New York Insurance Association

March 18, 2024

via e-mail: innovation@dfs.ny.gov
Adrienne A. Harris, Superintendent
NYS Department of Financial Services
One State Street, New York, NY 10004

Re: Comments on Proposed Circular Letter on the use of AI and ECDIS in Insurance Underwriting and Pricing

Dear Superintendent Harris:

I am writing to comment on the above-captioned proposed circular letter on the use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing, which was released by the New York State Department of Financial Services (DFS) on January 17, 2024.

The New York Insurance Association (NYIA) is the state trade association that has represented the property and casualty insurance industry in New York for more than 140 years. We offer feedback on behalf of the membership of NYIA, property and casualty insurance companies writing a wide variety of lines and varying in both size and scope. Thank you for the opportunity to comment on this proposed circular letter. NYIA offers the feedback below for your consideration, in an effort to ensure any guidance offered in such letter, is as clear, accurate, relevant and applicable as possible.

Artificial intelligence, and the accompanying use of external consumer data, is a rapidly emerging technology, where applications are evolving at unprecedented speed. Although comparisons have been made to DFS's novel regulation of cyber security, the basis for that technology had been developed for over 50 years prior to its regulation. In contrast, artificial intelligence has merely transformed from the theoretical to the barely possible, in less than a decade. These systems are not only in their technological infancy, but their development is occurring at such breakneck speed, it is doubtful that present day systems may not even be recognizable in the very short term.

NYIA fully recognizes that such facts present a serious challenge for regulators, who have the responsibility to assure the safety, security, and solvency of the insurance marketplace. But with such an important emerging technology, prudence guides that any actions by state regulators, should be carefully contemplated.

As aforementioned, the current action of DFS in this space is being advanced by means of a proposed circular letter and going forward this circular will have no legal implications or ramifications. This circular is merely a statement of how DFS interprets existing laws, such as statutes, and corresponding regulations, as well as case law, in a subject matter area.
However, this proposed circular letter does not interpret existing law but instead advances the position of the DFS on what the department ***believes*** the law should be, with the proposal not including citations

to the legal justifications for its positions. This is a very questionable use of a circular letter, and any comment on the same should be based upon its underlying statutory and related regulation or case law authority, of which there is none, for this emerging technology and evolving practice. One of the fundamental tenants of any law, is its foundational elements. Aspiration, no matter how well intended, does not qualify, and would certainly make any issuance of a circular letter, or regulation, based on the same, subject to serious legal challenge. Our specific comments are being offered with the understanding that this proposed circular is questionably legal since it is an opinion devoid of any reference to any corresponding statute or regulation.

In many instances, the current proposed circular letter advances solutions to which no problems yet exist and calls upon insurance companies to take actions that are ill advised, not fully informed and impractical. This is not a condemnation of the intent of DFS to try to get its proverbial hands around this emerging technology. Instead, it is merely a present-day assessment of this proposal seeking to control problems that may never occur, with new problems likely being created by the advancement of this effort. One key related point is since the proposed circular letter does not reference existing law, DFS is relying on a set of overly broad and insufficiently focused definitions and directives within the proposed circular letter.

In this attempt to capture the novel and unknown, and its fear of unspecified and undeveloped potential problems, DFS has cast an overly wide net, which can dramatically affect current legal and accepted insurance operations, that have little or nothing to do with either artificial intelligence or external consumer data and information sources. Courts have a long history of looking with serious circumspection at efforts of regulators that lack specificity and are overly broad and insufficiently focused.

It is with that perspective that NYIA, and our member companies, will seek however, to provide a detailed itemization of the many challenges that this proposed circular letter would present to the current insurance marketplace. We are hoping that this itemization, presented in Exhibit A, which is from insurers, who engage in the work of underwriting and pricing insurance on a daily basis, will prove helpful to DFS, as you seek to address potential challenges our modern age presents.

In closing, I would like to thank DFS for the opportunity to present comments on this extremely important topic. We would greatly appreciate DFS continuing to work with the insurance industry in relation to developing an effective, accurate, reasonable, and reliable use of artificial intelligence and external consumer data, to better serve our policyholders. We appreciate a recognition of the challenges that all parties have, and will experience, in crafting these solutions, and stand ready to work with DFS to find the right pathway that will meet the needs of all concerned.

Please feel free to contact me if you have any questions or wish to discuss this matter further. Thank you again for your consideration of our comments.

Sincerely,

Ellen Melchionni

Ellen D. Melchionni
President

Exhibit A

Subdivision One, paragraphs 1 through 8 of the proposed circular letter advance a purpose and background with respect to DFS's guidance in the use of AIS and ECDIS.

Subdivision One, Paragraph 3:

Our members' concerns begin with Subdivision One, Paragraph 3 of the proposed circular letter, which states that its purpose, is to identify DFS's expectations, that all insurers develop and manage their use of external consumer data and information systems, artificial intelligence systems, and other predictive models, in underwriting and pricing insurance policies and annuity contracts.

Clearly, this purpose shows that DFS wants to show some action in this advanced technology space, but such statement also demonstrates, at the same time, that DFS is somewhat reluctant to expressly define, exactly what that action, will be. Predictive models, for instance, have long been in existence, and nowhere in this proposed circular letter is there any actual definition as to what these "expectations" actually are.

Additionally, paragraph 3 also states that, "it is critical that insurers who utilize such technologies establish a proper governance and risk management framework to mitigate the potential harm to consumers." If such statement is to be taken at face value, does this mean that this proposed circular letter does not apply to commercial insurance transactions? Such should be clarified, and if commercial lines are indeed to be included within the scope of this proposed circular letter, a specific justification of this intent should be included within its terms. There is clearly a difference in the commercial and noncommercial consumer, and to merely lump the two together, by means of inexplicit definitions is not appropriate.

Subdivision One, Paragraphs 4 and 5:

In crafting any proposed circular letter, DFS should keep in mind that artificial intelligence and external consumer data are both simply tools. They are not methods or means unto themselves. This quintessential, essential and unavoidable fact, however, is not reflected in the definitional paragraphs four and five of the proposed circular letter. Accordingly, these definitions contained within paragraphs 4 and 5 respectively, are incredibly vague, overly broad, insufficiently focused, and extremely uncertain. These are not advisable characteristics for definitions, which are generally held by courts to be unsustainable.

More specifically, nowhere in the definition of artificial intelligence contained in paragraph 4 is there any reference to algorithmic programing, neural networks, machine learning, or any of the other customary descriptions that accepted science uses to identify this new, emerging technology. Instead, this definition in paragraph 4, attempts to describe what artificial intelligence systems might possibly do, instead of what they actually are. In taking this approach, such definition, unfairly seeks to capture all possible scenarios, and again, results in an incredibly vague, overly broad, insufficiently focused, and extremely uncertain definition of this technology.

This is also true for the definition of external consumer data and information Sources (ECDIS) in paragraph 5. Here again, this definition focuses on what can be done with this data, rather than what it actually is. It is described through its use, by describing its supplementation of "traditional" medical, property or casualty underwriting or pricing. Not only is this description using the term "traditional" extremely amorphous, vague and completely in the eye of the beholder, but this definition is also absent of all the essential and customary identifiers that data and actuarial science actually use to describe types

of “data” itself. Therefore, once again, by taking the approach to describe its use, rather than what the data actually is, this definition in paragraph 5, also, by its very construction, unfairly seeks to capture all possible scenarios, and is again, unacceptably vague, overly broad, insufficiently focused, and extremely uncertain.

In crafting the definition, in paragraph 4, DFS should incorporate accepted scientific definitions for what artificial intelligence actually is. This definition should further consider what technologies are actually, currently being used by insurers, that would be considered artificial intelligence systems under such accepted scientific definitions.

Additionally, any definition of artificial intelligence should also include the encouraging of innovative, pro-policyholder, and novel aspects of AI, so to allow for its potential benefits under a workable/flexible framework. Such a definition should therefore also exclude rule-based reasoning, so that property and casualty insurers, who have used such reasoning for generations, would not be inadvertently captured in the all too wide net of the definition contained within the proposed circular letter. Currently used rule-based reasoning, does not have to involve machine learning or recursive self-improvement, and should not be inadvertently swept into this overly broad definition.

Any definition of artificial intelligence should also recognize the currently permitted methods by an insurer to underwrite or price, including but not limited to, such methods as an insurer’s use of business intelligence or straight through processing of data. NYIA and our members are hopeful that it is not the intent of this proposed circular letter, to prohibit existing practices or methods of underwriting or pricing, that this overly broad and insufficiently focused definition could well do. Additionally, the definition of artificial intelligence systems contained in the proposed circular letter, which is currently so overly broad, nondescriptive, and insufficiently focused, could apply to any use of generalized linear models (or even just use of a computer).

The phrases “functions,” “normally associated,” and “supplement traditional” are also so extremely expansive that they would require regulatory interpretation in the proposed circular’s implementation, likely leaving carriers exposed to differing interpretations, and leaving DFS subject to avoidable litigation and court challenges.

More specifically, this definition of AIS, contained in paragraph 4, which contains the clause “designed to perform functions normally associated with human intelligence,” could further result in any telematics score information, voluntarily given by a policyholder to their insurer, under existing law, as being deemed to qualify as artificial intelligence, because such telematics scores represent the relative riskiness of the drivers (which would normally be associated with human intelligence because this is what underwriters do) and such are, under law, allowed to be used in establishing policy pricing.

This also means, that if a model were simple, like a generalized linear model (GLM) or even simpler, like a simple average, then such would also qualify as artificial intelligence under this overly broad definition contained in paragraph 4, for nowhere does this definition distinguish on the model structure.

Clearly the use of convolutional neural networks should be classified as artificial intelligence, but this overly broad, insufficiently focused definition in paragraph 4, would also capture GLMs or gradient boosting machines (GBMs), which have nothing to do with AI technology, other than as a possible metric to be calculated by such.

With respect to ECDIS, and its definition in paragraph 5, many variables based on external data have been used for years or decades for pricing or underwriting. As an example, credit-based insurance scoring, prior carrier information, and motor vehicle reports, have all been used for decades in the pricing and underwriting of private passenger automobile insurance.

The proposed circular letter specifically mentions that motor vehicle reports are not included in the definition of ECDIS but does not expressly specify whether credit-based insurance scoring and prior carrier information, which as aforementioned, have been used for a long time, with a high degree of risk assessment reliability, would be included—and they should be included.

The proposed circular letter further needs to clarify in paragraph 5, what would constitute "external data and information sources," so that such would not include informational data feeds, mapping data (including GPS landmarks or speed limits), or a third-party providing a consumer credit or insurance score.

If DFS's intent is just to include external consumer data, then such definition should define whether it applies to individualized consumer data, aggregated consumer data, or both, as such would represent the difference between an individual visiting a point of interest, versus total foot traffic at a point of interest (such as Yankee Stadium), which represent very different ideas from a consumer privacy standpoint.

Lastly, this definition in paragraph 5, by its silence, further fails to provide direction as to whether the guidance in the proposed circular letter applies to all ECDIS, or merely ECDIS used in connection with artificial intelligence. If intended for all ECDIS, then such is both unfair and misguided, as much of the information contained in that description has been successfully used for generations, without incident or complaint, and it is difficult to comprehend or justify why this proposed circular letter would now seek to severely restrict its effective and long-term use at present.

Once again, both the definitions of paragraphs 4 and 5 take the wrong approach, both factually and legally, and really need to be reconsidered. Using factually based, scientifically accepted definitions, instead of unfairly seeking to capture all possible scenarios of what AI and data can do, would eliminate this unacceptable vagueness, narrow the scope and focus, and provide more certain and acceptable definitions of what AI and data actually are.

Subdivision One, Paragraph 6:

Although insurers appreciate DFS's recognition in paragraph 6, that there is no one-size-fits-all approach to managing data and decisioning systems, the fact that DFS now seeks to advance a regulatory strategy of what is reasonable and appropriate to each insurer's business model, such is so overly broad and amorphous, as again, to be without specificity. Such declared reasonableness and appropriateness undoubtedly will not be left to the regulated entity's viewpoint, thereby providing insurers with a very subjective standard within which to navigate.

Subdivision One, Paragraph 7:

Paragraph 7 of the proposed circular letter states that the "Circular Letter is not intended to provide an exhaustive list of potential issues that could arise from the use of ECDIS or AIS and is not intended to suggest that an insurer's due diligence in assessing ECDIS or AIS should be limited to the concerns enumerated" and that the "Circular Letter also is not intended to address phases of the insurance product lifecycle other than underwriting and pricing."

Although such a "catch all" provision is not terribly unusual in statutes or regulations that exhaustively enumerate many issues, such is not helpful in a document that purports to offer industry guidance. For by means of this disclaimer DFS seriously calls into question the entire guidance document, essentially telling insurers that there may be a lot more actions they may need to take, that DFS may not know what such are, or wish to discuss such at present, but please know there may be much more that your company may need to do. This seriously undermines the very nature and purpose of this guidance, expressly stating that even if an insurer follows everything contained therein DFS may not view that such insurer has done enough.

Subdivision One, Paragraph 8:

A serious question also arises with respect to paragraph 8 of the proposed circular letter. Such paragraph allegedly authorizes DFS to "audit and examine an insurer's use of ECDIS and AIS, including within the scope of regular or targeted examinations pursuant to New York Insurance Law §309, or a request for special report pursuant to Insurance Law §308." Sections 308 and 309 of the insurance law authorize the Department to conduct audits and examinations in accordance with its regulatory authority to assure that the insurance law and its regulations are being adhered to in order to protect the interests of the state and its citizens. With respect to AIS and ECDIS there are no such regulations or statutes that govern their administration. This proposed circular letter does not have the effect of law, and offers no standing alone upon which DFS may perform an investigation, audit or examination. Such bootstrapping is without legal merit, and this paragraph should be removed as a matter of law.

If DFS insists on treating the proposed vircular letter as a regulation, which is certainly legally circumspect, and decides to flex its powers of audit and examination, based only on the issuance of non-binding guidance, then at the very least, DFS should include an addition to Paragraph 8, to include a "safe harbor" provision, where an insurer who has taken reasonable measure to follow the provisions of the proposed circular letter, should be exempt from the burdens of such audits and examinations.

Subdivision Two, Paragraphs 9 through 15 of the proposed circular letter advance certain fairness principles with respect to the use of AIS and/or ECDIS.

It should be noted at the outset that these paragraphs in subdivision two, however well-intentioned in their aspirations, do not reflect consideration of the current accepted and approved underwriting and pricing methodologies used by insurers, regardless of whether artificial intelligence systems or external consumer data and information sources are even deployed in such use or not.

Subdivision Two, Paragraph 9:

Specifically, Paragraph 9 specifies that "an insurer should not use ECDIS or AIS for underwriting or pricing purposes if such use would result in or permit any unfair discrimination or otherwise violate the Insurance Law or any regulations promulgated thereunder." This direction, in and of itself would be fine, except that it is amplified by Paragraph 14 of the proposed circular letter, which provides that an "insurer should not use ECDIS or AIS in underwriting or pricing unless the insurer can establish through a comprehensive assessment that the underwriting or pricing guidelines are not unfairly or unlawfully discriminatory in violation of the Insurance Law."

These paragraphs, when taken together, as surely they must be, again do not reflect consideration of the actual underwriting and pricing methodologies used by insurers under the Insurance law.

In order to prevent unfair discrimination in the first place, before it could even take place, most insurers simply do not collect, and therefore do not maintain, any demographic information on race or other

similar race or other similar protected class. They do, of course, collect and maintain permissible demographic information that is relevant to rating and underwriting (such as age, gender or marital status). Accordingly, as they do not collect or maintain any such information which could be used to unfairly or unlawfully discriminate, there is simply no information to test against, or any way to prove that their underwriting or pricing guidelines are not unlawfully or unfairly discriminatory.

This failure to collect and maintain such demographic information, which is the absolute best way to prevent and protect against such unfair and unlawful discrimination, effectively means that insurers are inherently unable to use this information they do not collect or maintain to prove that they do not discriminate. But this affirmative proof required in Paragraph 14, will leave insurers at a loss to demonstrate that their underwriting or pricing guidelines, which are not in fact discriminatory, and cannot be, are not so unfairly or unlawfully discriminatory in violation of the Insurance Law. As one cannot prove a negative, the plain fact of the matter is you cannot use information to prove that you do not do something, that you never collect or maintain in the first place.

As a result, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting and maintaining race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is simply not discriminatory as a matter of law.

To not include such disclaimer, would require insurers to begin collecting and maintaining race or other similar protected class demographic data, so that they can thereafter test against the same, to satisfy the provisions of Subdivision Two, to unnecessarily demonstrate that their practices, which currently cannot be, are in actuality nondiscriminatory. If this is the direction DFS wishes to pursue, such would be highly ill advised and extremely counterproductive, to the very purpose of assuring equality and nondiscrimination.

Additionally, any such misguided requirement that a change in pricing and underwriting practices must be undertaken, and to now require the collection and testing of such race or other similar protected class data, would have to additionally specify how the race or other similar protected class should be determined, and under what circumstances. Direction would further have to be provided if race should be imputed under this context, and under what specifics on which algorithm, and under which version of the algorithm, so as to ensure that all insurers are using the same methodology. All this for seriously questionable benefits.

It must be remembered that the existing framework of laws and regulations, in the insurance marketplace, already, currently include extremely substantial safeguards designed to prevent every source of unlawful discrimination and illegal conduct. DFS, which oversees these existing anti-discriminatory laws and regulations with respect to insurance companies, should fully understand that any underwriting and pricing process that would use the tools of artificial intelligence and/or external consumer data and information sources, are still, and always will be, required to comply with this existing legal framework of these antidiscrimination laws, and that no additional measures are advisable.

Subdivision Two, Paragraph 10:

In contrast to the above, the initial provisions of Paragraph 10, make direct sense when considering the the incorporation of artificial intelligence and/or external consumer data and information sources for both pricing and underwriting. Such paragraph states, that as with any other variables employed in underwriting and pricing, “insurers should be able to demonstrate that the ECDIS are supported by

generally accepted actuarial standards of practice and are based on actual or reasonably anticipated experience, including, but not limited to, statistical studies, predictive modeling, and risk assessments."

One of the very challenges of artificial intelligence is the ability of the user to understand and defend its outcomes, as sometimes its results can get somewhat ahead of its programmers. Insurers do need to be able to demonstrate that such results are within verifiable and generally accepted actuarial standards of practice and are based on actual or reasonably anticipated experience. Statistical studies, predictive modeling, and risk assessments are the fundamental building blocks of quality insurance underwriting, and quality insurance underwriting is the very foundation of accurate pricing for insurance products. Understanding the parameters and results of an AI produced report, for either underwriting or pricing, is essential for both confidence and accuracy of desired results.

The second part of Paragraph 10, however, which requires that the "underlying analyses should demonstrate a clear, empirical, statistically significant, rational, and not unfairly discriminatory relationship between the variables used and the relevant risk of the insured," is problematic. Like the above discussion on Paragraphs 9 and 14, this second provision of Paragraph 10, regarding the proof that there is no unfairly discriminatory relationship, carries with it the same problems referred to above in the concerns of paragraphs 9 and 14.

Accordingly, once again, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 11:

Paragraph 11 of the Circular Letter provides that "Insurers must be able to demonstrate that the ECDIS employed for underwriting and pricing are not prohibited by the Insurance Law or regulations promulgated thereunder and should be able to demonstrate that they do not serve as a proxy for any protected classes that may result in unfair or unlawful discrimination." Again, this paragraph contains the same exact problems as has been outlined with respect to paragraphs 9 and 14 above.

Additionally, Paragraph 11 never defines the word "proxy" which can be used in in different ways, and this paragraph should be more explicit in its definition. If its meaning targets what is known as a "statistical proxy," then such definitely should further defined. Statistical proxy discrimination would occur if a rating plan variable draws all or some of its power as an insurance loss predictor from its correlation to race, for example, rather than from its own power to predict insurance loss. This is simply not occurring, and again is seeking protections from imagined, nonapproved conduct.

Moreover, the language in Paragraph 11 that insurers must validate that any ECDIS does not serve as a proxy for race or other similar protected class information appears to impose the misguided and ill-advised requirement that insurers actually will have to now acquire ECDIS with race or other similar protected class information or leverage their AIS to perform such analysis (such as the Bayesian Improved First Name Surname Geocoding method).

This requirement would reverse the long-standing protections that most insurers use in not collecting or maintaining such data to prevent discrimination in the first place. By now advising insurers to restrict access to the data or techniques required to assess if there is a disparate impact or determining if data serves as a proxy for race or other similar protected classes would make it incredibly difficult to live into

DFS's view laid out in this proposal. Beyond this, there would also be questions of whether there are filing implications here to demonstrate that the company has evaluated their ECDIS for race or other similar protected class information to follow the guidance in this paragraph.

Additionally, this section is misplaced when it uses the term insurers "must." A circular letter, which is purely advisory and does not have the force or effect of law, cannot direct, mandate or compel a regulated entity to affirmatively do anything. So this mandate to demonstrate that the ECDIS employed for underwriting and pricing are not prohibited by the Insurance Law or regulations promulgated thereunder is nowhere within DFS's statutory and regulatory authority. This proposed circular letter is neither statute nor regulation and cannot be legally used to bootstrap a demand for an insurer to prove anything, not required by statute or regulation.

Furthermore, once again, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 12:

Paragraph 12 of the circular letter further reiterates the challenges mentioned aforehand with respect to unfair and unlawful discrimination, when its provides that "State and federal law prohibits insurers from unlawfully discriminating against certain protected classes of individuals and from engaging in unfair discrimination, including the ability of insurers to underwrite based on certain criteria" and that an "insurer should not use ECDIS or AIS in underwriting or pricing unless the insurer has determined that the ECDIS or AIS does not collect or use criteria that would constitute unfair or unlawful discrimination or an unfair trade practice."

In consideration of this paragraph, it bears repeating that DFS should recognize, whether using artificial intelligence or external consumer data and information sources or not, most insurers do not collect and do not maintain demographic data on race or other similar protected classes. Again, this is as a safeguard to assure that such information is not used for unfair or unlawful discrimination purposes. Each paragraph within this subdivision should recognize the value and importance of that practice, and not suggest it be reversed to prove the type of conduct which it fears, which cannot under such circumstances be perpetrated, and in actuality is not.

So once again, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 13:

This paragraph repeats the same problems and challenges as the others aforementioned above when its states that when "using ECDIS or AIS as part of their insurance business, insurers are responsible for complying with these antidiscrimination laws irrespective of whether they themselves are collecting data and directly underwriting consumers, or relying on ECDIS or AIS of external vendors that are intended to be partial or full substitutes for direct underwriting or pricing."

As with paragraph 12, when considering this paragraph, it again bears repeating, that DFS should recognize, whether using artificial intelligence or external consumer data and information sources or not, that most insurers do not collect and do not maintain demographic data on race or other similar protected classes. This is, again, as a safeguard to assure that such information is not used for unfair or unlawful discrimination purposes. Each paragraph within this subdivision should recognize the value and importance of that practice, and not suggest it be reversed to prove the type of conduct which it fears, which cannot under such circumstances be perpetrated, and in actuality is not.

This paragraph could further place, without exception, vendor responsibility on insurers. Traditionally, no insurer has ever been held responsible in a circumstance where a vendor commits fraud or intentionally misleads the insurer. To now rewrite this standard, would now unfairly impose an unprecedented and unnecessary issues and financial cost, that would have to be passed on to the policyholders. So once again, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 14:

Most of the concerns regarding Paragraph 14 were previously recounted within the discussion of Paragraph 9 above.

When this paragraph states that an "insurer should not use ECDIS or AIS in underwriting or pricing unless the insurer can establish through a comprehensive assessment that the underwriting or pricing guidelines are not unfairly or unlawfully discriminatory in violation of the Insurance Law" such statement reiterates all the challenges aforementioned with proof of nondiscrimination when insurers do not collect or maintain race or other similar protected class data in the first place.

One additional problem is that the term "comprehensive assessment" is nowhere defined, and would definitely need to be clarified. For example, here, in this paragraph, DFS refers to comprehensive assessments, but in Paragraph 15, it refers to "testing methodologies." Does DFS see any distinctions or differences between the two, or can these terms be used interchangeably?

Lastly, it needs to again be reiterated, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Within Subdivision Two, Paragraphs 15 through 18 of the proposed circular letter advance guidance on the analyzation of the use of ECDIS or AIS for unfair or unlawful discrimination.

Subdivision Two, Paragraph 15:

This paragraph provides that an "insurer should appropriately document the processes and reasoning behind its testing methodologies and analysis for unfair or unlawful discrimination commensurate with the insurer's use of ECDIS and AIS and the complexity and materiality of such ECDIS and AIS" and

that an "insurer should be prepared to make such documentation available to the Department upon request."

Once again, this paragraph raises all the exact same issues on unfair and unlawful discrimination aforementioned. Such misconduct is simply not occurring, is prohibited, with there being enacted laws to prevent it. Even more importantly, the current practices of insurers to not collect or maintain such demographic data, which could be used to perpetrate such conduct, further protect against this unseemly, unlawful and impermissible activity.

Additionally, any testing, to assure against unlawful and unfair discrimination under the present protocols that insurers use to prevent such conduct, would be unnecessary. As aforementioned, there are numerous laws and protocols already deployed by insurers to prevent this misconduct sought to be prevented, whether AIS or ECDIS is used or not. The using of these additional tools in no way would make it more likely or possible. To impose these testing requirements would be unwise, duplicative, and unnecessary.

With all that said, it needs to again be reiterated, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 16:

Paragraph 16 provides that "unfair or unlawful discrimination testing, and analysis should be administered prior to putting AIS into production and on a regular cadence thereafter, as well as whenever material updates or changes are made to either the ECDIS or AIS."

Once again, this paragraph raises all the same exact issues on unfair and unlawful discrimination aforementioned. Such misconduct is simply not done, is prohibited, and there are existing laws that prevent it. Even more importantly, the current practices of insurers to not collect or maintain such demographic data, that could be used to perpetrate such conduct, further protect against this unseemly, unlawful and impermissible activity.

Additionally, any testing, to assure against unlawful and unfair discrimination under the present protocols that insurers use to prevent such conduct, would again be unnecessary. As aforementioned, there are numerous laws and protocols already deployed by insurers to prevent this misconduct sought to be prevented, whether AIS or ECDIS is used or not. The using of these additional tools in no way would make it more likely or possible. To impose these testing requirements would be unwise, duplicative and unnecessary.

Moreover, this paragraph, entitled "Frequency of Testing" also implies that this unnecessary testing, from which insurers who do not collect or maintain information on race or other similar protected class should be exempt, would have to be performed repeatedly at extensive resources, with no benefit to policy holders.

With all that said, it needs to again be reiterated, as with the other paragraphs above, if DFS truly wants to discourage illegal discrimination with the use of AIS or ECDIS in underwriting and pricing, then it must also include within this subdivision of the proposed circular letter, a provision that deems the

recognized practice of not collecting race or other similar protected class demographic data in the first place, as prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision Two, Paragraph 17:
Although quantitative and qualitative assessment of the use of AIS or ECDIS with respect to its use in pricing and underwriting is both prudent and advisable, targeting such assessments for unfair and unlawful discriminatory practices, which are already covered by multiple protections, whether AIS or ECDIS is used or not, is ill advised, unnecessary, and duplicative. To that point, involving unfair and unlawful discrimination, this paragraph raises all the same exact issues aforementioned. Such misconduct is simply not done, is prohibited, and there are existing laws that prevent it. Even more importantly, the current practices of insurers to not collect or maintain such demographic data, that could be used to perpetrate such conduct, further protect against this unseemly, unlawful and impermissible activity.

Additionally, any testing, to assure against unlawful and unfair discrimination under the present protocols that insurers use to prevent such conduct, would again be unnecessary and consume resources. As aforementioned, there are numerous laws and protocols already deployed by insurers to prevent this misconduct sought to be prevented, whether AIS or ECDIS is used or not. The using of these additional tools in no way would make it more likely or possible. To impose these testing requirements would be unwise, duplicative, and unnecessary.

Other areas of quantitative assessment however, would be perfectly appropriate. As the use of AIS and ECDIS are both emerging areas, serious oversight, security and accuracy protocols and testing should be performed on a regular basis. Unlike testing for unlawful and unfair discrimination, these subject matter areas concerning the accuracy, methodologies and adherence to actuarial principles of the use of AIS or ECDIS, can be tested to deliver comprehensive understanding. Insurers should indeed use multiple statistical metrics in evaluating data and model outputs to ensure such comprehensive understanding and appropriate assessments. The cost of this testing is understandable to assure accuracy and reliability, while using emerging technology. This is the area that should be the focus this proposed circular letter.

Subdivision Two, Paragraph 18:
Although quantitative and qualitative assessment of the use of AIS or ECDIS with respect to its use in pricing and underwriting is both prudent and advisable, targeting such assessments for unfair and unlawful discriminatory practices, which are already covered by multiple protections, whether AIS or ECDIS is used or not, is ill advised, unnecessary, and duplicative.

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The cost of this testing is understandable to assure accuracy and reliability, while using emerging technology. Again, like in Paragraph 17 above, this is the area that should be the focus this proposed circular letter.

One area of this paragraph, however, states that insurers should be able to explain "the intuitive logical relationship between ECDIS and other model variables with an insured or potential insured individual's risk." A cautious approach should be taken in considering variable bans or limitations to variables on the basis that a variable is judged to be unintuitive. Judgments on whether a variable is intuitive or logical may vary between individuals and, when cost-relevant variables are banned or limited, insurers cannot robustly match risk and price, which can cause instability in the insurance marketplace, including problems with insurance availability.

NYIA and our members agree that rating plans should not be arbitrary nor capricious. Providing an explanation that a rational person could accept as possible is one way to ensure that a rating plan is not either arbitrary nor capricious, but there are other ways. For instance, a correlation with driving behaviors provides a rational explanation for an automobile insurance rating plan variable. If variable bans and limitations are considered based on whether they are judged to be intuitive, legislators and regulators should carefully assess how to keep insurers on a level playing field to ensure that they do not experience adverse selection or even insolvency.

As aforementioned several times herein, insurers intentionally do not collect information regarding race or other similar protected classes that would be assessed in the testing contemplated by this paragraph. Since insurers do not collect or maintain such information, a provision that deems the recognized practice of not collecting race or other similar protected class demographic data in the first place, should be added to this subdivision, declaring such to be prima facia proof, that the use of the AIS or ECDIS, without such collected data, is not discriminatory as a matter of law.

Subdivision 3, Paragraphs 19 through 35 of the proposed circular letter, advance guidance concerning the corporate governance and risk management aspects of the use of ECDIS or AIS.

Subdivision Two, Paragraph 19:

This paragraph of the proposed circular letter provides that 11 NYCRR Section 90.2, "requires an insurer to have a corporate governance framework that is appropriate for the nature, scale, and complexity of the insurer" and that 11 NYCRR Section 90.1(c) "defines 'corporate governance framework' as 'the structures, processes, information, and relationships used for the oversight, direction, control, and management of an insurer or system and for ensuring compliance with legal and regulatory' requirements." This paragraph continues that an "insurer should have a corporate governance framework that provides appropriate oversight of the insurer's use of ECDIS and AIS to ensure compliance with the Insurance Law and regulations promulgated thereunder."

By its terms, this paragraph seems to merely suggest that any insurer should have a corporate governance framework that allows it company to follow the law, albeit the statute that consists of the New York Insurance Law, or the duly promulgated regulations within 11 NYCRR promulgated thereunder. An insurer's obligation to follow the law, is without argument or question, and as such this paragraph is merely an advisory restatement of that obligation.

Within Subdivision 3, Paragraphs 20 through 23 of the proposed circular letter, advance guidance concerning Board and Senior Management Oversight of the use of ECDIS or AIS.

Subdivision Three, Paragraph 20:
Paragraph 20 states that the "role of an insurer's board of directors, or other governing body, is to provide oversight of the insurer's activities, including providing for an effective governance framework to carry out the board's or other governing body's strategic vision and monitor the entity's risk appetite."

Although the term "entity's risk appetite" is somewhat unconventional, and not defined, it is unquestioned, that as an insurer's governing body, it is the role of the board of directors to establish and direct the execution of the insurer's strategic vision, as well as plan for and supervise the risk and actions taken by the insurer in its business operations under the Insurance Law.

Subdivision Three, Paragraph 21:
Paragraph 20 states that the "board of directors, or other governing body, may delegate specific duties and authorities for overseeing an insurer's activities, including development and management of ECDIS and AIS, to board or other governing body committees and senior management" and that when "delegating specific duties and authorities, an insurer should ensure appropriate lines of reporting are in place, along with regular, quality reporting to meet the board's or other governing body's information needs." This paragraph further specifies that such reporting "should include all timely and relevant facts for a board or other governing body to understand the material activities and risks associated with the insurer's use of ECDIS and AIS."

Although all corporate boards bear the responsibility of all actions that occur under their watch, it is not, nor should not be, the traditional role of board members to seriously micromanage on a granular scale, all the operations of their corporation. To require such, seriously confuses the role of board members with the that of the officers, employees, and consultants that such board members oversee. To expect any board member to be completely fluent with every intimate aspect of every operation of artificial intelligence or external consumer data and information sources used by the insurer, is not only unrealistic, but is also duplicative, ineffective, and unreasonable. The role of the board is oversight, not direct execution or implementation. They receive reports and information on these operations, they do not, and should not, directly design, manage or operate them. Such design, management and operation needs to be performed on the granular level by the officers, employees, and consultants hired by the board, who are charged with the responsibility of assuring that any AI or ECDIS used, is accurate, effective, and operated within the bounds of the law.

DFS recognized this fact when it promulgated regulation on cybersecurity, realizing that board members are not the cyber experts, but merely must take reasonable measures to direct and oversee the experts in this field that they hire to perform these duties. This is even true with respect to management, where the bulk of such is left to corporate officers, employees, and consultants, who have a much more knowledge on the day-to-day operations and expertise in their area of responsibility.

For this reason, it should be senior management, and not board members, who are assuring that any AI or ECDIS used, is accurate, effective, and operated within the bounds of the law. There should be a reporting up to the board from senior management on this issue. To suggest a delegation down from the board, implicitly infers a granular understanding that next to no board member will ever possess. The role of the board is policy and oversight, not management. To this degree, it is senior management that is best positioned to provide oversight over the development and management of ECDIS and AIS in accordance with an organization's enterprise risk management framework.

Subdivision Three, Paragraph 22:

Paragraph 22 declares that senior "management is responsible for day-to-day implementation of the insurer's development and management of ECDIS and AIS, consistent with the board's or other governing body's strategic vision and risk appetite" and that this "includes establishing adequate policies and procedures, assigning competent staff, overseeing model risk management, ensuring effective challenge and independent risk assessment, reviewing internal audit findings, and taking prompt remedial action when necessary."

Again, although the term "entity's risk appetite" is somewhat unconventional, and not defined, it is unquestioned, that as an insurer's governing body, the board of directors, who must establish and direct the execution of the insurer's strategic vision, but it should be the role of the senior management, (the officers, employees and consultants tasked by the board) to assure that any AI or ECDIS used, is accurate, effective, and operated within the bounds of the law.

It should be senior management, and senior management alone, that should be responsible for the establishment of adequate policies and procedures, the selection and assignment of competent staff, the oversight of model risk management, the ensuring of effective challenge and independent risk assessment, the review of internal audit findings, and the taking of prompt remedial action when necessary.

Subdivision Three, Paragraph 23:

Lastly, Paragraph 23 declares that in "carrying out their duties to provide for effective implementation of the insurer's use of ECDIS and AIS, senior management should ensure all relevant operation areas are appropriately engaged, such as through a cross-functional management committee with representatives from key function areas, including legal, compliance, risk management, product development, underwriting, actuarial, and data science, as appropriate."

While this paragraph intends to assure that insurers provide sufficient oversight through their senior management over the use of AI and ECDIS, the specific requirement of a formally established cross-functional management committee is extreme, unnecessary, and unduly overburdensome. Including expertise with knowledge of legal issues, risk management issues, underwriting issues, actuarial issues, pricing, and data science, would prove helpful in such efforts.

Further within Subdivision 3, Paragraphs 24 through 29 of the proposed circular letter, advance guidance concerning policies, procedures and documentation that insurers are advised to deploy with the use of ECDIS or AIS.

Subdivision Three, Paragraphs 24, 25 and 26:

Paragraph 24 provides that insurers "that use ECDIS or AIS should formalize their development and management of ECDIS and AIS in written policies and procedures consistent with this Circular Letter," while Paragraph 25 provides that an "insurer's board of directors, or other governing body, or senior

management through delegated authority, should review and approve the insurer's ECDIS and AIS-related policies and procedures at least annually to ensure that they are kept current with changes in the insurer's use of ECDIS and AIS and best practices in the industry." Paragraph 26 provides that "[p]olicies and procedures should include clearly defined roles and responsibilities, as well as monitoring and reporting requirements to senior management."

While written policies and procedures for the use of AI or ECDIS would prove a prudent approach, and despite the fact that these paragraphs do use the advisory term "should," these statements come very close to the line of regulatory directive more than guidance advice, especially when concluded with the phrase "consistent with this Circular Letter."

Additionally, in accordance with the previous comments regarding the issues of corporate governance expressed above, senior management should have and maintain the oversight of the use of AI and ECDIS. For reasons stated previously, such oversight should be upward, consistent with reporting to the board, and not downward, through board delegation.

Lastly, the advice that the insurer's policies and procedures on the use of AI and ECDIS should include clearly defined roles and responsibilities, as well as monitoring and reporting requirements to senior management, is again prudent and responsible.

Subdivision Three, Paragraph 27:

Paragraph 27 provides that the policies and procedures, referred to in the previous paragraphs, "should include training for relevant personnel on the responsible and lawful use of ECDIS and AIS, appropriately tailored to staff responsibilities" and that "the training program should include prompt training for new staff and a regular cadence for training thereafter, as well as accountability for completing training in a timely manner."

There is little question that training should be component of any use of AI or ECDIS. Such, however, does have a cost in both staff time and dollars. Any such training should be consistent with the extent of the AI or ECDIS use, the size and scope of the insurer involved, and the scope and benefits such training will provide. A one size fits all approach, like as intimated in paragraph 6, is not appropriate.

Subdivision Three, Paragraph 28:

Paragraph 28 provides that insurers "should maintain comprehensive documentation for their use of all AIS, including all ECDIS relied upon for such AIS, whether developed internally or supplied by third parties consistent with 11 NYCRR 243, and be prepared to make such documentation available to the Department upon request."

Although the maintenance of relevant records for the use of technologies as AI and ECDIS is inherently good practice, this paragraph is far too prescriptive and overreaching. In addition to declaring that insurers must be prepared to make this retained, advised documentation, which is from an extremely arduous and extensive list, available to the department upon request, no consideration is given to the individual characteristics of an entity, including the extent of use of AI or ECDIS, or any other critical factors.

Moreover, once again, this document is a proposed circular letter, and not a statute or corresponding regulation. There is simply no justification or legal authority for DFS to require the production of the documentation identified in this paragraph to DFS. The production of documents is an aspect of the DFS's statutory and regulatory authority. This proposed circular letter is neither and cannot be legally

used to bootstrap a request for documents, not required by statute or regulation, to be maintained or produced.

Subdivision Three, Paragraph 29:
This paragraph provides that insurers "must be prepared to respond to consumer complaints and inquiries about the use of AIS and ECDIS by implementing procedures to receive and address such complaints" and that insurers "must maintain any records of complaints regarding AIS or ECDIS in accordance with 11 NYCRR 243 and be prepared to make such records available to the Department upon request."

As aforementioned in paragraph 28 above, this document is a proposed circular letter, and not a regulation or statute. There is simply no justification or legal authority for DFS to require the production of the documentation identified in this paragraph to DFS. Equally, it cannot direct that insurers must respond and address consumer complaints.

This section is misplaced when it uses the term insurers "must." A circular letter, which is purely advisory and does not have the force or effect of law, cannot direct, mandate or compel a regulated entity to affirmatively act. The production of documents is an aspect of DFS's statutory and regulatory authority. So is any requirement to maintain consumer records or respond to consumer complaints. This proposed circular letter is neither statute nor regulation, and cannot be legally used to bootstrap a request for documents, not required by statute or regulation, to be maintained or produced. This entire paragraph is extreme overreach and without legal merit and should be completely redacted.

Further within Subdivision 3, Paragraphs 30 through 33 of the proposed circular letter, advance guidance concerning risk management and internal controls that insurers are advised to use in connection with ECDIS or AIS.

Subdivision Three, Paragraph 30:
Paragraph 30 of the proposed circular letter provides that insurers "should manage the relevant risks at each stage of the AIS life cycle and should consider risk from individual AIS models and in the aggregate" and that insurers "may choose to manage the risks of AIS within an existing enterprise risk management function, as required by the Insurance Law, or separately as part of an independent program."

Risk management should be an essential element within the use of AI or ECDIS. The flexibility with which this paragraph advances will help insurers integrate this important mechanism for use with these emerging technological tools of AI and ECDIS.

Subdivision Three, Paragraphs 31 and 32:
Paragraphs 31 and 32 of the proposed circular letter provide that insurers "should include standards for model development, implementation, use, and validation, and promote independent review and effective challenge to risk analysis, validation, testing, development, and other processes related to an insurer's ECDIS and AIS development and risk management" and that insurers "should have competent and qualified personnel to execute and oversee AIS risk management with clearly defined roles and responsibilities, and appropriate means of accountability."

These paragraphs advise that insurers should maintain standards for model development, implementation, use, and validation, and promote independent review and effective challenge to risk

analysis, validation, testing, development. This is prudent risk management practice and will help to assure the integrity and accuracy of the AI or ECDIS deployed by the company.

The provision that insurers should have competent and qualified personnel to execute and oversee AIS risk management with clearly defined roles and responsibilities, and appropriate means of accountability, is also prudent procedure for risk management and AI. Such should, as aforementioned, however, consider the size of the company, its number of employees, extent of AI or ECDIS use, and other relevant factors.

Subdivision Three, Paragraph 33:

This paragraph advises that 11 NYCRR Section 89.16 "requires an insurer to have an internal audit function to provide general and specific audits, reviews, and tests necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations." It further provides that insurers "should ensure the internal audit function is appropriately engaged with the insurer's use of ECDIS and AIS consistent with the financial, operational, and compliance risk."

This paragraph also provides that such "auditing should assess the overall effectiveness of the AIS and ECDIS risk management framework," and includes a wide variety of examples.

The first part of this paragraph offers prudent guidance as audit and review of AI and ECDIS is unqualifiedly essential to its success, operation, accuracy and reliability.

The second part of the paragraph, which once again asks insurers to determine whether their use of Ai or ECDIS may result in unfair or unlawful discrimination against insureds or potential insureds, is once again problematic for all the myriad of reasons offered in response to all the questions in subdivision two above. Additionally, a very serious question is also raised as to whether the internal auditing teams of all insurers will actually have capability to perform what would be required by this paragraph, as well as the question of cost to create, train, and maintain such infrastructure and the personnel to manage it. Such extensive costs would be passed on to the policyholders.

Within Subdivision 3, Paragraphs 34 through 35 of the proposed circular letter, advance guidance concerning third party vendors that insurers deploy with the use of ECDIS or AIS.

Subdivision Three, Paragraphs 34 and 35:

Paragraph 34 provides that insurers "retain responsibility for understanding any tools, EDCIS, or AIS used in underwriting and pricing for insurance that were developed or deployed by third-party vendors and ensuring such tools, EDCIS, or AIS comply with all applicable laws, rules, and regulations" and paragraph 35 provides, that to "ensure appropriate oversight of third-party vendors, insurers should develop written standards, policies, procedures, and protocols for the acquisition, use of, or reliance on ECDIS and AIS developed or deployed by a third-party vendor" and that "insurers should put in place procedures for reporting any incorrect information to third-party vendors for further investigation and update, as necessary" and that "insurers should develop procedures to remediate and eliminate incorrect information from their AIS that the insurer has identified or has been reported to a third-party."

With respect to these paragraphs, insurers should be allowed to rely on ECDIS providers to adhere to guidance given the details around EDCIS and AIS are frequently part of the proprietary nature of a product. Alternatively, ECDIS and AIS providers could obtain approval from the DFS for use of their products that all insurers could then rely on. If this burden is placed on insurers, DFS should offer more

clarity around the information vendors need to provide to insurers and how insurers will test for disinformation.

A further concern is whether these provisions overreach and apply to oversight of third-party vendors, that are in widespread, customary use. If such is the case, it is more than unreasonable to require an insurer to actually know the complete business of the third-party vendor. The expertise of the third-party vendor is in many cases the very reason why such vendors are retained, and it would be highly irresponsible and counter productive to make insurers have to know the third-party vendor's business as well as their own insurance business.

These paragraphs also indicate that insurers have to be aware of and validate all third-party information. This is something insurers simply cannot do in many instances, and this requirement is too much of an overreach and frankly an impossibility.

As a result, these over strenuous requirements may not simply be tenable in the marketplace. Moreover, products sold by third party vendors are typically proprietary in nature and accessing the underlying information may not be feasible due to competitive concerns. Also, products sold by third party vendors are sometimes used because insurance companies just don't have the infrastructure in place to collect the data or the expertise to build the intellectual property. A more tenable solution would be having third party vendors and DFS engage directly on the proposed guidance in relation to these vendors.

Within Subdivision 4, Paragraphs 36 through 40 of the proposed circular letter, advance guidance concerning transparency and disclosure and notice when insurers deploy the use of ECDIS or AIS.

Subdivision Four, Paragraph 36:
Paragraph 36 outlines certain transparency sections of article 34, 42 and 24 of the insurance law. As these are sections of current law, insurers are required to follow their relevant requirements.

Subdivision Four, Paragraph 37:
Paragraph 37 provides that where "an insurer is using ECDIS or AIS, the reason or reasons provided to the insured or potential insured, or a medical professional designee, should include details about all information upon which the insurer based any declination, limitation, rate differential, or other adverse underwriting decision, including the specific source of the information upon which the insurer based its adverse underwriting or pricing decision."

There are currently disclosures in place for adverse actions based on consumer reports under the Fair Credit Reporting Act. If this provision is intended to go beyond the FCRA, DFS should clarify as to what is now included in their definition, when a notice would have to be sent to a consumer, and what would have to be included in the notice.

Additionally, it should be noted that this paragraph 37 is contrary to current statutes and regulations governing reasons provided to policyholders for an adverse underwriting decision.

Subdivision Four, Paragraph 38:
Paragraph 38 provides that the "notice should disclose to the insured or potential insured, or a medical professional designee, (i) whether the insurer uses AIS in its underwriting or pricing process, (ii) whether the insurer uses data about the person obtained from external vendors, and (iii) that such person has the right to request information about the specific data that resulted in the underwriting or pricing decision, including contact information for making such request."

This provision, again, is an overreach without any basis in law or regulation. A proposed circular letter cannot confer consumer rights, nor impose new disclosure requirements on insurers.

Subdivision Four, Paragraph 39:

Paragraph 39 provides that an "insurer may not rely on the proprietary nature of a third-party vendor's algorithmic processes to justify the lack of specificity related to an adverse underwriting or pricing action." This provision, is also an extreme overreach, without any basis in law or regulation. A Proposed Circular Letter cannot violate proprietary contract rights, nor impose new disclosure requirements on insurers with respect to the degree of specificity they must comply with. These are the sole properties of statutes.

Subdivision Four, Paragraph 40:

Paragraph 40 provides that the "failure to adequately disclose the material elements of an AIS, and the external data sources upon which it relies, to a consumer may constitute an unfair trade practice under Insurance Law Article 24." As aforementioned, it should be noted, again, that this attempt to establish a failure to adequately disclose material elements of an AIS (and the external data sources upon which it relies) to a consumer as an unfair trade practice under Insurance Law article 24, in this paragraph is highly improper. A proposed circular letter is neither a statute nor a regulation, and accordingly cannot be legally used to bootstrap a violation of Insurance Law article 24. As aforementioned, this proposed circular letter is merely advisory, and as such, cannot legally create a new unfair trade practice.