



TEXAS DEPARTMENT OF INSURANCE

Enforcement Section (110-1A)

333 Guadalupe, Austin, Texas 78701 ★ PO Box 149104, Austin, Texas 78714-9104
(512) 676-6325 | F: (512) 490-1020 | (800) 578-4677 | TDI.texas.gov | @TexasTDI

May 19, 2017

Director Bruce R. Ramege, Chair
NAIC Market Conduct Examination Standards (D) Working Group
Attn: Petra Wallace
1100 Walnut St, Suite 1500
Kansas City, MO 64106

VIA EMAIL ONLY: pwallace@naic.org

RE: Proposed Chapter X – Closing Continuum Actions, and Chapter 2, NAIC’s Market Regulation Handbook 2016

Dear Director Ramege, Ms. Wallace, and working group members:

Thank you for this opportunity to comment on both proposed Chapter X, and possible improvements to the existing Chapter 2 in the NAIC’s Market Regulation Handbook, 2016.

First, the Texas Department of Insurance (TDI) agrees with California’s April 20, 2017 written comments recommending the movement of section “3. Enforcements” as it appears in the existing 2016 handbook to appear under heading “C. Closure” in Chapter 2. In Texas, the items listed as methods of taking enforcement action chronologically occur as a regulatory response after the conclusion of the market conduct examination.

Second, TDI agrees with Iowa’s March 16, 2017 comments and California’s December 29, 2016 comments on Chapter X suggesting that proposed section “B. The Violation Analysis Phase” should not be included. Proposed section B. provides legal discussion on: laws requiring and not requiring intent; the frequency versus non-frequency of violations; and violations of prior orders and agreements. Such topics delve into what individual state laws require and how individual states interpret their own laws. Section B. goes far beyond the handbook’s own purpose as a tool “to assist states in optimizing the use of insurance department resources, eliminating duplicative inquiries and investigations and coordinating efforts with other states.” *NAIC’s Market Regulation Handbook, 2016* at 1.

Third, TDI also recommends exclusion of proposed section B. because it appears to encroach upon the provision of legal advice and analysis. Section B. fails to suggest that department personnel consult with their own legal counsel. Competent legal counsel acting on the behalf of an individual state are in the best position to provide legal guidance and advice on the topics included under proposed section B, as well as to counsel department personnel on any other factual and legal considerations pertinent to an individual state’s decision on whether or not a violation has occurred.

Fourth, TDI notes that the following statement in section B.3. “Violations of Prior Orders or Agreements” is simply erroneous:

If the state has a law making the company's failure to comply with the settlement agreement a violation, the company in this instance *would be guilty* of violating both the claims practices law it had previously violated as well as the law against failing to comply with a settlement agreement.

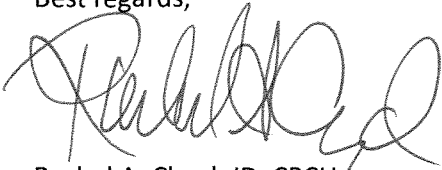
(emphasis added). This sentence applies criminal guilt to a civil disciplinary matter. Guilt is a criminal term, a state of responsibility assigned by a judge or jury for a criminal offense. In the civil enforcement context, “guilt” and “innocence” are not assigned by a hearing officer or administrative law judge. Rather, generally speaking, the department’s personnel or staff have the burden to prove by a preponderance of the evidence that a violation has occurred. The civil “punishment” is a sanction or discipline, which may include a monetary penalty, restitution, suspension, probation, revocation, or

imposition of a cease and desist order. Further, the sentence fails to account for the company's right to due process, including notice and a hearing.

Finally, proposed Section "C. The Remedial Phase" in Chapter X appears repetitive of the existing section "3. Enforcements" in the 2016 handbook, and thus may not be necessary. However, if included, TDI again has concerns that the entirety of section "C.2. Violations Found" borders on the provision of legal advice, and fails to contemplate that department personnel should consult with their own legal counsel when violations are found to discuss what method of resolution or remediation is appropriate.

Thank you for your time and consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Rachel A. Cloyd". The signature is fluid and cursive, with the first name being the most prominent.

Rachel A. Cloyd, JD, CPCU
Director, Regulatory Analysis Office
Enforcement Section | Legal & Enforcement Division
Texas Department of Insurance
DL: 512-676-6349
F: 512-490-1020
Rachel.Cloyd@tdi.texas.gov

cc: Ignatius Wheeler, Associate Commissioner - Chief Examiner