

VA Comments 10/01/09

From: Lee, Gregory

Sent: Thursday, October 01, 2009 7:07 AM

To: Wallace, Petra

Subject: Virginia's Comments RE: "Thoughts on Market Regulation - A Corporate Governance Approach to Market Conduct Examination" and the Ohio Draft Documents.

Importance: High

Virginia's comments concerning the document "Thoughts on Market Regulation – A Corporate Governance Approach to Market Conduct Examination" and the Ohio Draft Documents.

[OH Draft 6/24/09 - Risk Focused approach to Market Regulation, Initial outline of recommendations for additions to the Market Regulation Handbook](#)

It appears that elements of the risk-based approach may be suitable for market analysis as a potential continuum action. However, it is unclear exactly where this approach is intended to fit into market regulation and we feel that the recommendations related to "Risk-Based Market Conduct Examinations" and the "The Risk-Focused Surveillance Process" require further discussion and input from other interested parties before additions to the Handbook are recommended. Some of the questions and concerns that Virginia believes warrant further discussion are presented in the following paragraphs.

Is it possible that in the future, jurisdictions would have to adopt this approach in order to be accredited? The continual surveillance contemplated by this approach would appear to require additional resources that some jurisdictions may not have.

This approach appears to be geared exclusively towards large companies. How a regulated entity structures and documents its written processes does not always indicate whether it has a proactive or reactive approach. Small or mid-size regional companies with minimal staff specifically dedicated to compliance often have an excellent compliance record because the staff that does exist is small; located in one place; and constantly communicates with each other. Many large national companies with a verifiable management cycle and reams of state-specific procedures, processes, systems, flow-charts, etc...often have rather mediocre compliance records, even though they have reasonably well-staffed compliance, legal, and internal audit departments. Additionally, small and regional companies may find it costly and difficult to assemble and maintain the documentation contemplated by this approach.

Is it not already common practice for examiners to target for additional review the areas of an examination where written procedures appear to be absent or deficient? The standards in the Handbook are not entirely silent on what constitutes a procedural review. They state, "Review the regulated entity's procedures, training manuals and claim bulletins *to determine if regulated entity standards exist and whether standards comply with state law.*" It has always been our established practice to inform a company whether the lack of a procedure or a deficient procedure may have caused a violation to occur.

We would like to see a more detailed description of the specific elements of the "structured methodology designed to establish a forward-looking view of an insurer's risk profile." Wouldn't the size of the company, its area of operations and the lines of business it administers have something to do with the processes it would need to adopt to ensure compliance? Is it not possible that there could be substantial variance in compliant processes among different types of insurers?

[OH Draft 6/24/09 History Draft for Chapter 8](#)

We do not recommend inserting these 5 paragraphs into the History section of Chapter 8 as currently written.

What enabling statute gives examiners the authority "...to *confirm* that management has adopted an enterprise risk management approach to support its strategic decision making"? Would confirming the "management approach" of insurers be something that insurance departments would necessarily want to get involved with? What would the responsibility of regulators be if an insurer confirmed under the risk-based corporate governance approach was subsequently found to have engaged in an illegal business practice?

It is presently unclear as to how the documentation requests and continual surveillance contemplated by this approach would "...reduce audit times and costs." It appears that a review of controls, systems and processes of any or all business functions could potentially lengthen the time needed to complete an examination and increase the cost.

Thank you,

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