February 3, 2017 Presidential Executive Order Regarding Financial Regulation

Executive Order Cannot Repeal Post-Financial Crisis Consumer Protections or Restore Federal Subsidy for “Too Big To Fail” Banks

Executive Order Does Not Repeal Any Consumer Protections or Weaken Post-Crisis Reforms, Though It May Signal Future Actions to Reverse Progress

On February 3, 2017, President Trump issued an Executive Order titled ñCore Principles for Regulating the United States Financial System.ò This Executive Order does not ï and cannot ï repeal the Wall Street Reform and Consumer Protection Act (ñDodd-Frankò) enacted in 2010 following the financial crisis of 2008. In addition, the order has no direct or immediate impact on any of the post-crisis financial regulatory reforms or the elements of New York law that provide key consumer financial protections to New Yorkers. While the issuance of the Executive Order signals that the President may support efforts to repeal key aspects of the post-financial crisis reforms promulgated under Dodd-Frank, the American dual-banking system, which provides for a leading role for the states in financial regulation and consumer protection, provides important safeguards to promote financial stability and provide important consumer protections. Indeed, broadly speaking, state financial regulators such as New Yorkøs Department of Financial Services (DFS) already operate in accordance with many of the Orderøs core principles and have for some time.

The Executive Order promulgates seven ñcore principlesò for financial regulation, and directs the Treasury Secretary to consult with the heads of the member agencies of the Financial Stability Oversight Council (FSOC) on the extent to which the existing legal and regulatory framework promotes those core principles. Within 120 days of the order, the Treasury Secretary shall report to the President the findings of this review and identify what elements of the existing legal and regulatory framework inhibit the core principles. During this review, the Treasury Secretary should ensure adequate consultation with all FSOC participants, including the state regulators represented as non-voting members, not solely the heads of the Federal member agencies, as the Executive Order appears to require. Specifically, the Secretary should ensure robust consultation with the state insurance commissioner designated by the National Association of Insurance Commissioners (NAIC); the state banking supervisor designated by the Conference of State Bank Supervisors (CSBS); and the state securities commissioner designated by the North American Securities Administrators Association (NASAA). These FSOC participants will be able to convey the manner in which state financial regulators such as DFS have already been operating in accordance with many of the Administrationøs core principles.

The core principles are, on their face, broadly consistent with the spirit of the 2010 Consumer Protection and Wall Street Reform Act and in practice, consistent with DFS policy and action since the agencyøs inception. DFS strongly supports the Consumer Protection and Wall Street Reform Act as a necessary and effective response to the financial crisis and believes any revisions the Secretary recommends must enhance rather than erode the safety and soundness of the American financial system. The Executive Orderôs principles, which align with DFSôs regulatory posture, are as follows:

(a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;

DFS's financial empowerment and consumer protection mandate, as set forth in the Banking Law and Financial Services Law that created the agency from its predecessor Insurance and Banking Departments, is broad. The Banking Law establishes the Basic Banking Account, an important instrument of financial inclusion that provides an on-ramp to savings and wealth building for New Yorkers of modest means. The Financial Services Law established the Financial Frauds and Consumer Protection Bureau, specifically charging it with uncovering, investigating and eliminating the myriad financial frauds that may harm the social and economic well-being of New Yorkers.

(b) prevent taxpayer-funded bailouts;

DFS actively supports ending "Too Big To Fail" in its capacity as the resolution authority for the New York branches of some of the world's largest financial institutions. It is an active participant in the global efforts to end taxpayer funded bailouts and is the only regulator globally that has supported a going-concern resolution, by issuing a bridge-bank license for the New York operations of a foreign bank. Through its actions, DFS has demonstrated that the post-crisis reforms aimed at ending "Too Big To Fail" can work.

(c) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;

As the regulator of the world's financial capital, DFS is charged by New York Financial Services Law with the goal of encouraging, promoting and assisting banking, insurance and other financial services institutions to effectively and productively locate, operate, employ, grow, remain, and expand in New York State. This mandate guides all DFS regulatory rule-making, which is governed by the State Administrative Procedures Act and requires a robust public comment process. DFS actively uses this process to assess the impact of proposed regulations on the producers and consumers of financial services, and their overall impact on economic growth and the vibrancy of the financial markets.

(d) enable American companies to be competitive with foreign firms in domestic and foreign markets;

As the home regulator of some of the largest American financial services firms and the host regulator of some of the largest foreign financial services companies, DFS plays an important role in maintaining a fair, level playing field. By establishing and enforcing high, uniform standards of conduct for both domestic and foreign firms active in the New

York marketplace, DFS effectively protects the safety and soundness of the American economy.

(e) advance American interests in international financial regulatory negotiations and meetings;

As the home and host regulator for global systemically important financial institutions, DFS regularly hosts and participates in multilateral regulatory meetings and vocally represented American perspectives and interests. DFS believes that a strong, effective American engagement in global regulatory processes is imperative to ensure our interests are adequately reflected in global financial regulatory processes, that our consumers continue to enjoy robust protections and that our global financial firms are not disadvantaged.

(f) make regulation efficient, effective, and appropriately tailored; and

DFS's enabling legislation mandates that it ensures the continued safety and soundness of the insurance, banking, and financial services industries and the prudent conduct of the providers of financial products and services through responsible regulation. DFS has demonstrated the ability to tailor effective, efficient regulation to the profile of its regulated institutions, most recently by implementing strong anti-money laundering regulations and first-of-its-kind cybersecurity rules. DFS's legislative mandate further explicitly charges it with providing for the regulation of new financial services products, a mandate that DFS has invoked to provide a regulatory framework for virtual currency companies, thereby fostering the safety and soundness of this emerging financial services sector as it grows and matures.

(g) restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

Federal financial regulatory agencies are important partners for DFS as a state financial services regulator in the common mission of maintaining the safety and soundness of American financial institutions. The interplay between strong, effective participants in the financial regulatory framework, specifically between state and Federal counterparts and the explicit choice this provides financial services firms, serves to check all participants and interject accountability into the regulatory ecosystem.

What changes, if any, the Treasury Secretary will recommend in his report to the President remain to be seen. However, the American financial regulatory system, specifically the dual banking system, dates to the early days of the Republic, and the benefits accruing from this financial federalism over the countryôs history are many. DFS believes that the Secretary should find that the Administrationôs core principles are and have long been shared and actioned by state financial regulators.

Likewise, it remains to be seen how such recommendations could be carried out. Under existing Senate rules, any legislation to repeal the Consumer Protection and Wall Street Reform Act would require 60 votes. Any recommended revision to regulations would require a lengthy drafting process and a thorough public comment process. Should the goal of these recommendations be, in our view, to weaken the strong consumer protections and financial reforms that were revealed as necessary by the financial crisis, state financial regulators such as DFS would provide an important check in favor of consumers. Lastly, should the Secretary recommend an administrative refocusing of financial regulatory resources away from program areas in a manner that the DFS Superintendent or other state regulators deem negatively impacts the protections afforded to consumers and the safety and soundness of financial institutions, state regulators such as DFS have the ability to adjust their supervisory posture accordingly.

The Department of Financial Services will continue to be vigilant and report on relevant proposals regarding financial regulatory reform that may impact New York. DFS remains committed to promoting the safety and soundness of all New York financial institutions and economic opportunity for all New Yorkers while protecting consumers and markets from fraud.