

## New York Adopts Safe Harbor Protections for Qualified Financial Contracts in Insurance Company Insolvency Proceedings

On December 12, 2011, New York added a new Section 7437 to Article 74 of its insurance law adopting a version of the provisions of the National Association of Insurance Commissioners' ("NAIC") Insurer Receivership Model Act relating to the treatment of qualified financial contracts and netting agreements in an insolvency proceeding of a New York state regulated insurance company. New York joins 17 other states in adopting these safe harbors.<sup>1</sup>

Although insurance companies frequently utilize derivatives transactions, securities lending, repurchase transactions and other financial market transactions ("qualified financial contracts" or "QFC's") to manage risk and provide liquidity, the enforceability of netting, closeout and collateral foreclosure rights under QFCs and netting agreements with insurers has been questionable. While federal legislation exists recognizing and allowing enforcement of such rights under QFCs and netting agreements with other potential debtors (i.e., debtors under the U.S. Bankruptcy Code and banks under the Federal Deposit Insurance Act), insurer insolvency proceedings are governed by state law. With the adoption of this new legislation, New York aligns its state insurance law with federal law, as well as New York state banking law, which itself contains special insolvency provisions applicable to QFCs entered into by New York State branches of foreign banks, and provides much certainty to the enforceability of the contractual rights of a New York insurer's counterparties under QFCs and netting agreements in the event of the insurer's rehabilitation or liquidation.

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<sup>1</sup> Arizona, Delaware, Illinois, Indiana, Maine, Massachusetts, Minnesota, Missouri, Ohio, Utah, and Virginia have all adopted versions of the QFC and netting agreement provisions from the NAIC's Insurer Receivership Model Act, while Connecticut, Iowa, Maryland, Michigan, Nebraska, and Texas have adopted similar provisions from the NAIC's prior model act, the Insurers Rehabilitation and Liquidation Model Act. Tennessee currently is considering a bill to adopt the QFC provisions of the Insurer Receivership Model Act.



If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed under the “Derivatives” or “Bankruptcy and Restructuring” section of our website at <http://www.cgsh.com>.

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