
FIA investor barred from New York insurance

By Kerry Pechter *Thu, Oct 10, 2013*

Philip A. Falcone of Harbinger Capital Management may not exercise control over a New York-licensed insurance company for seven years, by order of the New York Superintendent of Financial Services, Ben Lawsky.

New York Superintendent of Financial Services Ben Lawsky has ordered hedge fund impresario Philip A. Falcone barred from exercising direct or indirect control over the management, policies, operations, and investment funds of Fidelity & Guaranty Life Insurance Co. of New York (FGL-NY) or any other New York-licensed insurer for a period of seven years.

The order was a consequence of the Aug. 16 Securities and Exchange Commission (SEC) consent action against Falcone and Harbinger Capital Partners LLC.

Lawsky stated that the SEC settlement detailed admitted facts and wrongdoing that demonstrate serious issues “related to Mr. Falcone’s fitness to control the management, operations, and policyholder funds of a New York insurance company.”

At the same time, FGL-NY agreed to put in place a series of enhanced policyholder protections - modeled on those that other insurers owned by private equity firms and investment companies have established at the request of the New York State Department of Financial Services (DFS).

These include maintaining risk-based capital levels (RBC Levels) at an amount not less than 450 percent and establishing a separate backstop trust account totaling approximately \$18.5 million to provide additional protections to policyholders above and beyond the heightened capital levels if FGL-NY’s RBC levels fall below 450 percent.

Little more than one month ago Fidelity & Guaranty Life, a leading provider of fixed indexed annuities (FIAs), announced it was going public through parent company Harbinger Group Inc. It filed a prospectus for a \$100 million IPO. In 2011, HGI, which defines itself as a publicly traded diversified holding company, acquired Fidelity & Guaranty Life for \$350 million.

The agreement **is in line** with the agreements struck with Guggenheim Partners LLC and Apollo Global Management LLC this summer as part of a package of policyholder and reserve protections in [their acquisitions of annuity companies](#).

Lawsky has highlighted a spike in private equity firms and other investment companies moving into the annuity business and subpoenaed private equity firms, **concerned that they have a more short-term oriented business model than traditional insurers, while they were buying annuity businesses**. He wanted them to show they were focused on ensuring long-term security for policyholders by subjecting them to higher standards. The companies, including FGL-NY, will also have stronger disclosure and transparency requirements.

The August SEC action resulted in a civil penalty of \$10.5 million and payments of more than \$7.5 million against Falcone and the Harbinger defendants for improperly borrowing \$113.2 million from two funds they advised, Harbinger Capital Partners Special Situation Fund (SSF) and Harbinger Capital Partners Fund.

Falcone prevented other SSF investors from making redemptions, and did not disclose the loan to investors for approximately five months; and granted favorable redemption and liquidity terms to certain large investors in HCP Fund who voted in favor of more restrictive redemption terms, and did not disclose these arrangements to the fund's board of directors and the other fund investors, according to the consent order.