

**MARKET REGULATION ACCREDITATION PROGRAM  
DRAFT OF NOVEMBER 17, 2008**

**OBJECTIVE**

The objective of the proposed Market Regulation Accreditation Program is to provide a process whereby state regulation of the market conduct of regulated entities in the insurance marketplace can be objectively monitored and enhanced.

**NAIC PRIORITY AND STATE ACTIVITY**

The NAIC Modernization Plan, adopted in 2003, established the following principles and goals for Market Regulation. “. . .to assess the quality of every insurer’s conduct in the marketplace, uniformity, and interstate collaboration. . .the goal of the market regulatory enhancements is to create a common set of standards for a uniform market regulatory oversight program that will include all states.”

In 2004, the NAIC recognized that state departments of insurance need uniform standards and solutions in order to effectively and efficiently address market regulatory issues. Core competencies were created to fulfill that need. Building upon the core competency standards, the accreditation standards will strengthen the ability of states to uniformly address regulatory problems, to ensure compliance by regulated entities with state statutes, rules and regulations and, ultimately, to protect insurance consumers. Additionally, increased accuracy and completeness of data submissions to NAIC databases ensures the quality of data used by insurance departments in the market regulatory process.

An NAIC survey was conducted in 2006 asking state departments of insurance to self-certify whether they comply with the core competencies adopted by the Market Regulation and Consumer Affairs (D) Committee at the 2005 NAIC Winter National Meeting. A total of 49 out of 51 state departments of insurance responded and 29 reported that they currently either met the general requirements of the adopted core competency standards or would meet them by the end of 2007.

The results of the above-mentioned survey regarding states’ compliance with core competencies would suggest that state departments of insurance have already established policies and procedures which allow them to comply with the majority of the core competency standards. Recognizing these efforts, the accreditation standards set forth in this document build upon the core competencies.

**THE ACCREDITATION STANDARDS**

The accreditation standards are criteria that each state department of insurance shall meet in the essential areas of market regulation. The accreditation standards are designed to bring uniformity to states’ performance of essential market regulatory functions, promote collaboration of market analysis, and continuum actions and provide for coordination concerning regulatory issues involving multiple jurisdictions. The following is a brief description of the 6 accreditation categories.

**Category I - Data Collection & Reporting**

All states shall fully participate in the NAIC’s Market Information Systems. This data consists of closed consumer complaints in the Complaints Database System (CDS), market conduct and/or combined examinations in the Examination Tracking System (ETS), Level 1 and Level 2 Analysis reviews in the Market Analysis Review System (MARS), regulatory initiatives in the Market Initiative Tracking System (MITS), adjudicated regulatory actions in the Regulatory Information Retrieval System (RIRS) and special activities in the Special Activities Database (SAD).

**Category II – Market Analysis**

The Department of Insurance shall gather information from data currently available to the Department of Insurance, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry. Data gathered by the Department of Insurance shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review regulated entities or practices that deviate significantly from the norm or that may pose potential harm to insurance consumers. The Market Analysis Chief (MAC) is the principal liaison for market analysis issues. The MAC is responsible for all market analysis-related communications with other work units within the Department of Insurance. The Department of Insurance shall have an appropriate staff member assigned as the MAC to ensure an effective market analysis program.

**Category III – Market Conduct Examinations**

The Department of Insurance shall have standards in place to determine when a market conduct examination is called. The Department of Insurance shall adhere to the procedural guidelines in the Market Conduct Uniform Examination Outline Section of the Scheduling, Coordinating and Communicating chapter of the *Market Regulation Handbook*.

#### **Category IV – Interstate Collaboration**

The Collaborative Action Designee (CAD) is the one contact identified by the Commissioner of each jurisdiction to have the responsibility for all communications related to interstate collaboration. The Department of Insurance shall have an appropriate staff member assigned as the CAD to ensure support and participation in multi-state collaborative actions.

#### **Category V – Oversight of Contractors**

When using contractors for market conduct examinations or market analysis, the Department of Insurance shall ensure that contractors have the education and professional experience comparable to qualified department staff and that processes and procedures are in place to oversee and monitor the work performance and related activities of the contractors.

#### **Category VI – Treatment of Confidential Information**

The Department of Insurance shall have authority to analyze, examine or investigate entities that transact the business of insurance, as well as the ability to protect consumers, keep records confidential, enforce the continuum of regulatory responses and take corrective action when necessary.

### **WHO PERFORMS MARKET REGULATION ACCREDITATION?**

Under this proposal, a new NAIC Market Regulation Standards and Accreditation (D) Committee shall make a determination on whether a state meets the accreditation standards. The meetings in which matters of state accreditation are discussed shall be held in regulator-only session at NAIC national meetings to protect the states, regulators, and regulated entities from disclosure of confidential information. Members of the Market Regulation Standards and Accreditation Committee shall be appointed annually by the NAIC Officers through the normal NAIC committee appointment process.

### **HOW THE MARKET REGULATION ACCREDITATION PROGRAM WORKS**

The proposed Market Regulation Accreditation Program establishes requirements under which a state insurance department may seek accreditation. Additionally, the program provides guidelines for states already accredited to maintain their accredited status. Under this proposal, a jurisdiction's accreditation or non-accreditation in the Market Regulation Accreditation Program will not impact the status of a jurisdiction's accreditation or non-accreditation under the Financial Regulation Standards and Accreditation Program **or any other Accreditation program that may be adopted by the NAIC.**

*Comment: WA indicates other accreditation programs may be developed this addition eliminates the need to go back and change our program based on future activities.*

States will have 2009 to assess their compliance with the proposed standards. An NAIC Review Team (similarly constructed as the Financial Regulation and Accreditation Standards Accreditation Review Team) would begin accreditation reviews in 2010. Each state would then be reviewed every 3 years to assess that state's ongoing compliance with the accreditation standards.

A state may also request an accreditation review at any time. States will be required to submit an annual self-evaluation to the Market Regulation Standards and Accreditation Committee. If the NAIC Review Team has found during the annual self-evaluation that a state is no longer meeting the accreditation standards, the state's accreditation may be suspended or revoked. A state insurance department may also voluntarily withdraw from the program.

The Market Regulation Standards and Accreditation Committee would consider any revocation or suspension of accreditation on a case-by-case basis. These assessments may reveal mitigating factors that warrant further inquiry or indicate, for example, that continued accreditation should be conditioned upon implementation of a satisfactory remedial plan.

### **ACCREDITATION CATEGORY I - DATA COLLECTION AND REPORTING**

Revised 11/17/08

The NAIC's Market Information Systems (MIS) Team in the Information Systems (IS) Division continues to work with Departments of Insurance to ensure the capture and analysis of frequent, current, complete and accurate Market Regulation data. This data consists of closed consumer complaints in the Complaints Database System (CDS), market conduct and/or combined examinations in the Examination Tracking System (ETS), Level 1 and Level 2 Analysis reviews in the Market Analysis Review System (MARS), regulatory initiatives in the Market Initiative Tracking System (MITS), adjudicated regulatory actions in the Regulatory Information Retrieval System (RIRS) and special activities in the Special Activities Database (SAD).

For the purposes of the proposed Market Regulation Accreditation Program, "full participation" in insurance department data reporting shall be defined as electronic submissions from state departments of insurance that are complete, timely and accurate. Insurance department data files, as referenced in the documents/areas to be reviewed, may include not only electronic files, but also hard copy files. The term "insurance department" shall include any NAIC member jurisdiction, including U.S. territories.

**Standard 1 The Department of Insurance shall fully participate in the Complaints Database System (CDS).**

*Comment: PIC indicates the use of this program by the states needs to be consistent and accurate. Currently, it's not, for example, states report complaints to the NAIC on a less than consistent basis.*

*Response: The Accreditation program is designed to increase the consistency and accuracy of reporting.*

- A. The Department of Insurance shall submit to CDS all loadable, closed consumer complaints within 30 days of closure or at the next available upload date upon completion of state specific processing requirements as set forth in statutes or rules of a particular state.

*Comment: WA indicates its new Market Oversight Law has specific requirements for complaint verification that will keep WA from achieving this standard as written.*

*Response: Document has been modified with suggested language from WA.*

- B. The Department of Insurance shall submit all CDS data transactions to the NAIC with an error rate of 2% or less. In the event that updates and/or corrections need to be made, they will be done within 5 business days for SBS based states or at the next upload date for non-SBS states.

*Comment: WA indicates that in order for a non-SBS state to meet this requirement, changes to the SBS web-based program will need to be completed. Currently the manual process that is required will never allow WA to meet the 5 business day requirement.*

*Response: Document has been modified with suggested language from WA.*

*Comment: WI suggests the error rate be deleted since there is no core competency addressing this standard.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

- C. The Department of Insurance shall submit all CDS data transactions to the NAIC with a usage rate of 2% or less of the complaint code "other."

*Comment: ME believes B & C should not be accreditation standards primarily due to the identified error rate of 2% or less and the 2% or less use of the complaint code "other." We would suggest the following standard, which was used in the 2006 Core Competencies Self Assessment, "frequent, current, accurate, and complete manner." Later, after a certain amount of accreditation reviews have been conducted and analyzed, then the error rate and the use of "other" code can be revisited for appropriateness. We also believe the 5 business day turn around is to tight a time frame on IB and would like to suggest 15 days.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

*Comment: WI suggests the deletion of this standard since there is no competency for this standard.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

- D. The Department of Insurance shall complete a data reconciliation, with NAIC staff, of Department of Insurance data files regarding closed complaints and the NAIC CDS database.

*Comment: LA questions if a process will be developed for data reconciliation for CDS. This also applies to ETS, MITS, RIRS and SAD.*

*Response: The MIS (Market Information Systems) Metrics application provides each state with detailed statistics on the submission of closed consumer complaints and regulatory actions (such as error rates, completion rates, confirmed complaints, and more), state specific submission frequency and formats, and Uniform Regulation Through Technology (URTT) compliance.*

- E. If the results of the reconciliation process indicate that inaccuracies are present in Department of Insurance closed complaint data files, the Department of Insurance shall submit corrected data to the NAIC within 10 business days.

*Comment: WI suggests changing 5 business days to 10 business days.*

*Response: The standard has been changed as recommend.*

- F. The Department of Insurance shall reconcile CDS data with regulated entities' complaint data at the request of the insurer. The Department of Insurance shall submit to the NAIC updates to corrected CDS data within 30 days after reconciling complaint data with data provided by regulated entities.

*Comment: LA indicates a need for uniform process to be developed and questions how often the reconciliation process would need to occur.*

*Response: A process still needs to be developed.*

*Comment: NC indicates this standard appears to require reconciliation with every licensed insurer which would be a daunting task and does not identify the frequency in which reconciliation should occur (e.g. monthly, quarterly, annually). In lieu of the current language, we recommend that reconciliation take place at the request of the insurer.*

*Response: Suggested language has been incorporated.*

*Comment: WI suggests the deletion of this standard since there is no competency for this standard.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

**Standard 2 The Department of Insurance shall fully participate in the Examination Tracking System (ETS).**

*Comment: More transparency from the NAIC is needed on this process. For instance, the NAIC should let companies know if their exam frequency has pushed them into a higher risk area for future exams.*

*Response: To date, the states have wanted to maintain the confidentiality of any analysis and not publicly release such detail.*

- A. The Department of Insurance shall enter a market conduct examination and/or combined examination into ETS, no later than 60 days before the expected date of the on-site exam.
- B. Exceptions to this requirement shall be allowed in the infrequent, unusual circumstance in which a Commissioner or a Commissioner's designee has requested that an immediate regulatory response be taken on a regulated entity, or to accommodate the schedule of the regulated entity. The Department of Insurance shall enter "no knock" examinations into ETS within 10 days of the commencement of the examination.
- C. If a regulatory action is taken at the conclusion of the examination, the Department of Insurance shall submit a loadable RIRS record no later than 30 days after the conclusion of any regulatory action, and update, within 30 days of a status change, any information previously provided to ETS.
- D. The Department of Insurance shall either update or close an examination in ETS if it has been open for more than eighteen months.

*Comment: ME suggests using 18 months, which is the financial exam accreditation standard to complete a report.*

*Response: Language has been modified.*

- E. The NAIC will notify the Department of Insurance staff when an examination is not closed within 12 months of the open date. It will be the responsibility of the DOI to update the ETS information.

*Comment: WA indicates there is no formal reconciliation process. Currently, the NAIC notifies us when an exam has been open more than 12 months. If this is the reconciliation process, then nothing else needs to be done.*

*Response: Document has been modified with suggested language from WA.*

- F. If the results of the reconciliation process indicate that inaccuracies are present in Department of Insurance examination data files, the Department of Insurance shall submit corrected data to the NAIC within 10 business days.

*Comment: ME suggests using 15 business days instead of "5 business days."*

*Comment: WI suggest 5 business days be changed to 10 business days.*

*Response: Change has been made as suggested by WI.*

**Standard 3 The Department of Insurance shall fully participate in the Market Analysis Review System (MARS).**

- A. The Department of Insurance shall complete the minimum recommended number of Level 1 Analyses established by the NAIC's Market Analysis Priorities (D) Working Group (MAP) or its successors.

- B. The Department of Insurance shall ensure that for every regulated entity on which a continuum action is taken, the Department of Insurance has completed a Level 1 Analysis and a Level 2 Analysis review, prior to commencing the continuum action *The Level 1 analysis must be documented in the Market Analysis Review System (MARS) for those lines of business supported by MARS, and in DOI work papers for all other lines of business. All Level 2 Analysis is to be documented in DOI work papers..* Exceptions to this requirement shall be allowed in the infrequent, unusual circumstance in which a Commissioner has requested that an immediate regulatory response be taken on a regulated entity or the examination is being conducted based upon a mandatory state review after a set period of time.

*Comment: ME believes that the requirement to perform both a level 1 and level 2 review before performing any action from the continuum is to restrictive. There may be situation where a state is required by law to perform an examination after a set period of time and it does not appear that this scenario would fit into the exception for not having to perform a level 1 and level 2 as currently written. Perhaps the exception language should be broadened to encompass other scenarios.*

*Response: Modifications have been made to address the issues of examinations being required by law after a set period of time.*

*Comment: NC indicated that since their law mandates a comprehensive examination on domestic insurers every five years, it would not be very efficient or beneficial for us to perform a Level 1 and Level II analysis prior to each examination. In addition, there are times that we receive referrals from other divisions within the Department requiring an immediate and expeditious continuum action, thus making a Level 1 and Level 2 review unnecessary.*

*Response: Modifications have been made to address the issues of examinations being required by law after a set period of time.*

*Comment; WA indicates there are some Lines of Business not supported by MARS for Level 1 and Level 2 is not supported at all. WA recommends the following language "The Department of Insurance shall ensure that for every regulated entity on which a continuum action is taken, the DOI has completed a Level 1 Analysis and a Level 2 Analysis prior to commencing the continuum activity. The Level 1 analysis must be documented in the Market Analysis Review System (MARS) for those lines of business supported by MARS, and in DOI work papers for all other lines of business. All Level 2 Analysis is to be documented in DOI work papers. Exception ....."*

*Response: Modifications have been made as suggested.*

*Comment: WI suggests the deletion of this standard.*

*Response: Additional modifications have been made based upon the comments from other states, which may alleviate the need to eliminate this standard.*

- C. The Department of Insurance shall ensure that all Level 1 Analysis for lines of business supported by the Market Analysis Review System (MARS) are documented in the system. For other lines of business, the DOI work papers shall contain the required documentation to support the DOI action.

*Comment: WA indicates that not all lines of business are supported by NAIC systems for Level 1 analysis, and Level 2 analysis is not supported at all.*

*Response: Document has been modified with suggested language from WA.*

- D. The Department of Insurance shall submit relevant and complete data in MARS which reasonably supports the Level 1 conclusions/next steps recommended by the Department of Insurance.

*Comment: WA indicates there is not a place to document Level 2 analysis. Reference to Level 2 analysis needs to be removed from this standard. In addition, for those lines of business not supported in MARS, the required supporting documentation needs to be maintained at the DOI.*

*Response: Standard has been modified to address WA's concerns.*

*Comment: WI indicates there is no core competency that requires this level of detail.*

*Response: This standard is designed to enhance use of MARS and interstate coordination of analysis.*

**Standard 4 The Department of Insurance shall fully participate in the Market Initiative Tracking System (MITS).**

- A. The Department of Insurance shall submit a regulatory initiative (e.g., one of the Continuum of Regulatory Responses) into MITS no later than 30 days after the onset of the initiative.

*Comment: WI indicates there is no core competency that addresses this requirement.*

*Response: This standard is designed to enhance the use of MITS and interstate coordination.*

- B. The Department of Insurance shall update, within 30 days of a status change, any information previously provided to MITS when the status of a regulatory initiative has changed.

- C. The Department of Insurance shall use MITS to link to ETS, MARS and RIRS, where applicable.

*Comment: ME indicates that RIRS entries are primarily investigations on producers, agencies and insurance companies. Therefore, any reference to RIRS, from an accreditation perspective, needs to be specific to market conduct examinations*

*Response: Need further clarification on comment.*

- D. The Department of Insurance shall complete a data reconciliation, with NAIC staff, of Department of Insurance data files regarding regulatory initiatives and the NAIC MITS database.

*Comment: WA indicates there is no reconciliation process for MITS.*

*Response: This process will be developed as the Accreditation Proposal proceeds.*

- E. If the results of the reconciliation process indicate that inaccuracies are present in Department of Insurance regulatory initiative data files, the Department of Insurance shall submit corrected data to the NAIC within 5 business days.

*Comment: ME suggests using 15 business days instead of "5 business days."*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

**Standard 5 The Department of Insurance shall fully participate in the Regulatory Information Retrieval System (RIRS).**

*Comment: The PCI indicates the Regulatory Information Retrieval System (RIRS) currently presents misleading information to users. When an insurer is examined by the DOI the exam could involve one or more companies. In those instances when an exam involves more than one company RIRS will list the exam multiple times (by company) in its data base including any penalty or fines. This leaves a user with the impression that an insurer was examined and fined multiple times for multiple exams when in reality it is one exam of multiple companies and one penalty or fine for the multiple companies in total not a fine for each individual company as is currently depicted in RIRS.*

*Response: Insurance departments are trained in the use of RIRS and understand the limitations of the system. This issue should be reviewed in more detail for any necessary programming changes as the goal is to ensure an accurate assessment of the marketplace. At the same time, these issues should not preclude the inclusion of this standard as RIRS continues to be a long-standing and useful NAIC database for regulators.*

- A. The Department of Insurance shall submit a loadable RIRS record no later than 30 days after the conclusion of any regulatory action.

*Comment: ME indicates that RIRS entries are primarily investigations on producers, agencies and insurance companies. Therefore, any reference to RIRS, from an accreditation perspective, needs to be specific to market conduct examinations*

*Response: Need further clarification on comment.*

- B. The Department of Insurance shall submit all RIRS data transactions to the NAIC with an error rate of 2% or less. The Department of Insurance shall submit to the NAIC updates to corrected data within 5 business days.

*Comment: ME suggests using 15 business days instead of "5 business days."*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

- C. The Department of Insurance shall submit all RIRS data transactions to the NAIC with a usage rate of 2% or less of the regulatory action code "other."

*Comment: For standards 5B and 5C, ME believes that the 2% error rate or 2% use of the code "other" should be used. This percentage is too restrictive and we would suggest the use of the standard used in the 2006 Core Competencies Self Assessment ("frequent, current, accurate, and complete manner"). The use of the error rate and "other" could be revisited at a later date. If it was determined that the error rate should be used we would suggest 15 days instead of 5 days as the time allowed to submit corrected data updates to the NAIC.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

*Comment: WA indicates that because energies have been spent on updating CDS, disposition reasons have not been updated in RIRS. Therefore, it would be helpful if the 2% limit was raised to 5% until changes to RIRS can be made.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

*Comment: WI indicates there is no core competency addressing error rates.*

*Response: This is the standard recommended by the MIS Participation Group and adopted by the D Committee in 2008.*

- D. The Department of Insurance shall complete a data reconciliation, with NAIC staff, of Department of Insurance data files regarding adjudicated regulatory actions and the NAIC RIRS database.

*Comment: ME indicates that RIRS entries are primarily investigations on producers, agencies and insurance companies. Therefore, any reference to RIRS, from an accreditation perspective, needs to be specific to market conduct examinations*

*Response: Need further clarification on comment.*

- E. If the results of the reconciliation process indicate that inaccuracies are present in Department of Insurance adjudicated regulatory action data files, the Department of Insurance shall submit corrected data to the NAIC within 10 business days.

*Comment: ME suggests using 15 business days instead of "5 business days."*

*Comment: Staff in WA are not aware of a reconciliation process for RIRS. If such a process exists, we would like to have someone work with us. If not, please remove this standard.*

*Response: This process will be developed as the Accreditation Proposal proceeds.*

*Comment: WI suggests changing 5 business days to 10 business days.*

*Response: The standard has been changed as recommend by WI.*

*Comment: ME indicates that SAD entries involve activities relating to investigations on producers, agencies and insurance companies. Therefore, this standard should be eliminated from market conduct accreditation standards.*

*Response: This standard has been deleted.*

*Comment: LA questions if a state will fail accreditation if it does not have any SAD entries.*

## **ACCREDITATION CATEGORY II - MARKET ANALYSIS**

The Department of Insurance shall gather information from data currently available to the Department of Insurance, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry. Data gathered by the Department of Insurance shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review regulated entities or practices that deviate significantly from the norm or that may pose potential harm to insurance consumers.

**Standard 1**      **The Department of Insurance shall ensure that data collected for market analysis purposes, including data collected through the Market Conduct Annual Statement (MCAS), is considered in the market analysis process.**

*Comment: PCI questions why this standard is necessary and question what else would be considered in the Market Analysis process?*

*Response: This standard is included to ensure that all collected data, including the MCAS data, is properly used.*

**Standard 2**      **The Department of Insurance shall perform, on an ongoing basis, baseline analysis whereby basic parameters are used to evaluate the insurance marketplace in order to identify regulated entities that may require more detailed and thorough analysis.**

- A. On a no less than quarterly basis, the Department of Insurance shall use currently available NAIC tools, e.g., the Market Analysis Prioritization Tool (MAPT) to conduct baseline analysis.

*Comment: ME indicates they conduct market analysis (Level One) annually. As written, ME indicates they would not be compliant with "on a no less than quarterly basis" standard. It seems appropriate to use the 2006 Core Competencies Self Assessment standard, which was completion of Level One analysis.*

*Response: Market analysis is intended to be an ongoing process and ensuring quarterly input accomplishes this goal better than an annual input.*

*Comment: NC recommends that baseline analysis be performed on at least a semi-annual or annual basis in lieu of the recommended quarterly basis due to the short period of time elapsing thus making it difficult to identify legitimate trends in inappropriate business practices that may violate state law.*

*Response: Market analysis is intended to be an ongoing process and ensuring quarterly input accomplishes this goal better than an annual input.*

*Comment: WI recommends this section be modified to "On a regular basis, but at least once a year" and then delete "no less than quarterly basis."*

*Response: Market analysis is intended to be an ongoing process and ensuring quarterly input accomplishes this goal better than an annual input.*

**Standard 3      The Department of Insurance shall coordinate results of market analysis with internal staff and with the NAIC Market Analysis (D) Working Group (MAWG).**

- A. Market analysis staff shall report any material adverse findings in market analysis to the Commissioner or their appropriate designee for determination and implementation of appropriate regulatory action.
- B. If the Department of Insurance has identified any material adverse findings in market analysis, the Collaborative Action Designee (CAD) and the Commissioner or their appropriate designee shall evaluate the circumstances and determine if a referral shall be made to MAWG.
- C. The Department of Insurance shall take timely action in response to such findings or adequately demonstrate the determination that no action was required. Action shall include but not be limited to the NAIC's Continuum of Regulatory Responses. The Department of Insurance shall promptly refer any item suggesting potential solvency concerns to appropriate financial regulation staff.

*Comment: ME indicates that the terms "material", "timely", "promptly" and "frequent basis" are used and their meaning is not clear. ME suggests deleting these terms or at a minimum, defining these terms.*

*Response: These terms are from the Core Competency Standards.*

- D. Concerns with nationally significant companies shall be reported to MAWG and issues that appear to focus on a small number of states shall be brought to the attention of those states' Departments of Insurance.

**Standard 4      The Department of Insurance shall appoint a Market Analysis Chief and notify the NAIC within 10 business days if the Market Analysis Chief changes.**

- A. The MAC or the MAC's designee shall have the authority to represent the Department of Insurance in matters related to discussions regarding market analysis.

**Standard 5      The MAC shall work with the NAIC to accomplish the goal that the Department of Insurance adopt uniform market analysis standards and procedures and use its market analysis in other market regulatory functions, including market conduct and interstate collaboration.**

**Standard 6      The Department of Insurance shall have documentation of communication between the MAC and appropriate Department of Insurance staff.**

- A. The MAC shall work on a documented, frequent basis with the appropriate staff in areas including consumer services, enforcement, legal, forms and rates filing, financial, market analysis and market conduct to ensure that the MAC is notified of unusual activity that may be of interest for market analysis.

*Comment: ME indicates that the terms “material”, “timely”, “promptly” and “frequent basis” are used and their meaning is not clear. ME suggests deleting these terms or at a minimum, defining these terms.*

*Response: These terms are from the Core Competency Standards.*

- B. The MAC shall establish means of regular communication with the unit heads of these areas.

**Standard 7     The MAC shall communicate with other Departments of Insurance and the NAIC regarding market analysis.**

- A. The MAC, in coordination with the Department of Insurance’s Collaborative Action Designee, shall be responsible for posting and responding to communications via the NAIC Market Regulation and Market Analysis Electronic Bulletin Boards.

**ACCREDITATION CATEGORY III - MARKET CONDUCT EXAMINATIONS**

The Department of Insurance shall have standards in place to determine when a market conduct examination is called. The Department of Insurance shall adhere to the procedural guidelines in the Market Conduct Uniform Examination Outline Section of the Scheduling, Coordinating and Communicating chapter of the *Market Regulation Handbook*.

**Standard 1     The Department of Insurance shall prioritize examinations.**

- A. The Department of Insurance shall establish criteria for calling a market conduct examination. The Department of Insurance shall prepare a schedule of examinations and select a person responsible for developing and maintaining the examination schedule. Exceptions may be made when an examination is called as a “no-knock” examination.
- B. The Department of Insurance shall maintain the trigger or reason for the examination in the examination documents, preferably the work papers, and where appropriate, share the reason/trigger for the examination with the regulated entity.

**Standard 2     The Department of Insurance shall establish a standard planning process.**

- A. At the end of the planning process, the Department of Insurance shall determine the phases and/or standards of the examination that require more attention, the phases or standard that require average examination scrutiny or attention and those that require a reduced emphasis or may be waived.
- B. The Department of Insurance shall prepare an examination work plan prior to the examination. The work plan or planning memorandum shall include:
  - 1) The scope of the examination;
  - 2) The justification for the examination;
  - 3) A time and cost estimate; and
  - 4) An identification of factors that will be included in the billing.

*Comment: The PCI suggests that regulators need to consistently provide work plans. Numerous departments do not provide work plans for exams.*

*Response: This standard is intended to accomplish this goal.*

**Standard 3     The Department of Insurance shall establish documented procedures concerning the announcement of the examination to the regulated entity.**

- A. The announcement of the examination shall be sent to the regulated entity as soon as possible but in no case any later than 60 days before the scheduled commencement of the on-site examination. Exceptions to this requirement shall be allowed in the infrequent, unusual circumstance in which a Commissioner has requested that an immediate regulatory response be taken on a regulated entity, or to accommodate the schedule of the regulated entity. The announcement notice shall contain the following:
  - 1) The name and address of the regulated entity(ies) being examined;

- 2) The name and contact information of the Examiner-in-Charge;
- 3) The date the on-site examination is expected to begin;
- 4) The statutory authority for the examination;
- 5) The identification of items that will be billed to the regulated entity, if any;
- 6) A request for the regulated entity to name its examination coordinator; and
- 7) Notice that additional information may be requested at a later date.

B. If the examination is to be led by a contract firm, the regulated entity shall be notified.

**Standard 4 The Department of Insurance shall develop a preliminary examination packet or handbook that shall be sent to the examination coordinator at least 30 days before the scheduled commencement of the on-site examination.**

A. The due date for the initial standardized data request, if utilized by the Department of Insurance shall be included in the preliminary examination packet sent to the regulated entity. The preliminary information shall contain the following information:

- 1) General instructions;
- 2) The scope of the examination;
- 3) The materials requested to perform the examination;
- 4) Standardized data requests;
- 5) Requirements for accommodations and supplies including modem requirements;
- 6) Time and cost estimates;
- 7) Travel information;
- 8) Specific instructions regarding sampling, communications with the regulated entity and other pertinent information;
- 9) Location of on-site examination;
- 10) Security arrangements; and
- 11) Billing procedures.

*Comment: LA raised concerns about the wording regarding the timing of the data requests.  
Response: Suggested language from LA has been incorporated.*

*Comment: PCI indicates that in most instances 30 days is not adequate time to acquire the requested data and make all of the arrangements for the exam. The exam packet needs to arrive at the company within ten days of the initial notice. This standard should just afford at least 60 or 90 days instead of 30 days. This needs as much time as possible, as everything else IT people are working on stops, and they have to shift gears quickly to respond to the DOI. This is vital if the state has unique items for the data call.*

*Response: The 30 day period is an established core competency and is a recognized standard. Should this time be extended as suggested?*

**Standard 5 The Department of Insurance shall adopt the standardized data requests contained in the Referenced Documents section of the Market Regulation Handbook Web page.**

*Comment: PCI indicates some education by the NAIC on what this includes would help companies to respond quickly and with greater accuracy.*

*Response: The data requests are part of the NAIC handbook. The NAIC would be willing to explore the possibility of providing Webinars to companies on these data requests.*

A. If the Department of Insurance deviates from a standardized data request, it shall notify the regulated entity of the deviation and shall allow additional time for the regulated entity to provide the information.

B. The Department of Insurance shall notify the NAIC's Market Regulation Division of the deviations for possible inclusion in the standardized data requests.

*Comment: WI recommends the deletion of 5.B, since there is no core competency requiring this.*

*Response: While not a uniform standard, the centralized collection and notification of various state data calls will help create a more robust and uniform list of data calls all states may use.*

**Standard 6 The Department of Insurance shall provide the regulated entity with the opportunity to participate in a pre-examination conference in order to clarify expectations prior to the commencement of the examination.**

- A. The Department of Insurance shall provide documentation that the availability of a pre-examination conference was provided to the regulated entity. The pre-examination conference can be conducted on-site or via telephone.

**Standard 7 The Department of Insurance shall establish a system for exchanging information with the regulated entity that advises them of errors and other problems developed during the examination. The Department of Insurance shall take into consideration the timeframes contained in the Market Conduct Record Retention and Production Model Regulation or substantially similar provisions of state law.**

- A. The system shall consist of “crit” sheets, summaries, or both. Any form of communication to a regulated entity concerning errors shall include the following information:
- 1) Record numbers or other identifying factors;
  - 2) The examiners’ statement of the problem or error and, if relevant, the applicable law and/or standard; and
  - 3) A request for signature and comment from the regulated entity.

**Standard 8 The Department of Insurance shall establish a procedure for document handling, including the removal of original documents, where that is necessary, to a location other than the Department of Insurance.**

- A. To address the issue of confidentiality, original work paper documents shall remain on site at the company or at the Department of Insurance, especially if the examiner is a contracted employee of the Department of Insurance. The procedure will include a section on confidentiality requirements for alternate work locations such as at the company, at contract examiner facilities or at an examiner’s home.

*Comment: ME indicates this conflicts with their current process of having all work papers stored on site at the company. Said work papers are kept in a locked file cabinet and we have the only key. This process is the same as financial examination’s process, which, to date, has not been an issue from a financial exam/analysis accreditation perspective.*

*Response: This language has been modified to permit on-site storage at the company.*

*Comment: WA proposes the following language: “The procedure will include a section on confidentiality requirements for alternate work locations such as at the company, at contract examiner facilities or at an examiner’s home.*

*Response: Suggested language from WA has been added.*

**Standard 9 The Department of Insurance shall use documented sampling guidelines as set forth in the Market Regulation Handbook.**

- A. The sampling method used shall indicate the confidence levels, tolerable error rates and include extrapolation.
- B. All sampling methods shall avoid pre-selection; however, stratified sampling is allowed.
- C. The nature of the sampling method chosen shall be disclosed to the regulated entity that is the subject of the examination.

*Comment: WI notes this deviates from the established core competency.*

*Response: Suggested language on how this should be changed is needed. The sampling methods should be consistent with the established core competencies.*

**Standard 10** At the end of an examination, the Department of Insurance shall conduct an exit conference with the regulated entity, either on-site or via telephone.

- A. The Department of Insurance shall provide documentation that the availability of an exit conference was provided to the regulated entity. The exit conference shall provide the following:
- 1) The examination status and proposed findings;
  - 2) The report process; and
  - 3) An explanation of any post examination billing.

**Standard 11** The Department of Insurance shall utilize the standardized report format found in the Writing the Examination Report chapter of the *Market Regulation Handbook*.

- A. The Department of Insurance examination report shall at a minimum include the following:
- 1) Title page;
  - 2) Table of contents;
  - 3) Salutation;
  - 4) Foreword;
  - 5) Scope;
  - 6) Executive summary;
  - 7) Results of previous examinations;
  - 8) Pertinent facts of the current examination;
  - 9) Summarization; and
  - 10) Appendices, if applicable.

*Comment: WA suggests that to make this a bit more flexible which would allow state requirements, the following language should be added "or a substantially similar format approved by the Commissioner. Response: It may difficult to determine if another format is "substantially similar." Further clarification on what other formats or elements should be allowed would be helpful.*

**Standard 12** The Department of Insurance shall utilize a standardized timeline as required by the state's statute or the NAIC Model Law on Examinations.

*Comment: PCI indicates that this rarely works today. The department can be late on their date, without consideration of the company.*

*Response: The accreditation standards should help address these deficiencies.*

- A. The Department of Insurance shall deliver a draft report to the regulated entity within 60 days of completion of the examination;

*Comment: WA suggests that to allow for state specific time frames, the language be modified as follows: The DOI shall deliver a draft report to the regulated entity within 60 days of completion of the examination or as required by state statute or regulation. KY had similar comments.*

*Response: Rather than defer to existing state statutes, which could provide for longer than 60 days, states should be encouraged to issue the exam within 60 days for consistency among states.*

- B. The Department of Insurance shall provide the regulated entity with 30 days in which to respond to the examination unless there is a mutual agreement with the regulated entity to extend the deadline for justifiable reasons;

*Comment: LA believes this timeframe should be extended by mutual agreement.*

*Response: Suggested language from LA has been incorporated.*

*Comment: WA suggests that to allow for state specific time frames, our suggested edits for this statement are: The DOI shall require the regulated entity to respond to the examination report within the time specified in state statute or rule. If there are no state requirements, the entity must respond within 30 days of receiving the report. KY had similar comments.*

*Response: The previous edits suggested by LA help address these issues. Rather than defer to existing state statutes, states should be encouraged to implement a response time of 30 days.*

- C. The Department of Insurance shall informally resolve issues and prepare a final report within 30 days (unless there is a mutual agreement with the regulated entity to extend the deadline); and

*Comment: WA suggests that to allow for state specific time frames, suggests this standard read as follows: Unless the regulated entity and the regulator agree otherwise, the DOI will resolve issues and prepare a final report within the time specified in state statute or rule. If there are no state requirements, the final report will be issued 30 days from the date the company comments are received. KY had similar comments.*

*Response: Rather than defer to existing state statutes, states should be encouraged to issue a report within 30 days.*

- D. The Department of Insurance shall provide the regulated entity with a 30-day time period in which to accept the final report or request a hearing unless there is a mutual agreement with the regulated entity to extend the deadline for justifiable reasons.

*Comment: LA believes this timeframe should be extended by mutual agreement.*

*Response: Suggested language from LA has been incorporated.*

*Comment: WA suggest that to allow for state specific time frames, suggests this standard read as follows: The DOI will allow the regulated entity a period of time to accept the final report or request a hearing. The period of time will be that allowed by state statute or rule. In the absence of such a requirement, states will allow 30 days for a hearing to be requested. KY had similar comments.*

*Response: The previous edits suggested by LA help address these issues. Rather than defer to existing state statutes, states should be encouraged to implement a 30 day time period.*

**Standard 13 The Department of Insurance shall include the regulated entity's response in the final examination report unless prohibited by law.**

*Comment: PCI indicates an insurer will almost always want their response included in the final examination report. Perhaps this standard should say "unless prohibited by law" instead of "where allowed by law."*

*Response: This standard has been modified as suggested.*

- A. The response may be included as an appendix or in the text of the examination report. If it is not in the final report, the report shall indicate that a response is available. The regulated entity shall not be obligated to submit a response. Individuals involved in the examination shall not be named in either the report or the response except to acknowledge their involvement.

**Standard 14 The Department of Insurance shall make final examination reports available as public documents where allowed by law.**

- A. Where allowed by law, the Department of Insurance shall publish the final examination report on the Department of Insurance Web site; and

*Comment: LA questions if this standard is needed and if the NAIC is contemplating a press release for each public examination and suggested the deletion of this standard since it duplicates standard 14A.*

*Response: The NAIC will only conducts press releases when there is a formal multi-state action under MAWG or a formal working group of the NAIC. These efforts are coordinated with the lead states of such examinations and the lead states provide the necessary direction.*

*Comment: ME believes this standard is duplicative of 14A.*

*Response: Standard has been deleted.*

*Comment: LA believe this standard should be eliminated since this undermines the authority of the Commissioner or Administrative Law Judge to make an independent determination regarding penalties. It may also lead to companies conducted a cost/benefit analysis on whether to violate a law.*

*This also will not lead to any uniformity since each department will develop their own “penalty matrix.”*

*Response: This standard has been deleted as suggested by LA.*

*Comment: ME indicates standard 15A and 15B are too restrictive.*

*Response: These standards have been deleted.*

*Comment: WA would like standard 15 expressed in more global terms such as: The DOI shall be able to demonstrate that an Enforcement Strategy has been adopted, and that the strategy is followed by the DOI in all enforcement matters, including market conduct activities.*

*Response: Standard has been eliminated.*

*Comment: WA indicates this language seems to limit the scope of enforcement activity when used as a standard. WA proposes the following changes: The DOI shall consider all findings and recommendations when an enforcement action is contemplated, and use these factors to determine what enforcement action is appropriate in a particular case.*

*Response: Standard has been eliminated.*

**Standard 15    The Department of Insurance shall establish a documented process to follow-up on market conduct examinations and market analysis.**

*Comment: ME indicates this standard needs to be specific to market conduct exam and market analysis. As written, it is too broad because it may be incorporating enforcement actions which are separate and distinct from market conduct exams and market analysis.*

*Response: Standard has been limited as suggested.*

**CATEGORY IV - INTERSTATE COLLABORATION**

Interstate collaboration continues to be a priority for market regulation. Recognizing this collaboration should begin with market analysis, the NAIC formed the Market Analysis Working Group and added a Collaborative Actions chapter to the Market Regulation Handbook. In addition, each state has been requested to appoint a Collaborative Action Designee. The Collaborative Action Designee (CAD) is the one contact identified by the Commissioner of each jurisdiction to have the responsibility for all communications related to interstate collaboration. The Department of Insurance shall have an appropriate staff member assigned as the CAD to ensure support and participation in multi-state collaborative actions.

**Standard 1    The Commissioner of the Department of Insurance shall appoint a Collaborative Action Designee and notify the NAIC of a new appointment within 10 business days, if the Collaborative Action Designee changes.**

**Standard 2    The Department of Insurance shall have documented procedures for the CAD to communicate with appropriate Department of Insurance staff regarding potential collaborative action issues and ongoing collaborative actions.**

- A. The CAD shall advise the appropriate staff in areas including, but not limited to consumer services, enforcement, market analysis and market conduct of the role of the CAD and procedures to notify the CAD of compliance issues that may affect multiple jurisdictions.
- B. The CAD shall establish a method of at least quarterly communication with the unit heads of these areas to follow up on ongoing and potential collaborative actions.

**Standard 3    The CAD shall participate in communication with other Departments of Insurance and in MAWG/CAD meetings and calls regarding interstate collaborative actions.**

- A. The CAD, in coordination with the Department of Insurance’s Market Analysis Chief, shall be responsible for posting and responding to communications via the NAIC Market Regulation and Market Analysis Electronic Bulletin Boards. Information related to the role of the Market Analysis

Chief (MAC) shall be handled by the MAC, and those related to potential or active collaborative actions shall be the responsibility of the CAD.

- B. The CAD shall coordinate responses and information obtained via the Bulletin Boards with the appropriate Department of Insurance staff.
- C. The CAD shall maintain communication with appropriate staff of the domestic regulator on issues and status related to potential collaborative actions.

**Standard 4     The CAD shall prepare referrals to MAWG for potential collaborative actions affecting multiple jurisdictions.**

- A. The CAD shall follow the procedures of the Collaborative Actions Guide in the *Market Regulation Handbook* or the MAWG Procedures/Participation Guidelines as appropriate to determine if the matter shall be referred to MAWG.
- B. The CAD shall use the appropriate MAWG referral form and identify the issue(s); specific companies affiliated with the issue(s) and all requested information contained on the form.

**Standard 6     The Department of Insurance shall have appropriate procedures in place for the CAD to communicate and where authorized by the Commissioner, provide recommendations on collaborative action settlements to the Commissioner or their designee.**

- A. Transmittal of collaborative action settlement documents and the Department of Insurance's participation shall be made within the time frames established in the communication from the lead state(s) or MAWG.

**Standard 7     The Department of Insurance shall follow the procedures in the Collaborative Actions chapter of the *Market Regulation Handbook*.**

**Standard 8     Referrals to the Market Analysis (D) Working Group (MAWG) shall be made when appropriate and when material issues may impact other jurisdictions.**

**Standard 9     In instances where MAWG refers an issue to the Department of Insurance, and the Department of Insurance accepts responsibility for following through with the recommendation, the Department of Insurance shall review the issue and respond within 30 days of receipt of the referral to MAWG.**

- A. If MAWG refers a matter to the Department of Insurance, the CAD shall communicate the referral to the appropriate Department of Insurance staff and respond to referrals from MAWG within the requested time frame.

**CATEGORY V - OVERSIGHT OF CONTRACTORS**

There are generally three types of contract examiners and analysts. Individual contractors may contract directly with insurance departments and frequently contract exclusively with one insurance department. Contractor firms may also contract exclusively with insurance departments. These firms may work for one or more insurance departments in the same or varying capacities. For instance, a firm may do examination work for Insurance Department A, analysis work for Insurance Department B, or baseline analysis and examination work for Insurance Department C. These firms agree not to accept engagements with regulated entities. Corporate contractors are firms that contract with insurance departments and accept engagements with regulated entities. Although specific staff may be dedicated to work for regulators, they work under the same corporate management as staff performing engagements with regulated entities. In addition, staff may change their roles within the firm at any time. The following competency standards apply to all three types of contract examiners.

When using contractors for market conduct examinations or market analysis, the Department of Insurance shall ensure that contractors have the education and professional experience comparable to qualified department staff and that processes and procedures are in place to oversee and monitor the work performance and related activities of the contractors.

**Standard 1 The Department of Insurance shall have established procedures to select contractors in accordance with applicable state laws and policies.**

*Comment: WA has a union contract that covers the use of contract examiners. Therefore, WA would like to amend this standard to read: The DOI shall have established procedures to select contractors in accordance with applicable state laws, rules and other controlling documents such as union contracts.*

*Response: Language has been modified to address WA concerns.*

- A. The Department of Insurance shall utilize documented standards to determine whether a conflict of interest exists, either directly or indirectly, that would preclude the contractor's involvement with the proposed market analysis, regulatory investigation or market conduct activity.
- B. The Department of Insurance shall utilize a written contract or Memorandum of Understanding (MOU) when using the services of a contract examiner. The contract or MOU shall include specific information regarding the following:
  - 1) scope of work and services;
  - 2) budget, hourly rates and fees;
  - 3) hours of work;
  - 4) deliverables and deadlines; and
  - 5) confidentiality and security.

*Comment: PCI indicates there is no mention in this standard about any attempt to minimize the cost of contract examiners. The concern is that since insurers typically pay the fees and expenses of contract examiners that the state should take into account that cost and factor it into the decision making of selecting the appropriate and most efficient contract examiner. This area on dealing with contractors needs to address the instances where contractors have abused the system, by adding unnecessary hours. While department's have gotten better at controlling contractors, controls still need to be put in place.*

*Response: The state insurance departments will need to retain the autonomy to select a contractor based upon the issue to be examined and the expertise of the contractor. State do take into consideration the cost, expertise of contractor and past experience with contractor.*

**Standard 2 The Department of Insurance shall establish procedures to ensure that the contract examiners comply with the standards of the *Market Regulation Handbook*.**

*Comment: PCI suggests the language should be changed to read...examiners understand and comply...*

*Response: Absent testing of examiners on the handbook, there is no effective way to measure an examiners "understanding" of the handbook.*

**Standard 3 The Department of Insurance shall assign Department staff the responsibility to oversee the performance of contract examiners.**

- A. Department of Insurance authorized staff shall monitor or oversee the pre-examination and exit conferences and appropriate department staff shall meet regularly with the contract examiners to ensure that the examination is being conducted in accordance with pre-exam agreements. Department staff shall review the contractors' preliminary findings and draft report before it is submitted to the regulated entity.

*Comment: PCI suggests adding the following at the end of the paragraph...The use and guidelines of contractors will be explained to the regulated entity before the start of the examination. The regulated entity will be provided a contact person within the DOI who can handle any contractor issues during the course of the exam, without fear of retribution. At the conclusion of the exam the DOI will provide the regulated entity with the opportunity to complete a post exam evaluation of the contractor and the examination process.*

*Response: This language has been added as new substandard D.*

- B. The Department of Insurance shall require activities performed by contract examiners on behalf of the Department be conducted in accordance with Department of Insurance established policies and procedures and applicable state law.

- C. Department of Insurance staff shall approve contractor billings for cost and reasonability and respond to any questions from regulated entities regarding contractor performance or billing.
- D. The use and guidelines of contractors will be explained to the regulated entity before the start of the examination. The regulated entity will be provided a contact person within the DOI who can handle any contractor issues during the course of the exam, without fear of retribution. At the conclusion of the exam the DOI will provide the regulated entity with the opportunity to complete a post exam evaluation of the contractor and the examination process.

**Standard 4    The Department of Insurance shall establish procedures to ensure confidentiality of work papers and other data, electronic security and requirements for returning market conduct examination work papers to the Department of Insurance.**

- A. To further enhance security, Departments of Insurance shall provide or require contractors to utilize dedicated computers with approved anti-virus software and approved encryption. When possible, e-mail and needed URL shall be routed through the Department of Insurance and password protected.
- B. Contracts or other written agreements between a Department of Insurance and contract examiners shall contain language that the contract examiner shall safeguard confidential information. This includes protection of proprietary information received from the regulated entity under examination, information received from other Departments of Insurance and data residing in NAIC databases.
- C. Assuming that the contract between the insurance department and the contractor contains appropriate language regarding confidentiality of information, the NAIC may allow the contractor access to information residing at the NAIC as directed by the insurance department. The Department of Insurance shall have authorized staff verify that the contract examiner has signed a confidentiality agreement that includes access to I-SITE; determine whether and to what extent the contractor may access NAIC databases such as I-SITE and shall be responsible for notifying the NAIC of any changes regarding the contract examiners and discontinuing such access upon completion of the examination.
- D. The Department of Insurance shall establish policies and procedures in writing with the contract examiners regarding the confidentiality of work papers and other related data as well as the point at which all data and work papers are returned to the Department of Insurance upon completion of the examination. Laptop computers shall be sanitized after each examination and at the beginning of each examination, only loaded with software for that specific examination.

**CATEGORY VI – TREATMENT OF CONFIDENTIAL INFORMATION**

The Department of Insurance shall have authority to analyze, examine or investigate entities that transact the business of insurance, as well as the ability to protect consumers, keep records confidential, enforce the continuum of regulatory responses and take corrective action when necessary.

**Standard 1**    The Department of Insurance shall have the ability to share and receive confidential and privileged documents, materials or other information with other state, federal, and international regulatory agencies, and law enforcement authorities and the National Association of Insurance Commissioners, its affiliates or subsidiaries provided that the recipient has the legal authority to maintain the confidentiality and privileged status of the document, communication or other information and agrees to maintain the confidentiality and privileged status of the document, material or other information.

*Comment: NAMIC suggests that this standard be revised to require sharing of information by the insurance department so long as the recipient agrees to maintain the confidentiality and so long as the recipient has the legal authority to maintain the information as confidential. An entity or organization may well agree to maintain information as confidential but, absent the legal authority to keep the information confidential, the entity or organization may be compelled by a court to release such information.*

Revised 11/17/08

*Response: The language has been modified to be consistent with the language in the NAIC's Market Conduct Surveillance Model Act.*

*Comment: PCI believes that most, if not all states, could not meet this standard without a change in state laws. Some states do not have the legal authority to keep the information confidential.*

*Response: NAIC legal continues to review and assess states' ability to keep records confidential. This should not cause concerns with keeping this as a standard.*

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