Insurance Industry Eyes European Regulation: Report

By Linda Chiem

Law360, New York (July 23, 2012, 10:01 PM ET) -- The U.S. insurance industry will continue to be challenged by Dodd-Frank provisions and new rules that took effect in the first half of this year governing unclaimed life insurance or death benefits, but developments in Europe will heavily influence U.S. insurance policy going forward, according to a report released Friday by Sutherland Asbill & Brennan LLP.

In the wake of the financial collapse four years ago, recent initiatives meant to tighten oversight of the insurance sector are progressing, causing new hurdles for insurance companies to make sure they’re in compliance, and reforms in Europe in particular are among those that will have a significant impact, the report said.

“Regulatory reform initiatives focused on oversight of complex groups continue apace at both the federal and state levels — although perhaps with less of a sense of urgency as the 2008 financial crisis recedes in the rear view mirror,” the report said. “U.S. insurance regulation continues to be increasingly influenced by regulation outside the U.S.”

The 30-page report, which recapped the major insurance developments during the first half of the year, said the European Commission’s solvency reforms and consumer protection initiatives, which still have uncertain timetables, will continue to influence insurance policy in the U.S. well into 2013.

The European Commission is seeking to establish a sweeping solvency plan, which applies to insurance groups, using a refined risk measurement by which capital is to be more accurately allocated to risk. It’s meant to take into account market, credit, operational risk, underpinned by proper governance standards in firms, all under the supervision of a national or multinational, regulatory body, according to the report.

The commission last month also announced new consumer protection initiatives, such as requiring more disclosure for insurance products to make sure consumers aren’t sold investments or insurance that aren’t suitable for their needs or circumstances, the report said.

“EU proposals of this nature impose burdens on the regulator and firms,” the report said.
The report said the industry still is awaiting the highly anticipated report on insurance regulatory modernization, a product of Dodd-Frank, from the U.S. Treasury’s Federal Insurance Office. The report, to be released later this year, is expected to address overhauling the insurance industry, including possibly having federal oversight of an industry currently regulated at the state level.

Under Dodd-Frank, the Federal Insurance Office was created to identify nonfinancial companies, such as insurers, with liquidity risks that threaten the financial system. The office still is finalizing its metrics for designating those companies as “systemically important financial institutions.” But once designated as an SIFI, a company would then fall under the supervision of the Federal Reserve, which is a level of scrutiny that excluded insurers up until now, according to the report.

The report also said the use of investigations and enforcement to make public policy endures, specifically noting an increase in multistate investigations into how insurers handle unclaimed death benefits.

For example, more than 40 state insurance regulators have hired Verus Financial LLP to investigate certain life insurers’ claims practices. Another 35 state treasurers have hired Verus to conduct aggressive unclaimed property audits of certain life insurers, according to the report.

“The regulatory initiatives are attempting to shift the burden to the insurer to determine whether an insured is deceased and benefits are payable by requiring periodic sweeps of an insurer’s entire book of business against the U.S. Social Security Administration’s death master file,” the report said. “In the process, regulators have created significant compliance uncertainty among all life insurers.”

The report singled out the May 14 emergency promulgation of New York’s Insurance Regulation 200, which requires all life insurers doing business in the state to immediately start identifying unclaimed death benefits, the report said.

The new rules require insurers to develop reasonable procedures for locating beneficiaries and for making prompt payments or distribution of benefits, as part of a multistate effort forcing insurers to comply with state unclaimed property laws.

The report said it will be challenging for insurers to implement the procedures because of inconsistent regulatory obligations and short deadlines for what would be significant system changes.

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