

July 2, 2009

**VIA EMAIL AND OVERNIGHT MAIL**

Insurance Commissioner Steve Poizner  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Tel: 916-492-3500  
Fax: 916-445-5280

**Re: Terrorism Financing Probe**

Commissioner Steve Poizner,

On June 29, 2009, your office announced increased efforts to probe investment ties in Iran by California-based insurance companies in an effort to divest any direct holdings in the Iranian government. As you may know, on April 28, 2009, the House Financial Services Committee also approved the *Iran Sanctions Enabling Act of 2009* (H.R.1327 / S.1065) which authorize State and local governments to divest public funds from companies doing business in Iran. The House of Representatives, however, has delayed placing the matter on its calendar out of fear that it could benefit hardliners in Iran and interfere with President Obama's policy of engagement. Without commenting on the legitimacy of these aims and the laws in question, the Iranian American Bar Association ("IABA") is concerned with a number of legal issues presented by your proposal which we hope your office can provide clarity on:

1. Currently there is no Congressional approval authorizing States to divest from companies operating in Iran. In the past, federal courts have generally held that similar efforts are unconstitutional measures since they violate the President's exclusive Constitutional authority over foreign affairs. *See generally Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003) (holding that California's Holocaust Victim Insurance Relief Act of 1999 was unconstitutional by undercutting the President's diplomatic discretion); *Nat'l Foreign Trade Council, Inc. v. Giannoulias*, 523 F. Supp. 2d 731 (N.D. Ill. 2007) (enjoining enforcement of the Illinois Act to End Atrocities and Terrorism in the Sudan for violating the Supremacy Clause and Foreign Affairs Clause). While we are not convinced that divestment from Iran, particularly after recent post-election violence, is an inappropriate act politically or legally, our organization and our members are interested in learning what Constitutional authority your office is relying upon in its efforts to address these concerns.
2. According to your press release, the State Insurance office will specifically focus on investments of companies doing business in the banking, nuclear, or defense sectors of

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Iran. As you may know, a considerable number of Iranian-Americans residing in California continue to have families in Iran or provide humanitarian services and/or aid to Iranians. The transfer of these funds and/or services are currently controlled by regulations promulgated by the U.S. Department of Commerce, U.S. Department of the Treasury, and the U.S. Department of State. These agencies, generally, allow money and services to be transferred to Iran for humanitarian and familial support. We were hoping that your office can provide assurances that individuals and/or companies or non-governmental organizations providing humanitarian support in Iran will not be targeted by your efforts.

3. Recently, as you may know, our organization has monitored a rise in increased criminal prosecution of individuals in violation of the current sanctions regime. While as an organization we have no position on the issue of sanctions, we are concerned that many of those who being prosecuted, reside abroad and are unaware of U.S. laws and regulations. While we understand your office's concerns, our organization was wondering what, if any, measures were being undertaken to communicate the nature and effect of these regulations and your efforts to the broader Iranian community.

We thank you again for the opportunity in allowing us to comment on this matter. Please feel free to contact me at [nmilaninia@iaba.us](mailto:nmilaninia@iaba.us) or (650) 644-7169 in case you have any questions. We hope to assist your office in making any determinations on this issue and would be willing to appear at any future hearings which may impact the Iranian-American community.

Very truly yours,

IRANIAN AMERICAN BAR ASSOCIATION

Nema Milaninia, Esq.  
*President*

**DEPARTMENT OF INSURANCE**

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**VIA ELECTRONIC TRANSMISSION ONLY**

July 22, 2009

Nema Milaninia, Esq.  
Iranian American Bar Association

Re: Commissioner's Terrorism Financing Probe

Dear Mr. Milaninia:

Thank you for your July 2, 2009 letter on behalf of the Iranian American Bar Association ("IABA") inquiring about the Insurance Commissioner's investigation of Iranian-related investments by insurers doing business in California. On behalf of the Commissioner, I welcome your questions and offer the following in response.

Your letter contains three inquiries.

First, you seek clarification that the Commissioner's actions will not interfere with federal law or the United States' foreign policy relating to Iran. The Commissioner specifically crafted his terrorism financing probe to avoid conflict with federal law and foreign policy related to Iran.

The Commissioner's initiative has two parts. The first part is a directive to all "domestic" insurers (i.e., insurers set up under the laws of California, of which there are approximately 150), to comply with California Insurance Code Section 1241.1. That statute, which went into effect on January 1, 2009, prohibits domestic insurers from acquiring "any investment respecting a foreign jurisdiction" designated by the United States Secretary of State as a state sponsor of terrorism and "any investment denominated in the currency of" such a jurisdiction. Ins. Code § 1241.1(a). If a domestic insurer already has such an investment or subsequently acquires one, the statute requires the insurer to divest from it. Ins. Code § 1241.1(b). The Secretary of State has designated Iran as a state sponsor of terrorism.

To implement Section 1241.1, the Commissioner specifically directed all domestic California insurers to certify that they have no holdings in (a) the government of Iran, (b)

“instrumentalities” of the government of Iran (i.e., entities that are controlled by or affiliated with the government of Iran), or (c) investments denominated in the currency of Iran. The Commissioner’s implementation of Insurance Code Section 1241.1 is consistent with United States Department of the Treasury regulations. (See, e.g., 31 C.F.R. §§ 535.101-535.905, 560.101-560.901 & 596.101-596.901).

The second part of the Commissioner’s initiative is a data call to all insurers “admitted” in California (i.e., licensed to do business in California even if domesticated in another state, of which there are approximately 1,400). It is important to note that the second part of the Commissioner’s initiative is *not* a directive to divest; rather, it is a request for information. The data call directs insurers to identify all investments they have in companies doing business in four sectors of the Iranian economy: nuclear, petroleum/natural gas, defense, and banking. The United States has expressed concern about support of some of those sectors, as reflected in federal statutes. (See, e.g., Iran Nonproliferation Act of 2000, Pub. L. No. 106-178, 114 Stat. 38; Iran-Iraq Arms Nonproliferation Act of 1992, Pub. L. No. 102-484, Title XVI, 106 Stat. 2315, 2571-75; Iran Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541; Iran Freedom Support Act, Pub. L. No. 109-293, 120 Stat. 1344; see also Executive Order 13059, 62 Fed. Reg. 44531 (Aug. 19, 1997).)

In addition, given political and economic uncertainty, the nuclear, petroleum/natural gas, defense, and banking sectors in Iran are potentially unstable. Investments in companies doing business in those sectors also, therefore, are potentially unstable. The Commissioner has responsibility to ensure the soundness of insurer investments. Understanding insurer investment portfolios related to Iran falls within that responsibility.

In short, the Commissioner believes that both parts of his terrorism probe – a directive to domestic California insurers to comply with California Insurance Code Section 1241.1 and a data call to all insurers admitted in California to identify their investments in companies doing business in specific sectors of the Iranian economy – are consistent with federal law and federal foreign policy regarding Iran.

IABA’s second inquiry is whether the Commissioner’s actions might restrict the efforts of non-governmental organizations or others to provide humanitarian support in Iran. The Commissioner does not intend his actions to undermine such efforts. The Commissioner will follow the same provisions related to humanitarian assistance to Iran as are provided under federal law. (See, e.g., 31 C.F.R. §§ 560.530, 560.532, 560.536 & 560.537.)

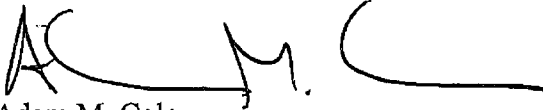
IABA’s third inquiry asks about criminal prosecution of individuals for violations of federal sanctions laws related to Iran. The Commissioner’s actions are directed solely at insurers domesticated or doing business in California. The actions are not directed at Iranian nationals, citizens of the U.S. of Iranian descent, or other individuals. The Commissioner’s actions should not, therefore, have any direct effect on those individuals. The Department of Insurance is not in a position to provide guidance on steps that Iranian nationals, citizens of the U.S. of Iranian

Nema Milaninia, Esq.  
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descent, or other individuals should take to comply with federal laws related to business transactions in Iran.

Thank you again for your inquiries. Please feel free to contact me if you have further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A.M.C.', with a long horizontal stroke extending to the right.

Adam M. Cole  
General Counsel

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