 30,000 retirees that they were eligible for retirement benefits.[38] The penalty levied by DFS was notable because it was significantly larger than a similar $1 million fine by regulators in Massachusetts.[39]

In September 2019, six life insurers agreed to pay more than $1.8 million in penalties and restitution for allegedly violating Insurance Regulation 187 by persuading customers to switch from "deferred" annuities to lower-paying "immediate" policies without properly notifying them of income they could lose as a result of the swap and whether the replacement was suitable.[40] The action was part of an industrywide investigation by DFS into the relevant practices. The insurers agreed to take corrective steps such as revising their disclosure statements and updating training procedures to comply with DFS regulations.[41]

After two years of litigation, DFS partially prevailed on the title insurance industry's challenge to Insurance Regulation 208. In early 2019, the Appellate Division affirmed a lower court ruling invalidating Insurance Regulation 208's restrictions on certain closer and ancillary fees. However, the appellate court in the same decision also upheld the regulation's restrictions on marketing and advertising-related expenditures by industry participants.[42] In subsequent proceedings, a trial court struck down Insurance Regulation 208 in its entirety on due process and free speech grounds, but the decision was reversed on appeal.[43]

III. Data Privacy

Consistent with Superintendent Lacewell's announcement that the agency will continue focusing on cybersecurity, there have been several developments relating to data privacy regulations and enforcement.

a. Cybersecurity Regulations

The grace period for DFS's cybersecurity regulations ended in March 2019, when they went into full effect. Those rules, which were first released in March 2017, require covered entities to fortify their cybersecurity procedures by establishing a detailed data security plan, increasing monitoring of third-party vendors, appointing chief information security officers, and reporting breaches to DFS within 72 hours.[44] Such entities also must monitor and test vulnerability and implement control measures such as multi-factor authentication and encryption of nonpublic information.[45] Commentators have noted that covered entities may need to seek clarity with respect to certain regulations that remain unclear under governing law, including which threats or attacks may constitute a reportable

"cybersecurity event" and how to adequately monitor access of third parties to non-public data.[46]

b. **Technology Enforcement**

DFS has continued pursuing enforcement actions for data privacy. In July 2019, for example, DFS entered into a settlement with Equifax Inc., in which Equifax agreed to pay $10 million in penalties to DFS for a 2017 data breach. According to a press release, the breach exposed sensitive financial and personal information of nearly 8.5 million New Yorkers.[47] The settlement comes after DFS and the New York State Attorney General's Office initiated separate investigations into the credit rating agency's practices and the communications surrounding its data breach, the latter as part of a multi-state investigation. As a result of the Attorney General's investigation, Equifax agreed to pay $9 million to the State of New York.[48] Finally, Equifax agreed to provide New York consumers restitution in connection with settlements that have been reached in multi-district class action suits and settlements with the FTC and CFPB, among other relief.[49]

IV. Fintech and Cryptocurrency

Over the past year, DFS has been actively flexing its regulatory authority with respect to contemporary trends in financial services, prevailing against the federal government in litigation over regulatory authority and continuing to regulate virtual currencies in the wake of establishing DFS's BitLicense regime.

a. **Litigation with the Office of the Comptroller of the Currency**

In October 2019, DFS prevailed in significant litigation in which it was represented by the New York State Attorney General's Office against the federal Office of the Comptroller of the Currency (OCC), obtaining an order setting aside OCC's regulation permitting non-depository fintech institutions to obtain special-purpose national bank charters. *See Lacewell v. Office of Comptroller of Currency*, No. 18 CIV. 8377, 2019 WL 6334895 (S.D.N.Y. Oct. 21, 2019). Fintech companies currently must obtain a license in every state in which they seek to operate. To streamline that process, OCC announced that it would begin accepting fintech charter applications, but DFS challenged OCC's authority under the National Banking Act because, it argued, non-depository institutions are not in the "business of banking" and are therefore outside OCC's regulatory ambit.

The United States District Court for the Southern District of New York agreed with DFS's analysis and denied OCC's motion to dismiss in May 2019. Following that decision, DFS and OCC negotiated but failed to agree on proper relief. DFS rejected the OCC's contention that any judgment should preclude charters for companies only with a New York nexus. The court ultimately sided with DFS, and the OCC has appealed to the U.S. Court of Appeals for the Second Circuit.[50] The parties have yet to file briefs in the appeal.

b. **Proposed Cryptocurrency Guidance**

DFS also recently proposed new guidance governing virtual currencies in New York State. DFS is currently the only state agency that requires creators, investors, and traders to obtain a "BitLicense," which requires Bitcoin exchanges and other virtual currency operators to comply with anti-money laundering, consumer protection, and other requirements. The BitLicense first came into effect several years ago and reportedly led to an "exodus" of several cryptocurrency companies. The proposed guidance would establish an online list of digital coins approved for business in New York and permit DFS to develop a new "model framework" that would allow licensed companies to self-certify compliance of new currencies with DFS requirements, without the need to obtain pre-approval from DFS.[51]

c. **New Approvals**

DFS has continued to approve virtual currencies under its BitLicense regime. In July 2019, DFS approved BitLicenses for two companies—Seed Digital Commodities Market LLC and Zero Hash LLC. The former will serve as a matching engine for buyers and sellers of cryptocurrencies such as Bitcoin and intends to cater to institutional investors hoping to execute large trades in the digital currency market. Zero Hash will serve as Seed Digital's money transmitter. In December, DFS granted another BitLicense to SoFi, permitting it to open cryptocurrency trading to New Yorkers and clearing the way for trades in crypto-currencies such as Bitcoin, Ethereum, and Litecoin on SoFi's platform.[52]

Last September, DFS also authorized the sale of PAX Gold, a digital cryptocurrency backed by physical gold. A single digital token of the currency will represent one fine troy ounce of London Good Delivery gold, which will be stored in professional vault facilities but owned by holders of the token. The currency is sold by Paxos Trust Company LLC, which also received approval to issue Binance USD, a U.S. dollar-backed cryptocurrency developed in partnership with the cryptocurrency exchange Binance.[53]

V. Confidential Supervisory Information

In November 2019, DFS proposed a new regulation allowing regulated entities to share "confidential supervisory information" with legal counsel and independent auditors without first obtaining approval from DFS.[54] DFS stated that the new regulation will make it easier for banks to share confidential information with attorneys[55] and other advisors by seeking to "streamline" the disclosure process.[56]

As New York's chief financial regulator,[57] DFS has broad "supervisory" authority[58] to examine and investigate banks, trust companies, investment companies, and other banking organizations.[59] In exercising that authority, DFS has long mandated that reports, memoranda, or correspondence relating to such investigations and examinations, including materials from banks or regulatory agencies, be deemed "confidential" and not be subject to subpoena or disclosed to the public without DFS approval.[60] DFS has taken the position that this confidentiality requirement, which is more than a century old,[61] applies even when a regulated entity seeks to provide

confidential supervisory information to important professional advisors such as legal counsel—an interpretation that raises constitutional concerns in light of its impact on the attorney-client relationship.[62] As a result of DFS's approach, legal counsel with financial clients are often forced to obtain DFS approval before considering such confidential supervisory information and can be impaired from providing timely and thorough advice with respect to compliance with the state's banking statutes.

DFS and its predecessors have long maintained that such a rule is intended to "encourage frank and open communications" between regulated entities and DFS, facilitate "effective" and "comprehensive" examinations by DFS, and allow the agency to make "frank and forceful criticism" without fear of disclosure.[63] The breadth of DFS's prohibition has, however, led some to criticize DFS's rule as out of step with more moderate restrictions imposed by other regulators.[64]

The new regulation would provide a "limited exception" to DFS's restrictions as they relate to regulated entities and professional advisors.[65] In particular, regulated entities could share confidential supervisory information with legal counsel and auditors without first obtaining DFS's approval, provided that they enter into a written agreement stating, among other things, that the information will be used solely to provide "legal representation or auditing services;" that the information will be disclosed solely to employees, directors, or officers on a "need to know" basis; that the counsel or auditors will notify DFS of demands or requests for information; and that the advisors will assert legal privileges or protections as requested by DFS and on the agency's behalf.[66] In addition, the regulated entities must keep a record of all disclosed confidential supervisory information[67] and a copy of each required written agreement.[68]

The new regulation would place DFS closer in line with other regulators of financial institutions, such as the CFPB, FDIC, OCC, and FRB, that allow certain service providers, such as legal counsel, to access confidential supervisory information without seeking additional approval from the regulator.[69] If the regulation is approved, counsel are likely to find it easier to provide prompt legal advice to their clients.

VI. Other Enforcement News

Finally, we highlight a number of other significant enforcement developments relating to international sanctions, online lending, and student debt.

a. International Sanctions

In April 2019, DFS announced that Standard Chartered Bank would pay a fine of $180 million, and agree to a variety of oversight and compliance measures, as part of a global settlement for allegedly violating federal and state banking laws in connection with clearing transactions through the bank's New York City branch with entities in sanctioned countries like Iran, Syria, and Sudan. The parties reached earlier consent orders, but further investigation revealed continued transactions with prohibited entities and deficiencies in Standard Chartered's sanctions-compliance infrastructure. DFS recognized that Standard Chartered had cooperated with DFS's investigation and was undertaking efforts since 2014 to

install new senior leadership and to foster an improved culture of compliance and enhancements to the bank's compliance function.[70]

In addition, DFS announced that UniCredit Group would pay $405 million in penalties, and agree to a number of disciplinary review, hiring, oversight, and compliance measures, as part of a global settlement for allegedly violating sanctions laws in connection with client transactions from sanctioned countries like Iran, Libya, and Sudan. As with Standard Chartered, DFS recognized UniCredit's significant progress in implementing a remediation plan and substantial cooperation.[71]

b. **New Investigations**

In August 2019, DFS announced that it would lead a multistate investigation into the payroll advance industry and allegations of unlawful online lending. The investigation is focused on allegations that members of the industry purportedly collect illegally high interest rates in the form of "tips" or miscellaneous fees, and force improper overdraft charges on vulnerable low-income consumers, violating state usury limits, licensing schemes, and other consumer protection laws. Financial regulators from eleven other jurisdictions joined in the investigation.[72]

DFS also recently launched an investigation into the student "debt relief" industry, subpoenaing eight debt relief companies concerning certain advertising and monthly fees. DFS touted this investigation as part of its "Step Up for Students" initiative.[73] Student debt affects "three million New Yorkers, who collectively owe $86 billion in student loans," and the student-debt relief industry has expanded to meet this growing demand.[74] DFS's investigation will focus on allegations that companies in the industry have engaged in deceptive practices by failing to alert borrowers of the availability of federal programs that offer the same loan consolidation programs for free, or that they have otherwise misrepresented the debt relief they can achieve.[75]

[1] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202001141.
[2] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202002072.
[3] *See* FY 2021 New York State Executive Budget, Transp., Econ. Dev. & Envtl. Conserv. Art. VII Legis., Mem. in Supp., https://www.budget.ny.gov/pubs/archive/fy21/exec/artvii/ted-memo.pdf. ("Mem.").
[4] *See id.* at 34; *see also* FY 2021 New York State Executive Budget, Transp., Econ. Dev. & Envtl. Conserv. Art. VII Legisl., https://www.budget.ny.gov/pubs/archive/fy21/exec/artvii/ted-bill.pdf ("Bill"), at 263-79.
[5] *See* Mem. at 34-35; *see also* Bill at 279-88.
[6] *See* Mem. at 35; *see also* Bill at 288-93.
[7] *See* Bill at 288-89.
[8] *See id.* at 291-92.
[9] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr2001091.
[10] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202002072.
[11] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202002071.
[12] https://www.law.com/newyorklawjournal/2019/06/20/linda-lacewell-confirmed-by-ny-senate-as-new-dfs-superintendent/?slreturn=20200109113938
[13] https://www.insurancejournal.com/news/east/2019/02/05/516786.htm
[14] https://www.law.com/newyorklawjournal/2019/06/20/linda-lacewell-confirmed-by-ny-senate-as-new-dfs-superintendent/?slreturn=20200109113938
[15] *Id.*
[16] *Id.*
[17] https://wp.nyu.edu/compliance_enforcement/2019/04/18/incoming-dfs-chief-calls-cyber-the-number-one-threat-facing-industry-and-government/
[18] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1905221.
[19] *Id.*
[20] *Id.*
[21] https://www.law360.com/articles/1181128/nydfs-launches-innovation-division-to-oversee-fintech.
[22] *Id.*
[23] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1904291.
[24] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1911203
[25] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1909111.
[26] *Id.*
[27] https://www.dfs.ny.gov/about/press/pr1807181.htm.
[28] *Id.*
[29] *Id.*; https://www.law360.com/articles/1184957/complying-with-ny-s-new-insurance-recommendation-rule; https://www.dfs.ny.gov/docs/insurance/r_finala/2018/rf187a1txt.pdf.
[30] https://www.law360.com/articles/1133108/what-to-know-about-ny-s-new-rules-for-selling-annuities.
[31] https://www.dfs.ny.gov/about/press/pr1807181.htm.
[32] https://www.law360.com/articles/1133108/what-to-know-about-ny-s-new-rules-for-selling-annuities; https://www.dfs.ny.gov/docs/insurance/r_finala/2018/rf187a1txt.pdf.
[33] *Id.*
[34] https://www.dfs.ny.gov/about/press/pr1807181.htm; https://www.law360.com/articles/1184957/complying-with-ny-s-new-insurance-recommendation-rule; https://www.dfs.ny.gov/docs/insurance/r_finala/2018/rf187a1txt.pdf.
[35] *Id.*
[36] *Id.*
[37] *See Independent Ins. Agents & Brokers of N.Y., Inc. v. DFS*, 65 Misc. 3d 562, 577 (Sup. Ct. Albany Cnty. 2019).
[38] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1901282; https://www.dfs.ny.gov/system/files/documents/2019/01/ea190128_metlife.pdf.
[39] https://www.law360.com/articles/1123048/metlife-s-220m-deal-shows-risk-in-losing-track-of-retirees.
[40] https://www.reuters.com/article/us-usa-insurance-new-york/six-u-s-insurers-to-pay-1-83-million-for-improper-annuity-swapping-new-york-regulator-idUSKBN1W920S;

https://www.law360.com/articles/1202625/six-insurers-to-pay-ny-1-8m-for-improper-annuity-swapping-

[41] *Id*.

[42] *See New York State Land Title Assoc., Inc. v. New York State Dept. of Fin. Servs.*, 169 A.D.3d 18 (1st Dep't 2019).

[43] *See New York State Land Title Assoc., Inc. v. New York State Dept. of Fin. Servs.*, 178 A.D.3d 611 (1st Dep't 2019).

[44] https://www.law360.com/articles/1140839/-training-wheels-come-off-new-ny-cybersecurity-rules-

[45] *See* 23 N.Y.C.R.R. §§ 500.12-500.16, *available at* https://www.dfs.ny.gov/docs/legal/regulations/adoptions/dfsrf500txt.pdf.

[46] https://www.law360.com/articles/1140839/-training-wheels-come-off-new-ny-cybersecurity-rules-

[47] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1907221

[48] https://ag.ny.gov/press-release/2019/attorney-general-james-holds-equifax-accountable-securing-600-million-payment.

[49] *See* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1907221; Consent Order at 15, *Matter of Equifax Inc.*, *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Executed_Consent_Order_Equifax.pdf.

[50] https://www.law360.com/articles/1216289/what-challenges-to-occ-charter-mean-for-fintech-cos-; Ltr. to Hon. Victor Marrero from Matthew W. Grieco, *Lacewell v. Office of Comptroller of the Currency*, No. 18 Civ. 8377 (S.D.N.Y. filed Oct. 21, 2019) (ECF No. 40); *Vullo v. Office of Comptroller of Currency*, 378 F. Supp. 3d 271 (S.D.N.Y. 2019).

[51] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1912101; https://www.crainsnewyork.com/politics/new-york-proposes-new-rules-cryptocurrency.

[52] https://www.law360.com/articles/1224868/fintech-lender-sofi-gets-virtual-currency-license-in-ny; https://www.law360.com/articles/1178316/ny-licenses-crypto-exchange-for-big-firm-block-trading.

[53] https://www.law360.com/articles/1195759/ny-approves-1st-ever-regulated-gold-backed-cryptocurrency.

[54] *See generally* Mylan L. Denerstein, Matthew L. Biben & Seth M. Rokosky, *New York State Department of Financial Services Proposes New Regulation Easing Information Sharing Between Regulated Entities and Professional Advisors* (Nov. 22, 2019), *available at* https://www.gibsondunn.com/wp-content/uploads/2019/11/ny-state-dfs-proposes-new-regulation-easing-information-sharing-between-regulated-entities-professional-advisors.pdf.

[55] https://www.law.com/newyorklawjournal/2019/11/14/dfs-proposes-new-regulation-streamlining-info-sharing-between-banks-and-their-lawyers/.

[56] https://www.law360.com/publicpolicy/articles/1220001/nydfs-pitches-plan-to-streamline-supervisory-info-sharing?nl_pk=4f609501 5c43 4897. 8b97a64d2a84f930&utm_source=newsletter&utm_medium=email&utm_campaign=publicpolicy.

[57] *See, e.g.*, N.Y. Financial Services Law §§ 101-a, 102; *see also, e.g.*, Dep't of Fin. Servs., 2018 Annual Rep. at 1, https://www.dfs.ny.gov/system/files/documents/2019/07/dfs_annualrpt_2018.pdf.

[58] *See, e.g.*, N.Y. Financial Services Law §§ 201(a), 202, 301-302.

[59] *See, e.g.*, N.Y. Banking Law §§ 10, 36(1); *see id.* §§ 2(11), 11, 14(1), 38-39; *see also, e.g.*, N.Y. Financial Services Law §§ 102(j), 104(a)(4).

[60] N.Y. Banking Law § 36(10); 3 N.Y.C.R.R. Sup. Proc. G 106.8; *see* ch. 146, 1961 N.Y. Laws, 779, 680; *see also* https://www.law360.com/publicpolicy/articles/1220001.

[61] *See, e.g.*, ch. 41, 1914 N.Y. Laws 1264, 1264.

[62] N.Y. Const. art. Art. 1, § 6.

[63] *See, e.g.*, Banking Dep't Mem. of Bill Before the Gov. for Exec. Action (June 29, 1999), *reprinted in* Bill Jacket for ch. 206 (1999) ("Bill Jacket"), at 11; Ltr. from Sen. Hugh T. Farley to Hon. James M. McGuire (June 28, 1999), *reprinted in* Bill Jacket at 4; *see also, e.g.*, *Stratford Factors v. New York State Banking Dep't*, 10 A.D.2d 66, 70-71 (1st Dep't 1960).

[64] *See, e.g.*, https://www.law360.com/articles/980300/ny-regulator-s-untenable-authority-over-confidential-info.

[65] *See* 3 N.Y.C.R.R. § 7.2(b) (proposed 2019); *see also* https://www.law360.com/publicpolicy/articles/1220001/nydfs-pitches plan to streamline supervisory info sharing?nl_pk=4f609501 5c43 4897 8b97 a64d2a84f930&utm_source=newsletter&utm_medium=email&utm_campaign=publicpolicy; https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1911141.

[66] *See* 3 N.Y.C.R.R. § 7.2(c) (proposed 2019); *see also* https://www.law360.com/publicpolicy/articles/1220001/nydfs-pitches-plan-to-streamline-supervisory-info-sharing?nl_pk=4f609501-5c43-4897-8b97

-a64d2a84f930&utm_source=newsletter&utm_medium=email&utm_campaign=publicpolicy; https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1911141.

[67] *See* 3 N.Y.C.R.R. § 7.2(c) (proposed 2019); *see also* https://www.law360.com/publicpolicy/articles/1220001/nydfs-pitches-plan-to-streamline-supervisory-info-sharing?nl_pk=4f609501-5c43-4897-8b97-a64d2a84f930&utm_source=newsletter&utm_medium=email&utm_campaign=publicpolicy; https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1911141.

[68] *See* 3 N.Y.C.R.R. § 7.2(c) (proposed 2019); *see also* https://www.law.com/newyorklawjournal/2019/11/14/dfs-proposes-new-regulation-streamlining-info-sharing-between-banks-and-their-lawyers/.

[69] *See* 12 C.F.R. §§ 4.37(b)(2), 261.20(b), 309.6(a), 1070.42(b)(2).

[70] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1904091; https://www.dfs.ny.gov/system/files/documents/2019/04/ea190409_standard_chartered_bank.pdf.

[71] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1904151.

[72] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908061; https://www.reuters.com/article/us-new-york-loans/new-york-state-regulator-leads-probe-into-payroll-advance-industry-idUSKCN1UW218.

[73] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1909052.

[74] https://www.wsj.com/articles/new-york-investigates-companies-offering-student-debt-relief-11567695601.

[75] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1909052.