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EXCERPTS FROM SUPERINTENDENT LAWSKY'S REMARKS ON FOREIGN EXCHANGE TRADING, WALL STREET ENFORCEMENT, AND HEALTH CARE PAYMENT REFORM IN ALBANY, NY

Benjamin M. Lawsky, Superintendent of Financial Services for the State of New York, is delivering the inaugural Massry lecture today at the State University of New York at Albany.

The following are excerpts from Superintendent Lawsky's remarks on foreign exchange trading, Wall Street enforcement, and health care payment reform as prepared for delivery.

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Excerpts from Superintendent Lawsky's Remarks at the Inaugural Massry Lecture at the
State University of New York at Albany
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As Prepared for Delivery

Wall Street Enforcement/Foreign Exchange Trading

In the wake of the financial crisis, many Americans have been deeply disappointed by efforts to hold individual, senior executives on Wall Street accountable for misconduct, including the lack of criminal prosecutions.

Indeed, we almost always see bank settlements in which a corporation writes a big check to the government without any individual Wall Street executives held to account. And in our opinion, if in any particular instance we cannot find someone, some person, to hold accountable, that just means we have stopped looking.

A "corporation" is just a legal fiction. It hasn't acted. Corporations are made up of people. If there is wrongdoing at a corporation, that wrongdoing was committed by people.

Moreover, even if there are certain circumstances where the misconduct does not rise to the level of criminal fraud, civil financial regulators can also play a role in imposing individual accountability. While the New York State Department of Financial Services (DFS) does not have authority to bring criminal prosecutions, it has taken a number of actions to expose and penalize misconduct by individual senior executives – including all the way up to the C-Suite, when appropriate.

For example, NYDFS required the Chief Operating Officer of France's largest bank, BNP Paribas, and the Chairman of one of the United States' largest mortgage companies, Ocwen Financial, to step down as part of enforcement actions brought against those companies.

In fact, we settled a case earlier today with a large German Bank – Commerzbank – which required the termination of several employees, including the individual then serving as the head of anti-money laundering compliance for its New York branch.

We by no means claim that our agency has squared the circle on enforcement. I doubt we get it right in every case. But we have sought increasingly to move toward individual accountability in the resolution of these settlements. And it is our hope that it will help spur others to do the same.

Indeed, there is still an opportunity to chart a new course in enforcement at Wall Street banks moving forward. While the statute of limitations clock has run out on many of the financial-crisis-era cases, the same cannot be said for more recent misconduct on Wall Street.

As is well known and documented in public filings, a number of enforcement agencies are currently investigating

recent market manipulation on Wall Street in foreign exchange trading and other areas.

To state the obvious: *Markets do not just rig themselves.* It requires deliberate misconduct by individuals.

Despite the complexity of the financial products at issue, a lot of the misconduct that occurs on Wall Street boils down to simple fraud.

If you deliberately deceive your customers and investors for financial gain, you have committed fraud. At the end of the day, fraud is just a series of lies told to line your pockets or increase your firm's bottom line.

The ongoing market manipulations investigations could represent an important test of whether we have learned the lessons of the financial crisis and are willing to move toward greater individual accountability for misconduct at Wall Street banks.

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Health Care Payment Reforms

More than any time in a generation, this is a moment of great opportunities and challenges in the health care market.

In New York, with the advent of federal health care reform, we have made the most of the opportunities presented by the Affordable Care Act. Under Governor Cuomo's leadership, our state's health exchange has enrolled more than 2 million New Yorkers in coverage. And for those enrolled in individual commercial health insurance, premium rates are less than half of what they were before federal health care reform.

Yet we still have pressing challenges ahead:

- **Cost.** Our most critical challenge is cost—US health care costs are among the highest in the world, and New York's health care spending per capita is 22 percent higher than the U.S. average.
- **Quality.** Despite high expenditures, our state's quality of care by most measures is close to the national average, while the prevalence of preventable chronic conditions such as diabetes is rising quickly in New York State, as it is nationwide. We also rank 50th among states for avoidable hospital use and 40th for ambulatory care-sensitive admissions.

Suboptimal health care quality means less healthy, less productive New Yorkers. And out-of-control health care costs hinder economic development for the state. Continuing to improve quality and reduce costs is a crucial issue for both consumers and business.

We cannot simply just cut or suppress premium rates and call it a day as regulators. We have to work to address the underlying growth in the cost of health care – which is, in some ways, partly beyond the control of insurers – if we want to continue making meaningful strides in affordability and reducing the upward pressure on premium rates.

We are working to address those challenges here in our state through three main objectives: (1) improved health, (2) better health care quality and consumer experience, and (3) lower costs.

We seek to achieve this by working on many areas, including: increased access to coverage for all New Yorkers; integration of primary, specialty and behavioral care; transparency of both quality and cost; population health; and paying for value. Although any one of these would be a worthy topic of discussion, today I will focus on paying for value.

While many factors contribute to the trend of higher health care costs, one commonly recognized problem is the use of fee-for-service payments to providers. Under fee-for-service, insurers pay hospitals and physicians a fee for each service that they perform. This payment model rewards providers for doing more without regard to the quality, efficiency, or outcome of the procedures.

We need to move increasingly away from the fee-for-service model and toward solutions that deliver better, lower cost results for consumers.

Alternative payment models would reward providers for quality care, and measure outcomes and adherence to best practices. In this way, we can align incentives and pay for a delivery system that rewards improved quality, not just quantity.

Over the past several years, New York has been – in certain respects – an incubator of health care innovation. New models for payment and care delivery are being spearheaded by physicians, health systems, and other providers, with the active support of multiple consumer groups, our business community, as well as Medicare, Medicaid, the New York State Health Insurance Program (the State employee benefit plan), and more than a dozen private health insurers operating in the State.

In the commercial market, a recent DFS survey showed that every major health insurer was engaged in some form of payment reform effort. That is good news. However, the DFS survey also found that, for most insurers, the payment reform models were pilot projects, accounting for less than 15 percent of their provider payments.

Indeed, in New York, fee-for-service is still the rule rather than the exception. And we need to work to change that.

DFS's role in this effort will be crucial. As the state's chief health insurance regulator, we are considering ways of using our authority to promote payment reform. But we face two key questions: What are the most effective alternate models of payment reform? And how will DFS promote the adoption of those models?

Models of Reform

The DFS survey I previously referenced identified a variety of alternate payments models insurers are currently utilizing. These range from "pay-for-performance" models, where providers simply receive additional payment for meeting certain quality metrics; to capitation models, where providers are paid a per-member per-month fee to provide care to the member that meets quality metrics.

We will be working with groups of providers, insurers, consumers and business to identify, standardize and measure the success of payment reform models. A focus of payment reform will be on Advanced Primary Care, or APC. APC seeks to establish care coordination and preventative care as a recognized way to reduce costs and improve health. Many studies show that good primary care, with an emphasis on care coordination and electronic medical records, keeps people out of more expensive specialty or inpatient care.

Payment for Reform

Once we identify the most effective alternate payment models working with key stakeholders, we need to ensure that we create incentives that move us in that direction.

DFS intends to use its regulatory oversight to encourage commercial health insurers to move to alternate payment models.

In some cases, that may simply mean clearing away existing regulatory hurdles. For example, DFS will work to ensure timely approval of products with tiered networks, where insurers offer lower copayments to providers that meet certain payment reform standards. Such value-based insurance designs are another method for insurers to help improve quality and reduce costs.

In other cases, DFS may use our rate review authority to encourage payment reform. The prior approval statute allows DFS to review rates for "reasonableness." One element of a reasonable rate request may be whether an insurer is adhering to payment reform targets set with stakeholder input. This could be a powerful incentive for insurers to bring payment reform efforts to scale.

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