CARLTON FIELDS

New York Fines Two Major Insurers

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Two recent Consent Orders issued by the New York State Department of Financial Services against major insurers appear to signal the Department's enhanced focus on insurers' detailed compliance with regulatory requirements. In March, 2014, the Department, led by Superintendent of Financial Services Benjamin Lawsky, tagged MetLife, Inc. with the largest New York state fine ever imposed against an insurer – $50 million – for allegedly selling insurance in New York without a license. Specifically, the Consent Order averred that MetLife representatives "engaged in direct selling in New York to multinational companies" from 2007 to 2012. In addition, MetLife signed a deferred prosecution agreement with the New York County District Attorney wherein it agreed to forfeit $10 million. According to Mr. Lawsky, "[i]nsurers have a responsibility to follow the law, play by the rules, and be honest with their regulators .... MetLife did the right thing by stepping up to resolve this matter." The Department's $50 million MetLife fine more than doubled the previous high, established just two weeks earlier, when it fined AXA Equitable Life Insurance Company $20 million for allegedly failing to adequately inform the Department that it was implementing an investment strategy that substantially changed its variable annuity products. According to the Consent Order in that case, AXA allegedly minimized the impact of requested amendments to its Plans of Operations for annuity contracts, and the Department concluded that the amendments "effectively changed the nature of the product that the policyholders purchased." Asserting that "[w]hen it comes to retirement products, insurers must go above and beyond to explain any changes that would alter investor returns," the Department stated that had it been adequately informed of AXA's proposed changes, it would have provided additional consumer protections such as requiring existing annuity holders to affirmatively "opt in" to the altered product rather than remaining in that investment by default.

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