ASSEMBLY STANDING COMMITTEE ON INSURANCE AND ASSEMBLY STANDING COMMITTEE ON SCIENCE AND TECHNOLOGY HEARING ON THE USE OF ARTIFICIAL INTELLIGENCE SYSTEMS IN THE UNDERWRITING AND PRICING OF INSURANCE

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Good morning, Chairs Weprin and Otis; Ranking Members Blankenbush and Blumencranz; and distinguished Members of the Assembly Standing Committees on Insurance and Science and Technology.

My name is Kaitlin Asrow, and I am the Acting Superintendent of the New York State Department of Financial Services ("DFS"). Thank you for the opportunity to address you at today's hearing regarding the use of artificial intelligence to underwrite and price insurance policies in New York. I also want to thank Governor Hochul for trusting me to lead DFS into its next chapter.

I appreciate, and share, Governor Hochul, and the Legislature's commitment to ensuring the responsible use of innovation in financial services. My background is in innovation, exploring how it may be applied in financial services, and how we as regulators balance the risk and opportunity of that activity.

With innovation like artificial intelligence ("AI") we can find more efficient and effective ways of working and parsing those essential data we depend on for decision making. We also must ensure that we are protecting consumers and maintaining a stable financial system amidst the new, and still developing risks, of this technology.

Data is the foundation of AI, and it is essential to consider how it is managed alongside the models themselves. This is why, for example, the Circular Letter referenced in this hearing covers both the use of artificial intelligence systems and external consumer data and information sources.

Before turning to the substance of my remarks, I would like to briefly share a bit of my background and approach to innovation in financial services.

Earlier in my career I served in a research and consulting capacity for a non-profit focused on consumer financial health. I began advising early-stage financial technology, or fintech,

companies that were part of the organization's accelerator program. These fintechs were all focused on helping consumers better navigate their financial lives.

This experience allowed me to participate in, and guide, conversations around consumer access, safety, and demand during the creation of new financial products and services. I became especially focused on the use of data in these products, both the risks and opportunities of this increasingly valuable resource.

Following this experience, I went to the Federal Reserve, where I worked in Supervision with the Bank of San Francisco and advised the Board of Governors. In both roles I continued to focus on innovation. I supported and trained federal bank examiners on how to supervise technology use and innovative products inside of banks, and I helped draft the Federal Reserve's overall policy and approach on these topics.

From there I joined DFS, where for the past four years, prior to the Governor appointing me Acting Superintendent, I ran the Research & Innovation Division, leading the Department's work on a range of innovation topics, including virtual currency, fintech, and artificial intelligence.

The team I led in that capacity worked closely with colleagues in the Insurance Division to release the 2024 Circular Letter on artificial intelligence, which I will speak more to. That year, DFS also released guidance on customer service and complaints processing in virtual currency where we discuss the expected approach if AI is used to interact with customers. And the final piece of AI policy work I will highlight was our October 2024 guidance on *Cybersecurity Risks Arising from Artificial Intelligence.*

In addition to these policy efforts, I also stood up an internal AI Steering Committee focused on the policy implications of AI, and an AI Governance Committee to oversee the Department's own use of AI.

The use of AI is rapidly growing and evolving, and its use in the financial services sector is no exception. AI brings enormous potential for the financial services sector, with opportunities ranging from greater efficiencies for both businesses and consumers, to new and improved product offerings that leverage AI. It also presents potential risks, ranging from bias and discrimination to data privacy and cybersecurity. As a regulator, DFS is focused on ensuring that the companies and industries we regulate are deploying AI responsibly and with appropriate risk management. The benefits of AI cannot come at the expense of consumer protection or the safety and soundness of the entities using them.

It is important to recognize that many of the laws that DFS enforces are technology-agnostic, meaning the core regulatory obligations are the same for manual processes as they are for AI models and systems. This agnostic approach is positive because it enables companies to innovate under existing law. Given this, the Department has taken a diligent and considered approach to overseeing the use of AI within our regulated entities. We analyze our existing rules and processes, and where appropriate, clarify how they apply to AI through guidance and circular letters. We also integrate reviews of these new systems and datasets into our supervisory approaches.

This is consistent with how innovation is approached in many areas. Regardless of whether banking services are offered through brick and mortar or a phone app, the same laws apply. Regardless of whether a car has a manual or automatic transmission, the same traffic laws apply. Of course, as new risks arise, there may be room for specific AI requirements, but DFS has not taken that approach to date.

I will also note that while AI as an area is evolving rapidly, it remains rare to have a full deployment of AI without redundant, manual processes in financial services. Furthermore, the practice of modeling, and prediction has always been fundamental to insurance.

I believe the application of existing laws and guidance to new approaches and tools gives us the flexibility to adapt as the market evolves. It also allows for innovation while still maintaining strong safeguards for consumers and the stability of the marketplace.

Circular Letter on the Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing

The Department was aware of insurance companies exploring this technology, and also the broader environment offering new opportunities in AI. It was the right time to share our regulatory expectations to both enable companies and protect consumers through existing laws.

To ensure we were taking a diligent and considered approach, the Department first released a proposed version of the Circular Letter in January 2024. It is not typical to seek comments on a Circular Letter, but we felt it was important given this novel area. We received and reviewed comments from a range of interested parties. Following that comment and review period, the Circular Letter was finalized in July 2024.

This regulatory guidance explains the Department's expectations under existing laws for insurers to have the appropriate frameworks in place when using AI and external data. It focuses on three primary areas: fairness, governance and risk management, and transparency.

The fairness portion of this guidance applies the provisions of New York insurance law that prohibit various forms of discrimination.[1] It explains that insurers should only use external data or AI for underwriting or pricing if they can establish that it will not result in unfair or unlawful discrimination. The guidance then outlines how insurers can mitigate this risk by assessing both inputs of the models they use to train their AI and the outputs the AI generates.

Insurers are expected to evaluate the data going into the model to see whether they are correlated with status in protected classes. Insurers should also undertake a comprehensive assessment to ensure that their underwriting or pricing guidelines do not result in outputs that are unfairly or unlawfully discriminatory. The guidance outlines the minimum steps for this assessment, which include testing for disproportionate adverse effects on protected classes; assessing whether those adverse effects have a legitimate, lawful, and fair explanation; and conducting and documenting a search for less discriminatory alternatives that still meet the insurer's business needs.

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[1] *See* Insurance Law Article 26 and §§ 2303, 4224(a)–(b), 3221(q)(3), and 4305(k)(3).

The Department expects that insurers conduct these assessments on a regular cadence, including after material changes to the AI model. The guidance also provides several illustrative examples of statistical techniques that may be useful in this review to help assist insurers who may not be familiar with these approaches.

The guidance then provides expectations for governance and risk management. The governance aspects of the guidance apply the Department's insurance regulations requiring insurers to have appropriate corporate governance frameworks.[2] Insurers are expected to have their board of directors and senior management oversee the use of external data and AI. While such oversight may be delegated, it should include appropriate lines of reporting and mechanisms for monitoring risk. Senior management are responsible for day-to-day implementation of external data and AI, and are expected to establish policies and procedures, which should define roles and responsibilities. Insurers are also expected to maintain comprehensive documentation, including system inventories, descriptions of key processes, and a description of the testing performed on model outputs conducted at least annually to assess the output of AI models.

For risk management, the guidance applies provisions of New York insurance law and regulations that require insurers to have enterprise risk management functions.[3] It recommends considering and managing risks at each stage of the AI life cycle, including development, implementation, use, and ongoing testing. Risk management should involve independent review, including the engagement of the insurer's internal audit functions. Third-party vendors are of critical importance in using external data and AI, so the guidance explains that insurers should develop written policies and procedures when relying on third parties, retaining responsibility for understanding the tools, external data, and AI systems that a vendor sources. Where appropriate and available, insurers should seek audit rights of their third parties and require cooperation by the third party with regulatory inquiries.

Finally, the guidance addresses transparency for consumers. The transparency section of the guidance applies provisions of New York insurance law that require disclosure of the reasons for refusing to issue or terminating, or charging a different rate for, an insurance policy.[4] Insurers using external data or AI should provide consumers with a notice disclosing this. Insurers should also inform consumers of their right to request information about the data that resulted in an underwriting or pricing decision. In the event of an adverse underwriting decision, the insurer should proactively include details about the information upon which the decision was based, including its source, in the notice to the consumer.

Overview of the DFS Exam Process

As I mentioned at the outset, the purpose of this guidance is to help insurers understand the Department's supervisory expectations, which may be tested through examinations. There are two types of primary insurance examinations: financial examinations and market conduct examinations. A financial examination verifies an entity's financial standing and solvency while a

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[2] 11 NYCRR § 90.2.
[3] *See* Insurance Law §§ 1501, 1503(b), 1604(b), 1702,and 1717(b). *See also* 11 NYCRR § 82.
[4] Insurance Law §§ 2402(c), 2403, 3425, 3426, 4224.

market conduct examination is focused on the fair treatment of policyholders. Market conduct examinations can vary significantly in scope based on the business lines of an entity, and include areas such as company operations, complaint handling, marketing, claims, and customer service.

Immediately upon issuance of the guidance, cross-functional staff were dedicated to drafting a framework to assess an insurer's adherence to the AI guidance in market conduct examinations. While it is still early in this process, this framework is an important tool for the Department to understand the extent of AI use in underwriting and pricing within a particular company, and how that company is preparing and executing on those initiatives. If the Department identifies through this work that discrimination is happening as a result of an insurer's use of AI, then it may open an enforcement investigation and hold the insurer accountable.

Over time, gathering this information will allow the Department to assess the state of AI adoption across New York insurers. This information will also enable the Department to see best practices and challenges across the insurance sector when using these tools, and from that we may further evolve our regulatory approach.

I look forward to working with you to understand your priorities and concerns across innovation in the financial services landscape.