

## **SPEED TO MARKET DEVELOPMENTS IN NEW YORK**

Marcia D. Alazraki, Esq. Jeremiah P. Sheehan, Esq. (212) 541-9090

### ***Introduction***

New York has traditionally been viewed as anything but a “user friendly” jurisdiction for obtaining the necessary regulatory approvals to bring a product to market. The filing and approval process in New York was perceived as unduly burdensome and complex. Moreover, there was no uniform and generally available information for insurers regarding permissible policy provisions and filing procedures. As a result, many insurers pursued filings on a “trial and error” basis, essentially learning from their mistakes. Since the review process could take six months or longer, some filers would either file forms before they were fully developed (on the theory that the “final” version could be substituted while the initial filing was still in the queue) or submit “generic” multistate versions of a form, thereby relying on the New York Insurance Department (“the Department”) to detect and correct provisions incompatible with New York law during the review process. Such approaches are no longer workable.

In today’s broad-based financial services marketplace, and particularly with the passage of Gramm-Leach-Bliley, insurance companies face ever-increasing competition from non-insurance financial institutions such as banks and mutual funds. These entities have no comparable state-by-state regulatory product filing restrictions and can therefore get products to market rapidly. This perceived inequity has put pressure on insurers and insurance regulators to improve insurer “Speed to Market”<sup>1</sup> to meet both competitive pressures and the needs of insurance consumers.

To address these concerns various Speed to Market initiatives have been undertaken by the National Association of Insurance Commissioners (“NAIC”) and state insurance departments. These efforts continue to be expanded and refined to permit the filing and approval of products with some degree of uniformity, consistency, and speed among the various jurisdictions.

This article will focus on the Department’s effort to improve its own regulatory processes for the review and approval of product filings. It will also touch upon its involvement in and use of NAIC-based initiatives such as the Coordinated Advertising, Rate and Form Review Authority (“CARFRA”) and System for Electronic Rate and Form Filing (“SERFF”). Structural aspects of the product filing that will be impacted by these new filing programs are being reviewed as this article goes to publication. This will be an ongoing evolutionary process. The information below should not be viewed as a definitive statement regarding applicable forms or procedures for a specific product or filing. Detailed information for filers is available on the Department’s website.<sup>2</sup>

### ***Product Review Within the Department***

The Department is subdivided into several Bureaus for regulatory administration. The Life, Health and Property Bureaus are directly involved in product filings. Responsibility for review and approval of filings for life insurance and annuity contracts, as well as contracts made by nonlife insurer entities subject to regulation by the Life Bureau (i.e., fraternal benefit societies, charitable annuity societies and viatical settlement companies), rests with the legal and actuarial staff of that Bureau who are located in the Department’s Albany Office.<sup>3</sup> The Health Bureau’s product review staff is also located in Albany. This Bureau has jurisdiction over accident and health insurance form filings. It was created as part of a December 1997 reorganization of the Department that transferred and consolidated staff of the Life and Property Bureaus with principal responsibility for health insurance related functions into the new Health Bureau. Health Bureau staff review product filings for all for-profit insurers writing accident and health insurance, not-for-profit entities writing such coverage pursuant to Article 43 of the Insurance Law, and health maintenance organizations licensed under Article 44 of the Public Health Law.<sup>4</sup> Finally, property-casualty products (including “monoline” insurance coverages such as financial guaranty, mortgage guaranty, and title insurance) are reviewed by the Property Bureau, which is located in New York City.<sup>5</sup>

The three Bureaus have all implemented “Speed to Market” initiatives. Although they differ somewhat, the methodology used by each has several common features: (a) making detailed product specifications available to filers so that the basic statutory and regulatory requirements can be understood and incorporated into the products prior to filing; (b) establishing uniform filing procedures which rely upon the submission of specified information as

part of the insurer's cover letter or submission checklist; (c) requiring specific identification of problem areas by the Department reviewer and demanding prompt turnaround responses to Department comments from insurers; and (d) offering "fast track" incentives to insurers that meet certain additional requirements in connection with their filings.

### *Speed to Market Initiatives*

**Life Bureau.** In 1997, life and health insurers were advised that, in an attempt to deal with delays caused by incomplete and non-complying product filings, the Life and Health Bureau would return all filings deemed incomplete. The response from the Department would identify those portions viewed as defective.<sup>6</sup> This process was intended to result in immediate rejection of forms with multiple provisions not in conformity with applicable New York statutes and regulations. Insurers were also advised that following acceptance by the Bureau, a file would be closed if a complete written response to a Department comment letter was not received within 45 days of the date thereof.

Chapter 616 of the Laws of 1997 added Section 3201(b)(6) to the Insurance Law, establishing a 90 day "deemer" provision for life, annuity and accident and health policy form filings. This measure represented an attempt to provide insurers with an alternative to the existing prior approval requirement. However, insurers have generally viewed the procedures and conditions relating to such filings as onerous, and the statutory "deemer" filing option has not been used on a regular basis to date.<sup>7</sup>

Efforts have also been made to provide additional information for insurers regarding the statutory and regulatory requirements applicable to specific life and annuity products. As a result of discussions with industry representatives, the Life Bureau began the development of product outlines. The first such outlines (covering individual whole life insurance and group annuity contracts subject to the standard nonforfeiture provisions of Section 4223 of the Insurance Law) were posted on the Department's website in March of 1999.<sup>8</sup> To date, 34 outlines have been completed and made available, and the process is continuing. The Bureau also established a required format for the submission letter that accompanies a filing and has shortened the period for responding to the Department's comment letters to 15 calendar days.<sup>9</sup>

In August 2000, policies filed in the Bureau under this program were granted processing priority over non-CARFRA filings.<sup>10</sup> Filers seeking to utilize this procedure (referred to as "certification") must file: (a) the required submission letter; (b) a completed prescribed checklist form for each product that highlights required and optional provisions, and cross-references them to provisions of the proposed policy forms; (c) a certification executed by an officer familiar with the filing attesting to compliance with applicable laws and regulations; and (d) where an existing form is being revised, a marked version highlighting changes from the prior version (which must be explained in the cover letter).

The Department has encouraged life insurers to utilize the procedures and has given priority to filers who do so. The intended purpose of these procedures is to give up the lengthy "front-end" regulatory prior approval process and devote more energy to "back-end" market conduct and compliance examination after the products have been in the marketplace.

The Department's Office of General Counsel ("OGC") has also issued informal legal opinions that have served to eliminate certain market and product distinctions in the individual life and annuity market as well as certain long applied actuarial requirements with respect to products sold in this market.<sup>11</sup> These actions have had the intent and effect of removing barriers to the prompt review and approval of filings. Product outlines are being revised to reflect these opinions.

Finally, as described below, New York is participating in CARFRA, which represents an attempt to facilitate "Speed to Market" on a multi-jurisdictional basis by creating uniformity in state filings.

**Health Bureau.** Health insurance filings are also technically subject to the statutory "deemer" provisions of Section 3201(b)(6), but this procedure has not been widely used. In May 1999, as part of an effort to shorten the overall time period for approval, the Health Bureau instituted a 15-calendar day response deadline.<sup>12</sup> Soon thereafter, the Bureau began posting information for filers on the Department's website, including a summary of benefit requirements, descriptions of groups eligible for group accident, and health insurance coverage and submission letter

requirements.<sup>13</sup> In August 2000, it instituted an optional “fast track” prior approval procedure to expedite the review process.<sup>14</sup> Insurers, Article 43 corporations, and health maintenance organizations seeking to utilize this system must submit: (a) a standard transmittal form; (b) a prescribed compliance certification form executed by a company officer; and (c) a marked version of revised forms, highlighting changes. Forms and supporting rate material must be submitted as a package, with required certifications and actuarial material.

**Property Bureau.** In May 1998, this Bureau established uniform procedures for review of filings, including initial screening for the purposes of rejecting incomplete filings and closing of files for failure to respond to comments and information requests.<sup>15</sup> Compliance checklists were made available on the Department’s website. This Bureau established optional “Speed to Market” procedures in August 2000, whereby insurers would receive priority in processing.<sup>16</sup> The Bureau’s basic approach tracks that of the other Bureaus. However, personal and public automobile insurance, workers compensation insurance, and physicians’ and surgeons’ medical malpractice liability insurance are excluded, as are filings made electronically pursuant to SERFF (although SERFF filings are reviewed on a higher priority basis than others not utilizing the “Speed to Market” procedures). In addition, the compliance checklist requirement utilized by the Property Bureau is considerably more detailed than the comparable documents for the Life and Health Bureaus. It calls for a master checklist, a specific checklist for each form, for each different coverage part of each form and for special provisions within a form (i.e., cancellation and nonrenewal, inclusion of defense costs within liability limits).

At present, most filers do not use the full “Speed to Market” package with required certification. However, the use of the checklists is becoming more widespread for other filings and this has apparently had a positive impact upon the length of the review process.

#### ***System for Electronic Rate and Form Filing (SERFF)***

SERFF was developed in the early 1990s by the NAIC to facilitate electronic filing of policy rates and forms with regulators by insurers. Throughout the 1990s, refinements and enhancements were made to SERFF to enable it to meet increasing “Speed to Market” demands. In order to utilize the system, an insurer must purchase a license and possess the necessary hardware and software to transmit the filing electronically. All users must also receive the required training from a SERFF-certified vendor. An insurer utilizing SERFF electronically files rates and forms once for acceptance in each participating state. Through a series of cues and signals the filer is made aware of errors, omissions and regulatory issues which must be addressed before a filing is acceptable in a given jurisdiction.

In April 2000, the system was initiated in New York on a pilot basis for property and casualty filings. It was expanded to certain life insurance products in May 2001. SERFF filings are given priority by the Department during the approval process. It is anticipated that the scope and use of the program will continue to expand.

#### ***Coordinated Advertising, Rate and Form Review Authority (CARFRA)***

In May 2001, the NAIC instituted CARFRA on a pilot basis in 10 states, including New York.<sup>17</sup> CARFRA is designed to provide a single point of review of a product based on national standards developed for these products. Filings may be made only through SERFF. Currently the focus is on life and health products but will be expanded to include property and casualty products as well.

To date, CARFRA has developed national standards for three products: individual term life, flexible premium deferred annuities, and Medicare Supplement insurance. The CARFRA filing is subject to review by a panel drawn from participating states, with final approval including all participating jurisdictions. A 45-day review period is anticipated.

At present, one company has filed a term life product in New York under CARFRA. There are approximately 140 New York deviations from the national standardized product. Until such deviations are eliminated, companies must conform to standards of each state.

Obviously, the issues of individual state conformity to national standards and potential changes in laws, regulations and regulatory practice in participating states have still to be fully resolved. The process of developing eligible CARFRA products and standards is complex and time consuming. In addition, the “generic” product template

required under CARFRA may also be inconsistent with insurers seeking to implement unique or “niche” products or features. These factors could impede the Speed to Market effectiveness of CARFRA.

In addition, state membership in CARFRA is voluntary and every member state retains its jurisdictional prerogatives with respect to filings made under CARFRA. Consequently, “Speed to Market” initiative is a work in progress with overall results yet unknown.

### ***Conclusion***

Both the New York Insurance Department and other state regulators are cognizant of the challenges posed in assisting insurers in bringing their products to the marketplace quickly and in a uniform manner. Such action must take into account regulatory responsibilities with respect to consumer protection, regulatory compliance and insurer solvency issues.

The complex and long-standing system of state regulation once again is in the spotlight with federal regulation viewed by many as an issue of “not if but when.” The success of the individual state and NAIC initiatives to bring uniform products quickly to market consistent with regulatory responsibility is critical. Accordingly, the Department has been pursuing Speed to Market developments on a priority basis and continues to seek input from industry personnel involved in the filing process regarding possible areas for improvement or refinement.

### ***Endnotes***

1. As used herein, “Speed to Market” refers to the time frame for implementation of a product, with specific reference to the period required for review of filings by relevant state Insurance Departments.
2. The Department’s website is located at [www.ins.state.ny.us](http://www.ins.state.ny.us).
3. The Albany office is located at Agency Building One, Empire State Plaza, Albany, N.Y. 12257.
4. Contracts between a health maintenance organization and its enrollees are subject to regulation by the Department and must contain benefits mandated by Article 43 of the Insurance Law. *See* New York Public Health Law, Section 4406.
5. The New York City office is located at 25 Beaver Street, New York, NY 10004.
6. Circular Letter No. 14 (1997) (August 1, 1997).
7. Areas of concern included the Department’s authority under the law to terminate approval of or to disapprove a filing for certain reasons, (with resulting restrictions on future submissions by the filer) as well as the ability of the Department to require retroactive modification or withdrawal of approval of a filing in certain circumstances. (*See* Circular Letter No. 2 (1998) (January 15, 1998) for a more detailed discussion of the requirements of Section 3201(b)(6).)
8. *See* Circular Letter No. 7 (1999) (March 16, 1999).
9. Circular Letter No. 8 (1999) (March 16, 1999).
10. Circular Letter No. 27 (2000) (August 21, 2000).
11. See the following OGC opinions (available on the Department website): (a) Indeterminate Premium Policies and Universal Life Insurance Policies – Approval Process and Profit Margins; (b) Section 4228(h) of the Insurance Law, June 29, 2001; and (c) New York Insurance Law Section 4324(a)(1), Regarding Unfair Discrimination Among Members of the Same Class, December 13, 2000.
12. Circular Letter No. 8 (1999) (May 18, 1999).

13. Circular Letter No. 20 (1999) (July 13, 1999).
14. Circular Letter No. 28 (2000) (August 22, 2000).
15. Circular Letter No. 11 (1998) (May 7, 1998). The failure to respond within thirty days causes the initiation of follow-up activity by an examiner with the contact person designated in the filing. Failure of the filer to submit a response within thirty days of the follow-up date would result in the file being closed. Supplement No. 2 to that Circular Letter, issued December 20, 1999, eliminated the follow-up period and provided that the file would be closed for failure to respond within thirty days of a comment or letter from the Bureau.
16. Supplement No. 3 to Circular Letter 11 (1998) (August 21, 2000).
17. Alabama, Arkansas, Indiana, Michigan, Maine, New York, Ohio, Oregon, Pennsylvania, and Texas.