

Memorandum

To: The Office of the Governor

From: Michael S. Pieciak, Commissioner of the Department of Financial Regulation

Re: Gubernatorial Transition Memorandum

Date: November 8, 2016

I. Overview of the Department of Financial Regulation (“DFR” or “Department”)

Administration and General Counsel Division

Commissioner - Michael S. Pieciak

General Counsel - Scot Kline

18 employees

The Administration Division includes the Offices of the Commissioner and the General Counsel and supports the other four divisions of DFR. The Administration Division's mission is to provide the best possible tools, infrastructure and operations expertise to all DFR divisions. This is achieved through organizational management, financial and technological support and effective, professional communications. The range of services that the Administration Division provides to the Department covers such things as internal budgeting and business management, public records, internal and external communications, web site design, content management, IT support and executive and administrative assistance.

The General Counsel's Office mission is to provide high quality legal and enforcement services to DFR, characterized as timely, competent, clearly communicated, independent, and effective legal advice and advocacy for the Department. The General Counsel's Office, within the Administration Division, consists of all of the Department's attorneys. The office is responsible for providing legal services and enforcement support for each of the Divisions, and for the Department as a whole.

Banking Division

Deputy Commissioner - Cynthia Stuart

17 employees

The Banking Division's mission is to promote the safety, soundness, and stability of financial services providers; to promote competition in and availability of financial services; to provide consumer protection; and to provide education.

The Banking Division pursues this mission by:

- Chartering and licensing financial service providers

- Proposing appropriate bulletins, regulations, and statutes
- Enforcing laws and regulation
- Examining and monitoring financial services providers
- Providing information and education services
- Assisting the public and financial service providers
- Cooperating with other supervisory authorities
- Providing training for examiners

The Banking Division activities are organized around three broad program areas:

Supervision which includes issuing charters and licenses as well as conducting examinations and investigations of all regulated entities in such areas as safety and soundness, trust, electronic data processing, e-banking, business practices, and compliance. These organizations are supervised by the Commissioner to assure the solvency, liquidity, stability and efficiency of all such organizations and to assure reasonable and orderly competition thereby encouraging the availability of financial services to the public.

Consumer services are available to assist any consumer who has questions or concerns about an institution chartered or regulated by the Commissioner. Efforts are made to assist a consumer through problem resolution and mortgage foreclosure intervention with regulated institutions. Examinations and investigations may be initiated where needed.

Education that centers on providing the public with valuable information through public speaking engagements, brochures, and surveys which can be used when making a decision regarding choice of institution or product. Survey results and other information about chartered and licensed entities are available on the Department's web site.

Insurance Division

Deputy Commissioner - Kaj Samsom

32 employees

The Insurance Division's mission is to keep insurance affordable and available to Vermont policyholders through orderly competition, ensure that insurers are able to meet their contractual obligations, and to protect consumers against unfair and unlawful business practices.

The Division accomplishes this mission by:

- Licensing and overseeing the financial stability of the insurance companies doing business in Vermont;
- Licensing individuals involved in Vermont's insurance industry;
- Providing consumer protection, education and outreach;
- Overseeing rates and forms used by insurers;
- Monitoring the competitiveness of Vermont's insurance markets; and
- Participating with other state regulators as an accredited member of the National Association of Insurance Commissioners.

The Insurance Division's activities are organized around five broad program areas:

The Financial Examination and Company Licensing Section monitors insurers for solvency and capital adequacy through rigorous licensing requirements, on-going financial analysis, on-site financial examinations and the approval of insurance company transactions.

The Producer Licensing Section licenses insurance professionals and administers their appointments as agents by various licensed companies. Licenses are issued to insurance producers, adjusters, appraisers, consultants, public adjusters, managing general agents, reinsurance intermediaries, surplus lines brokers and life settlement brokers. Producer licenses and company appointments are granted on a biennial basis in odd numbered years. Adjusters and all other individual license types renew in even numbered years.

The Consumer Services Section resolves consumer complaints as well as provides consumer education and guidance across all lines of insurance. In 2012, the section handled more than 4,817 consumer complaints and inquiries resulting in more than \$492,000 recovered for consumers in direct benefits.

The Rate & Forms Section reviews and approves filed insurance policy forms and certain filed premium rates for insurance companies licensed to do business in Vermont. As part of Vermont's health care reform initiative, the section is also responsible for major medical health insurance rate recommendations to the Green Mountain Care Board.

The Market Regulation Section combines the market conduct function with a trend analysis approach. The section ensures that insurance companies are in compliance with Vermont law and regulations. Examiners conduct periodic investigations to identify non-compliant activities resulting in enforcement actions by the Department's Legal Department to recover civil penalties and appropriate restitution for policyholders.

Captives Insurance Division

Deputy Commissioner - David Provost

35 employees

The Captive Insurance Division is charged with licensing and examining captive insurance companies domiciled in Vermont. A captive insurer is a company which is owned and managed by its policyholders, thereby enhancing the company's desire and ability to control costs and tailor its insurance program to suit its individual needs. The number of captives in Vermont continues to grow.

The mission of the Captive Insurance Division is to maintain a regulatory system that ensures the solvency of captive insurers while recognizing the special purpose for which they were created. The Division pursues this mission by:

- Performing thorough, critical review of applications for admission
- Performing ongoing financial surveillance
- Performing periodic financial examinations

- Implementing and enforcing laws and regulations
- Developing effective and reasonable policies and procedures
- Advancing the growth of Vermont's captive industry

Currently there are approximately 590 active captive insurance companies licensed in this state. Vermont remains the country's premier domicile for captive insurance. The Captive Insurance Division is charged with licensing and examining these insurers to ensure their financial solvency. The Division collects fees for its licensing and examination activities that offset the cost of staffing the examination section. Captive insurers create an estimated 1,400 jobs in Vermont and generate premium taxes for the state; in FY2011, the Captive insurance industry paid approximately \$23.4 million in Vermont premium taxes, and over \$2.3 million in license and examination fees.

Securities Division

Deputy Commissioner - Bill Carrigan

8 employees

The mission of the Securities Division is to protect Vermont investors and to help promote the legitimate formation of capital in this state. This is achieved by enforcing and administering the securities laws of the State of Vermont, including:

- Registering securities broker/dealers, investment advisors, and their representatives
- Examining/auditing the above for compliance with the law
- Investigating violations of the securities laws
- Responding to investor complaints
- Reviewing and approving securities offered to Vermont investors
- Bringing administrative or civil actions against violators of the securities laws
- Educating investors and industry participants about the securities laws
- Granting exceptions from registration, where appropriate
- Creating policy and regulations that further the mission

Since December 2014, the securities division has worked with ACCD to administer Vermont's EB-5 regional center.

II. Agency Major and Evolving Issues

The Department is largely engaged in its normal regulatory functions, however, there are several items to note:

- **Jay Peak Litigation:** The Department plays a central role in the Jay Peak litigation both at the state and federal level. Both cases are working their way through the legal system and both are awaiting decisions from the respective judges on fully briefed motions to dismiss.
- **Stowe Aviation Termination from Regional Center:** The Department and ACCD sent a notice of intent to cancel the Stowe Aviation EB-5 project memorandum of

understanding with the Vermont Regional Center on October 25th. The project has until November 28th to respond at which time a final determination will be made.

- **EB-5 Oversight Generally:** The Department has implemented an EB-5 oversight compliance program for the Vermont Regional Center. The Department is in the midst of drafting EB-5 rules that will formalize the compliance program in regulation.
- **Providing Assistance to the Jay Peak Receiver:** The Department provides the Jay Peak Receiver Michael Goldberg assistance on a variety of items as they arise, including financial and investigatory information.

III. Inter-Agency Issues/Relationships

The Department regularly interacts with the following state and federal agencies:

- **Agency of Commerce and Community Development (“ACCD”):** The Department now administers Vermont’s EB-5 Regional Center with ACCD. This has required a high degree of coordination with ACCD during the last year and a half and will likely continue to be a key partnership going forward. The Department and ACCD have had a good working relationship.
- **Green Mountain Care Board:** The Green Mountain Care Board approves health insurance rates while the Department opines as to the insurance companies’ solvency if the proposed rates are accepted. The Department and the Board have had a good working relationship.
- **Federal Agencies:** The Department frequently interacts with a number of federal regulatory and law enforcement agencies while fulfilling its regulatory functions including: the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation (FDIC); the US Securities and Exchange Commission; the Federal Bureau of Investigation; and the Consumer Financial Protection Bureau, among others. The Department enjoys a strong relationship with each of these agencies.

IV. Legislation

The Department does not currently contemplate proposing any major legislative items, however, there are a few legislative priorities and housekeeping items:

- **Banking:** The Division anticipates a legislative proposal focused on “clean-up” items relating to Vermont’s banking and credit union statutes.
- **Insurance:** The Division does not anticipate proposing major legislation, however, industry may likely propose the following:

- The American Council of Life Insurers will likely re-introduce their employee pay-all bill which the Department previously supported.
- American Insurance Association or Uber may put forward a Transportation Network Company (i.e. Uber, Lyft) bill to define whose insurance company is liable during various stages of an Uber transaction. The Department is waiting for a draft.
- UVM or the Department may advance a statutory change that would allow colleges and universities to self-insure for student health policies (with Commissioner approval and some solvency review etc.). This might be a high priority for the Department depending how the Student Health market shapes up as there is limited coverage for academic year 2017.
- **Captives:** The Division usually proposes an annual housekeeping bill which updates Vermont's captive insurance regulations. The specifics for the upcoming legislative session are still being developed.
- **Securities:** The Division does not contemplate any legislative items at this time.

V. External Group and Organizations

The Department works closely with fellow state regulators through a number of nationwide organizations to shape uniform regulation and policies. A brief overview follows:

- **Banking Division - Conference of State Bank Supervisors ("CSBS")**

Executive Director: John Ryan

CSBS is the nationwide organization of financial regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

CSBS gives state supervisors a national forum to coordinate supervision and develop policy related to their regulated entities. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

State regulators supervise approximately 5,000 state-chartered financial institutions with more than \$4.9 trillion in combined assets. Further, most state banking departments oversee mortgage providers and many other financial services providers, such as money services businesses (MSBs), payday lenders, check cashers, and finance companies. State regulators license 16,022 mortgage companies, 131,725 individual mortgage loan originators (MLOs), and more than 138,000 additional non-depository financial services providers across the nation.

- **Banking Division – the National Association of State Credit Union Supervisors (“NASCUS”)**

Executive Director: Lucy Ito

The NASCUS mission is to enhance state credit union supervision and advocate for a safe and sound credit union system. State credit union regulators formed NASCUS in 1965 to promote the safety and soundness of state-chartered credit unions.

NASCUS, a professional regulators association, is the primary resource and voice of the 47 state governmental agencies, including the Department, that charter, regulate and examine the nation's state-chartered credit unions. (Delaware, South Dakota and Wyoming have no laws permitting state-chartered credit unions.) NASCUS is the only organization dedicated to the defense and promotion of the state credit union charter and the autonomy of state credit union regulatory agencies.

NASCUS also represents the interests of state agencies before Congress and is the liaison to federal agencies, including the National Credit Union Administration (NCUA). NCUA is the chartering authority for federal credit unions and the administrator of the National Credit Union Share Insurance Fund (NCUSIF), the insurer of most state-chartered credit unions. NASCUS also provides examiner education programs for state agencies.

- **Insurance Division - National Organization: National Association of Insurance Commissioners (“NAIC”)**

Executive Director: Andrew Beal

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

- **Securities Division - North American Securities Administrators Association (“NASAA”)**

Executive Director: Joey Brady

NASAA is the oldest international investor protection organization. Today, NASAA membership consists of 67 state, provincial, and territorial securities administrators in

the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada, and Mexico.

The state and provincial securities regulators who comprise the membership of the North American Securities Administrators Association have protected Main Street investors from fraud for 100 years. State securities regulation predates the creation of the federal Securities and Exchange Commission (SEC) by more than two decades.

Regulation of securities offerings and the licensing of broker-dealers and their agents by a state are governed by what is known as "blue sky" law. The term "blue sky" referred to speculative schemes that, in the words of a judge of the period, had no more substance than so many feet of "blue sky."

Other Important Trade Organizations

The Department also works with a number of trade organizations to help shape regulatory policy in Vermont. A brief overview follows:

- **Vermont Captive Insurance Association (the "VCIA")**

Executive Director: Rich Smith

The VCIA is the largest trade association for captive insurance in the world. Established in 1985, the Association has grown to provide lobbying support on both the state and federal levels for its nearly 500 member companies. In addition, it hosts and supports professional education opportunities for the industry at large.

- **Vermont Bankers Association ("VBA")**

President: Christopher D'Elia

The VBA was established in 1909. Its purpose is to promote the general welfare and usefulness of banking institutions and discussions of subjects of importance to the banking and commercial interests of the State of Vermont.

- **Association of Vermont Credit Unions (the "Association")**

President / CEO: Joseph Bergeron

The Association is a non-profit corporation that exists to provide credit unions throughout Vermont with a wide assortment of trade association services. The Association promotes the credit union movement and a favorable public attitude toward credit unions, both within the state and nationwide.

The Association provides legislative advocacy, regulatory support, training and staff development opportunities, networking, and business support services to its members.

In conjunction with a variety of strategic business partners, the Association develops, markets and provides members with access to affordable back-office support products and services. The Association is committed to its mission of assisting credit unions in

any way possible with improving their overall level of service to members and Vermont consumers.

- **Vermont Insurance Agents Association (“VIAA”)**

Executive Director: Mary A. Eversole

VIAA is a statewide trade association representing nearly 100 independent insurance agencies in Vermont, with more than 900 employees.

VIAA member independent insurance agents represent more than one insurance company, and as a result, can offer clients a wider choice of auto, home, business, life and employee benefits.

Founded in 1906, VIAA’s mission is to be an advocate for independent insurance agents and to satisfy the professional needs of its members. VIAA is affiliated with the Independent Insurance Agents and Brokers of America.