

NYDFS TO INDUSTRY: NY MEANS BUSINESS WHEN IT COMES TO HAVING A LICENSE TO DO BUSINESS

The New York State Department of Financial Services (NYDFS) has taken several high-profile enforcement steps in recent months against entities alleged to have taken advantage of doing business in New York State without the necessary regulatory license. Enforcement activity against the National Rifle Association (NRA), Athene Holding Ltd., as well as Trinity Healthshare and Aliera, serve as reminders that NYDFS takes very seriously the obligation to abide by New York statutory licensing requirements.

This is for good reason — businesses that operate in New York without a license can cause serious repercussions for consumers and industry alike. Such conduct can result in serious consumer harm, because unlicensed entities can skirt important and well-established consumer protections. And doing business without a license also can seriously injure businesses that have obtained licenses, because unlicensed entities can sharply reduce costs and increase profits if they can avoid important regulatory requirements.

So to protect both consumers and industry, NYDFS has taken three notable enforcement steps in recent months based on allegations of unlicensed activity. First, in early February 2020, following a lengthy investigation, NYDFS brought an enforcement action against the NRA in an administrative proceeding. Among other things, the agency alleged that the NRA acted as an unlicensed insurance producer when marketing a particular “self-defense” insurance to its members, and also engaged in misleading marketing towards its members in doing so. [The charges remain pending.](#)

Additionally, in April 2020, via a Consent Order, NYDFS settled its allegations of unlicensed activity with Athene Holding Ltd. According to the Consent Order’s findings, Athene entered into 14 large-scale pension risk transfer transactions involving thousands of New York policyholders, two of which involved New York-based plan sponsors covering tens of thousands of individual policyholders. Because a large bulk of the arranging of these transactions – by which an insurance company assumes the obligation to cover the long-term pension payments of a company’s employees – clearly occurred in New York, a license was required. [Athene paid a \\$45 million fine](#) for this conduct.

And, again this April, NYDFS issued a cease and desist letter to Trinity Healthshare, a Christian association, and Alieria, a for-profit company, for operating health care plans that NYDFS alleges are essentially health insurance plans, which must be offered by a licensed insurer. Typically, a cease and desist letter issued by NYDFS has the force of law. According to a media report, “[n]early 8,000 New Yorkers are currently enrolled in the group’s plans, and regulators are concerned that the coronavirus crisis could lead people who recently lost insurance when they lost their job to pick one of these plans rather than find one through the state insurance marketplace or enroll in Medicaid.” NYDFS Superintendent Linda A. Lacewell stated that the Department “[will use all the tools at its disposal to crack down](#) on those who mislead or deceive New Yorkers, especially during a pandemic.”

So businesses be advised: even though the New York legislature apparently failed this month to give NYDFS enhanced authority to go after unlicensed activity, the Department will continue to use its current arsenal to restrain such conduct, in order to protect consumers and those businesses that continue to play by the rules. In other words, New York is open for business – just don’t forget to bring your license.