

Regulators Target Insurance Company Acquisitions by Private Equity Funds

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Private equity firms and hedge funds have stepped up efforts to acquire insurance companies in recent years. This has prompted regulators to increasingly air their own unease with the risks they perceive associated with such funds managing assets backing insurance company reserves. In 2013, in response to vocal concerns expressed by the New York regulator, the NAIC formed a Private Equity Issues Working Group and exposed for comment a paper that set forth procedures regulators can use when considering ways to mitigate or monitor risks associated with fund ownership or control of insurance company assets. The paper addressed development of best practices and considered possible NAIC policy position changes. These best practices included requiring supplemental information for review during change in control filings, performing additional examinations to ensure the investment strategy continues to be prudent, and considering changes to the credit for reinsurance model law, state investment laws, and the risk-based capital formula. At its second open meeting on May 30, 2014, the Working Group discussed both the proposed best practices as well as comments urging that funds should be held to the same standard as other acquirers. While the Working Group Chairman responded that any guidance ultimately provided should be based on the risk associated with an acquirer, not on the type of entity, the Working Group raised the possibility of trying to define private equity acquirers at some point in the future and unanimously voted to charge the NAIC staff with gathering information on recent insurer acquisitions by funds. Some regulators present acknowledged that they currently have all the necessary tools to manage any risk posed by a fund acquirer. Curiously absent was any discussion of how the funds or any acquirer could manage an insurer's assets beyond the very stringent requirements set by each state's insurance law investment statute. The New York Department of Financial Services, which currently regulates New York domiciled insurers with perhaps the most stringent insurer investment laws of any state, recently released for public comment proposed amendments to its regulations governing applications for approval of acquisition of control. While the public statements of the New York regulators have been focused on Funds acquiring control of insurers, the proposed regulations are applicable to all potential acquirers. If adopted, they would

require potential acquirers to submit additional information as part of the approval process. It is not yet clear whether New York's proposal will pressure the NAIC to propose similar amendments.

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