NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

**Breakfast with Superintendent Vullo**
**Insurance Federation of New York (IFNY) and Committee on Insurance Law (COIL)**
**New York City Bar**
**January 29, 2019**
**20-25 minutes, plus Q&A**

Good morning! Thank you for that introduction Nick Pearson – it is always great to see you – and thank you IFNY and Drexel Harris and the City Bar Committee on Insurance Law (COIL) for having me here for what will be my final speech as the Superintendent of the New York State Department of Financial Services. In fact, this is my last week as DFS Superintendent and I am pleased to be here with all of you as I begin to look back on my three years as Superintendent and reflect on the great work that we have done on behalf of New Yorkers during a time when state action and consciousness of purpose have been sorely needed.

I chose IFNY for this last speech because we have established a strong partnership since I took over this job in February 2016: By my count, this is my *sixth* time speaking at an IFNY event!

It is also fitting for me to give my final DFS speech here on what is really my home turf at the City Bar in midtown Manhattan, where I spent so much time as a practicing lawyer for 27 years before I took on this job. In fact, one of my first speeches after my Senate confirmation was here at the IFNY and NYC Bar Association Insurance Committee Breakfast, and I spoke at last year's breakfast as well. These events bring my professional life full circle and serve as book ends to my time in public service.

As I was thinking about how I should spend my limited time here today, I decided to discuss some overall themes as well as specific initiatives that we launched during my tenure. I don't have the time today to discuss everything we did or even most of what we did. Of course, if I could fit three years into 25 minutes then I didn't do enough! But I will try to give some personal perspectives on my tenure and provide some key examples of our important initiatives.

First, a quick perspective on the job. As you all know, DFS is a rather new agency – I am its second Superintendent – the agency was formed in 2011 by the merger of two longstanding state government agencies – the New York Banking Department and the Insurance Department. For three years, I have been both New York's insurance commissioner and its banking commissioner – which has meant interacting with the insurance and banking commissioners of the other 49 states, D.C. and the U.S. territories, including through the National Association of Insurance Commissioners – in which I took a very active role – and the Conference of State Bank Supervisors – on whose board I have served. In addition, because of the global reach of some of our large insurance companies, and the many foreign bank branches under our supervision, this job put me in contact with many federal agencies and central banks and supervisors from around the world. I would say that about one-half of my time was spent meeting with the various stakeholders of the agency, both in my offices and during the many interactions external to my offices in downtown Manhattan.

In addition to all of that, when DFS was created in 2011, the new Financial Services Law added new powers and a deeper consumer protection focus to the agency, which is the third hat that I wore – proudly. I can say with confidence that there has never been a dull moment. In government, there are always limited resources. But the key to leadership is how you tackle the opportunities that present themselves and how you utilize your limited resources to have a real impact, while doing the basic work of the agency at the same time. I believe that the ongoing work of the agency was just as important as the news-worthy parts of the job.

When people ask me what I think the theme of my work has been, I tell them – truthfully – that there is no one thing that was my singular focus, although I certainly utilized the full panoply of state law at a time when federalism was ever-present. I am sorry to say, but it is difficult to pigeon-hole me into one sound-bite. I never wanted to be another "Sheriff" though I used the agency's law enforcement powers fully. I believe the true essence of my tenure is that – throughout the agency – we took on the many opportunities that presented themselves – using our regulatory powers to make a real difference in our work, focusing on the setting of prudent industry standards, consumer restitution, and making a difference in the lives of New Yorkers at a time when the federal government has unleashed an all-out assault on people. And equally importantly, we did our work with care, with thoroughness, and with engagement, with our ultimate goal at all times being to make the right decision, on the merits, in the interests of the people of the State of New York.

When I arrived at DFS in 2016, one of my goals was to bring some of the best practices that I had gained from practicing law and apply them to managing a regulatory agency of about 1,400 people. I believe that I brought to the agency a litigator's mind and expertise, and I also joined together – either with new hires or by targeted internal promotions – an executive staff comprised of the best professionals that any government agency has ever had – professionals who worked together collaboratively and did their work with great care and dedication to the public good.

So, as I near my exit this week, I look back on my time with much pride in the sheer volume and depth of our work, and, equally importantly, the professionalism with which we have done our job for the people of this great state. I remained true to my promise that I would strengthen industry and protect consumers at the same time – and would make decisions based on facts and reason and the law.

As it so happens, one's time is public service is often shaped by the events happening in the world during the time of that service. That certainly was the case for me. I arrived at DFS in early 2016 with a plate full of ideas and initiatives, and then there was a national election at the end of 2016, which focused us more acutely on our country's founding principles of federalism. As a state regulator, the division of powers and responsibilities between the federal and state governments was pronounced on many occasions, particularly during these past two years. Unlike the banking system – where Hamilton and Jefferson famously disagreed on the role of a central bank (among other things) – insurance has always been a state-based system, with policyholder protection at its core.

I hope you all know by now that I am a history buff. (It just so happens that my kids and I are going to see Hamilton this Sunday!) In that spirit, just steps from the DFS office is not only Lady Liberty -- a prized beacon of hope to this grand-child of immigrants – but also Fraunces Tavern, where General George Washington said farewell to his troops after the American Revolution. That farewell was short-lived, as soon after the Continental Army defeated the British troops, General Washington was elected our nation's first president. Notably, in his final farewell address after his second term as president, Washington urged Americans to avoid excessive party spirit and excessive foreign influence. Very prescient sentiments for today. But when he left office, Washington left a nation better able to respond to the challenges that lay ahead.

One of my first initiatives as Superintendent was to tackle cybersecurity, which in many ways is today's war of nations. When I arrived in early 2016, the threat was obvious and not in dispute. I believed from the start that government needed to require industry best practices on cybersecurity, and this was before we learned that the 2016 election was compromised by foreign influences appropriated via cyber-attacks. We proceeded to fill the void and drafted a cybersecurity regulation that would withstand the test of time and technological advancements – with the singular goal of protecting our financial industry and its many customers from cyber-attacks.

I proposed the cybersecurity regulation in September 2016, just six months after I arrived at DFS, and we finalized it in early 2017, with an effective date of March 1, 2017. That quickness did not sacrifice the depth of our stakeholder engagement or the quality of the regulation – we worked incredibly hard, engaged with all stakeholders, and, I believe, we got it right. A month later, I spoke at a national meeting of the National Association of Insurance Commissioners (NAIC), urging my fellow commissioners to adopt a national cybersecurity standard for the insurance industry. The NAIC cybersecurity task force working group had been going back and forth on drafts for years, with little progress. With my little nudge, in October 2017, the NAIC Commissioners from all 50 states adopted a national uniform cybersecurity standard for the insurance industry modeled after New York DFS's regulation.

The DFS regulation had a two-year implementation period, which – timely enough -- ends this upcoming March 1, 2019. I therefore leave DFS knowing that, because of the regulation we implemented, all DFS-regulated institutions now have a comprehensive risk-based cybersecurity program, adequate controls in place to protect their information systems, are required to report a known cyber breach within 72 hours, must utilize vulnerability scans, penetration testing and encryption where necessary to protect customer private data, and have a responsible Chief Information Security Officer reporting to the Board of Directors regarding the company's cybersecurity program. The March 1 deadline also requires due diligence of third-party vendors, a critical requirement of our regulation that no one was willing to tackle before. The regulation also requires an annual certificate of compliance, and this upcoming February 15 is our second annual certification date. Requiring an annual certification puts cybersecurity in the important c-suite location where it belongs.

That's just the public-facing aspect of what we did with cybersecurity. We have also incorporated cybersecurity as part of the everyday work of the agency, as part of the regular examinations we perform of our regulated entities. We created a new Cybersecurity Examiner title for hiring and promotion purposes and we created and implemented a robust training program – developed by the Professional Training Department that I created over two years ago – which has now trained more than 500 DFS examiners. We did a lot in this space – with long-lasting impact.

Cybersecurity – and data privacy – are fundamental issues today in every industry. The Equifax breach over a year ago made this even more powerfully clear. We acted there too: Because credit reporting agencies service our banks and insurance companies, we issued a new regulation requiring credit reporting agencies to comply with the Department's cybersecurity regulation, and this past June we launched an online registration form for credit reporting agencies to register with DFS, which they now have done.

Turning to another, very different topic, but with the same theme that the work of government is shaped by what is happening at the time. After I had been at DFS for about eight months, there was that national election in November 2016. There followed an avalanche of attacks that required a Jeffersonian response by the states. Healthcare took center stage. We swung into action. Some examples of our policy work:

- We protected women's right to reproductive health coverage by issuing regulations that require insurance companies to cover medically necessary abortions and full contraceptive services, including over-the-counter emergency contraception, and the dispensing of 12 months of contraceptives at one time, all without co-insurance, co-pays or deductibles. Two weeks ago, the New York Supreme Court in Albany upheld my abortion regulation, and last week the State Legislature enacted into New York's statutory law the requirements of our contraceptive regulations. That's progress.
- I issued a regulation making clear that regardless of federal attempts to repeal and replace the ACA, in New York, insurers

must cover essential health benefits and may not discriminate based on age, gender or pre-existing conditions.

- We also issued regulations expanding the scope of anti-discrimination protections for transgender individuals in accessing health insurance.
- We also responded to problematic rules by federal agencies in the health insurance space. We made clear that short-term limited duration health insurance plans – or as I call it “junk insurance” -- are prohibited in New York regardless of federal regulatory changes, as they are exempt from protections, including essential health benefits and anti-discrimination provisions.
- We also advised insurers and brokers that the U.S. Department of Labor final rule, known as the Association Health Plan (AHP) Rule, does not preempt New York Insurance law, which strictly limits the associations or groups of employers that may sponsor a health insurance plan.

- We also implemented a State Risk Adjustment Program that will maintain the stability of New York's individual and small group markets to ensure choice and access to affordable health care for all New Yorkers.

In addition, we:

- Advised insurers that they may not discriminate when underwriting life and disability insurance for New Yorkers who use pre-exposure prophylaxis (PrEP), used to reduce the risk of contracting HIV.
- We issued regulations to ensure that all New York commercial health insurance policies cover maternal depression screenings, including screening for the mother under the child's policy.
- And we made clear that women who suffer from maternal depression may not be discriminated against in life and disability insurance coverage either.
- We made clear that, under New York's groundbreaking breast cancer legislation, 3D mammograms are covered, which is

critically important for women of color. After we provided this interpretative guidance, the Legislature enacted a bill making this part of New York statutory law.

On the property/casualty side, we protected New York drivers from unfairly discriminatory auto insurance rates by issuing a regulation and then reaching agreements with all major automobile insurance companies banning the use of an individual's occupational status and/or educational level as unfairly discriminatory factors in setting rates for car insurance. This was a major initiative, which required a lot of time and effort, but we got it done – and it is now fully in place and will have lasting impact.

Title insurance was another area where reform was sorely needed. I issued two important regulations. The one that got the most attention is the one where we prohibited the lavish meals, entertainment, gift cards, designer goods, sporting tickets and strip clubs, as improper inducements of title insurance business in violation of the Insurance Law. We had a well-published litigation over this regulation, and just two weeks ago, the Appellate Division, in a 4-0 decision, upheld the regulation. Quite timely, I would say. Another important, difficult, initiative, done.

Two weeks ago, I also concluded the DFS investigation regarding the use of “big data” for purposes of life insurance underwriting, with guidance as to the appropriate use of third-party data in algorithms. We explained in our circular letter that insurers may not use third-party data sources in underwriting unless the insurance company does its due diligence to ensure that the data does not violate New York and federal laws prohibiting discrimination against protected classes. In other words, if you cannot use certain data for underwriting directly, you cannot arrive at that discriminatory place by indirectly utilizing third-party data. This is another example of New York leading on an issue of the time – acting when others are sitting back – moving the ball forward towards a national dialogue.

We also led the nation where a void existed by our regulation providing for a best interest standard of care for sales of life insurance and annuity products, after the new federal administration abandoned the U.S. Department of Labor’s Fiduciary Rule. I believe strongly that a producer's financial compensation or incentives should <u>not</u> influence the recommendation to the customer – but rather must act solely in the best interests of the customer. Our final regulation also requires life insurers, producers and distributors to perform an adequate suitability review when recommending the sale or replacement of an annuity. We are the first state to have finalized a best interests regulation. Another important national initiative done.

There are more examples. We banned the NRA's Carry Guard insurance program, as it violated New York law. We protected seniors with our life insurance regulation that requires notice before "cost of insurance" premium increases can be imposed. We protected the no-fault insurance system from scams that permitted doctors in New Jersey to charge more than we would allow in New York. And we approved transactions, dividend requests, rate requests and other regulatory matters after a thorough review, on the merits. In some cases, we imposed conditions to protect the consumer, such as in the CVS/Aetna transaction. And, we did the regular work of the agency – doing our best to make the trains run on time despite resource constraints and retirements.

As this discussion highlights, I think it is fair to say that my tenure put a focus on the agency's efforts on regulation and the setting of prudent industry standards. DFS had been known as a strong law enforcement agency prior to my arrival, and during my time we certainly held the industry appropriately accountable for violations of law. I collected over $3 billion in fines – mostly in the banking sector – which certainly is not chump change. Please, do not call me a Sheriff! But, you can definitely say that I am particularly proud of our regulatory work setting prudent industry standards and mandating restitution – over $400 million – for New York consumers.

We had two announcements yesterday that emphasize our focus on restitution to policyholders, in those cases for annuity and life insurance policyholders and beneficiaries. One involved pension transfers with a significant amount of consumer restitution, and the other involved denial of claims during the two-year contestable period, part of an industry investigation we launched over a year ago, and that also required restitution to beneficiaries unlawfully denied claims. We made clear that it is the insurer's burden to prove a material misrepresentation by the decedent, and that the insurer cannot unilaterally cancel the policy. These are just two examples, but our work on behalf of consumers was a focus throughout the agency – and something we are all very proud of. Where relevant, I was always willing to commend regulated institutions for their cooperation and commitment to provide restitution – as I did yesterday.

In fact, I made sure that we put consumers at the front and center of our work at DFS. We mediated many disputes and enforced the law to protect policyholders. We expanded our education and outreach programs throughout the state – on issues that included breast cancer screening, elder financial abuse, student loans, identity theft and foreclosure protections. We deployed our Mobile Command Unit on many occasions throughout the state during floods, storms and other emergency situations. We assisted in Puerto Rico's recovery following

Hurricane Maria by sending bilingual DFS examiners to assist the Insurance Department in Puerto Rico in responding to consumer complaints and questions. We engaged with New Yorkers at all levels, and reminded ourselves all the time that improving a single person's life every day is a job well worth doing.

My job as DFS Superintendent also involved proposing and commenting on legislation – and there was a lot of legislation to review and to propose. I testified on numerous occasions before the State Legislature, both in budget hearings and in subject matter hearings. DFS's work spans various legislative committees, including banks, insurance, finance, health and consumer protection. I worked with the chairs and members of all these committees.

We opposed legislation that we thought was not good for New Yorkers. There were a lot of bills and this task took a lot of effort – and really, nothing bad passed. At the same time, we worked with industry where we could reach agreement on legislation with which we shared a common point of view. For example, we supported the passage of legislation permitting accelerated death benefits policies as well as the implementation of principle-based reserving (PBR) in New York. With the Governor's signing of the PBR bill at the end of last year, I also issued an agreed emergency regulation affirming DFS's statutory authority to deviate from the NAIC Valuation Manual to adjust reserves, where necessary, in order to protect New York policyholders and the state's life insurance industry, another legacy action. And one made necessary by NAIC accreditation standards. It was not easy, but we got it done.

I am also proud that DFS successfully implemented New York's nation-leading Paid Family Leave Law. This is a disability insurance program, and it was up to DFS to implement the program, issue regulations, and set the rate for employee contributions. We implemented the program in year one – commencing January 1, 2018 – without a glitch, and the second year of the program is now up and running well. We have close to 30 insurers participating in the program – this is truly a national model, with New Yorkers benefitting from our paid family leave law.

Although this is an insurance crowd, a few words are in order for DFS's work in the banking space as well. Speaking of the times, I have been responsible for the regulation of crypto-currency and addressing the advent of internet lending and new so-called "fintech" companies. We have now licensed 16 virtual currency firms, and we have provided a regulatory framework that allows for innovation while protecting markets and consumers, by requiring high standards and compliance with law. We have worked hard organizationally to make this work – it is a new industry and a new task for DFS. The same can be said for the job we did implementing New York's new vacant and abandoned properties law – which includes a statewide registry at DFS and an inspection and enforcement mechanism. Done without a glitch, and within the same budget.

I have been a big proponent of New York's community banks and credit unions. We have vigorously fought against payday and predatory lending, strengthened New York State's banking charter and opposed the OCC's so-called national "fintech" charter, because it would unlawfully preempt state consumer protection laws and provide unfair competition to our state chartered banks. Focusing on financial inclusion, I have also increased our emphasis on the New York Banking Development District Program, which expands access to retail banking services and products for unbanked and underbanked consumers. During my tenure, we approved 8 new districts, in urban and rural areas where access to banking is limited, the last one approved today.

A few words about our enforcement work. No doubt, DFS is a strong law enforcement agency – and no one could fairly say that I was not tough. But DFS is at the same time a critical regulator and one cannot do enforcement without taking this important role into account. The job of a regulator is to support a fiscally sound industry and a regulator must be forward looking. During my three years, we worked very hard at our relationships with our regulated institutions, and with our federal and state government counterparts. We did many joint investigations and coordinated our resolutions. We also coordinated our examinations with other regulators to ensure the necessary improvements at the institutions, on fiscal soundness as well as compliance. We focused on our work in a forward-looking manner –

working with monitors and financial institutions on remediation plans so that there may no longer be failures leading to enforcement actions. We always considered the good faith of our institutions, and gave due credit to cooperation and self-reporting. These are very important principles that too often are neglected.

We also focused our work as regulator on corporate compliance and governance. Our transaction monitoring and cybersecurity regulations require certificates of compliance, to ensure that senior management takes the matters seriously. I spoke often about the importance of a culture of compliance, from the top down, and the importance of remedial measures and reforms. I saw that culture develop in a good number of our financial institutions. I witnessed our institutions really caring about things like financial inclusion and climate change. I saw community engagement and transparency with DFS as regulator. I never believed that we at DFS had to act in a difficult manner with our regulated entities to show that we possessed the power of the government. It is clear who has the power but the way to actually get things done is to be honest and direct and to appreciate the role that we each play in this business.

We also encouraged whistleblowers to come forward and meet with us. As one example of our broad approach, earlier this month, we did an enforcement action after a significant breach by a large bank in this area, and then we issued guidance to all regulated companies setting forth our view as to what constitutes an appropriately robust whistleblowing program that includes independent, easy-to-access channels; strong protections for a whistleblower's anonymity; and staff members adequately trained to receive and investigate whistleblowing complaints. We issued guidance in other areas as well, including on incentive compensation, marijuana banking, fair lending, and lending to rent stabilized buildings. I am proud that all of this, too, is part of my legacy at DFS.

It is important to mention that my job as Superintendent was not only to move these policy ideas forward and to regulate the industries under my supervision. I was also the manager of an agency of 1,400 employees with a $250 million budget. So, while we safeguarded the industry and protected consumers, we also undertook a top-to-bottom transformation of the agency from an organizational standpoint. We worked hard to remove silos that existed from DFS's two predecessor agencies, and we actually merged the titles in the agency to implement the merger organizationally. Many new areas were not even covered by existing titles – such as cybersecurity and virtual currency – so we spent over a year and a half working with the Civil Service Commission to modernize the agency titles – a legacy that will allow DFS to provide expanded career mobility, and the ability to hire experienced persons as the financial services industry continues to evolve. I also created a first-ever agency wide entry-level trainee program – an 18-month rotation for about 60 new hires. You might say that here I put my law firm experience to good use!

Our work to improve the agency's operations was broad and deep. We reorganized our Enforcement activities into a centralized Enforcement Division, leading to stronger coordination within the Department and consistency in approach. We created a new Compliance

Division, which took on new projects to modernize and streamline DFS procedures to ensure efficient and effective supervisory activities. We created a new Office of Financial Innovation to manage the agency's cybersecurity and virtual currency work; hired a new professional director of Training and one for Information Technology; and expanded our communications function to bolster our communications strategy and added a focus on internal communications in addition to our external activities. I sent out many messages from the Superintendent on holidays, published a monthly newsletter, gave several agency-wide speeches as well as town halls, and handed out numerous Superintendent Awards for exceptional service.

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When I announced my resignation in December, I chose February 1 as my departure date because I wanted to make sure some legislative initiatives would proceed. A few weeks ago, the Governor unveiled his executive budget, which includes important pieces of legislation that I have championed as Superintendent. First, on health care, as I mentioned, DFS has issued regulations over the past 24 months to protect New Yorkers from federal government actions. The Governor's budget now includes DFS's proposed language to put those regulations into statutory law, along with legislation to license and regulate pharmacy benefit managers – which are non-transparent entities that must be regulated in order to address the high costs of prescription drugs. In both the CVS/Aetna and Cigna/Express Scripts deals, at my insistence, the applicants agreed not to oppose our PBM legislation.

Second, I have been passionate about protecting our students. The federal Consumer Financial Protection Bureau (CFPB) recently disbanded its unit that protects student loan borrowers, making this initiative critically important. I am pleased that the Governor's Executive Budget includes a bill that will require all student loan servicers doing business in New York to be subject to regular examination by DFS. My last appearance before the state legislature was in early December, when I testified about our student loan bill. That timing was not an accident. I am hopeful that this year, this legislation will be passed.

There is so much more that I can discuss – and I am sure that I will have more to say in the future. This has truly been a great three years. Every day presented challenges that kept my brain happy – and opportunities that filled my heart. As a lawyer accustomed to billable hours, I never had to look for work – there was always work that was both intellectually challenging and personally rewarding. It is a unique gift to have had the privilege of a job like this one – running an agency, working with a great executive team, engaging with stakeholders on a wide range of important issues, and seeking to make a difference in people's lives. But no one person is entitled to hold this mantle for too long, and it is time for me to move on to the next chapter of my career, and I believe I have a few chapters left.

Back to history: When President Washington stepped down, he left a legacy of **strength, integrity and purpose** and an America better able to face the future and the challenges it held. In fact, his legacy is still felt today. Two of Washington's most prominent Cabinet appointees were Alexander Hamilton and Thomas Jefferson, who disagreed intensely about the role of the federal government, an issue with which we certainly wrestled with during my years at the helm of DFS.

Centuries later, two separate state regulatory agencies, the New York Banking Department and the New York Insurance Department, came together – that was just 8 years ago. I can say without a doubt in my mind that DFS is the leading state regulator in the country. I had the privilege of serving in this role for New York – proudly, as a born and bred New Yorker in the financial capital of the world and the progressive capital of the nation. While being New York's regulator gave me this incredible platform, I knew that my duty was to not only protect and enhance the agency's reputation but also to use that platform for the public good and to lead in areas where we had the ability to make a difference, <u>if</u> we did it right. I believe we did it right, every time, with **strength, integrity and purpose**.

As I started to seriously think about my exit some months ago, my goal was to leave DFS as an organization better than I found it, and to improve the lives of New Yorkers for the better. I feel very good about having achieved these goals. With a terrific team, we created a stronger, more efficient and more unified agency, more committed and more equipped to fulfill its broad mandate. We created a DFS that worked for the people and that is well equipped to handle the challenges and pursue the opportunities of the future. And we undertook many key initiatives – including the ones I have mentioned this morning – that will have **lasting** impact well beyond our time here.

Throughout my career, though it has largely been in the private sector, I have always dedicated substantial time to public pursuits – whether through pro bono work, nonprofit board service, or government service. This was my third stint in government service – and who knows what the future will bring. So much of my career success has not been particularly planned in advance. I did not apply for this job, and it has been a great ride. It has always been my belief that public service is a gift that is not owned by any individual person – and that one's time in public service should be judged not by how that service rewards one's personal pursuits, but by the impact of that service on the lives of real people. I will leave DFS this Friday knowing that every day I dedicated my energies to the service of the People of this great State and to tangibly improving their lives for the better. That, to me, is my personal legacy.

Thank you all for your partnership throughout these three years. I hope we stay in touch, and I look forward to my next chapter(s), as I'm not done yet.

I'm happy to take a few questions, if we have time.