April 23, 2015

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NAIC Market Regulation
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Dear Randy:

Thank you for the opportunity to respond to the draft March 28, 2015 Market Regulation Accreditation Program Proposal. It is clear that you and other staff at the NAIC devoted a significant amount of thought and considerable effort into the creation of this draft.

We provide comments and some suggested edits on the attached draft and will be participating in the interim meeting on April 27. However, it may be appropriate to restate a point that was included in our earlier comments on the proposed accreditation program, and which has been echoed by many others. The purpose of the market regulation accreditation program remains unclear. While the new draft includes some general goals and objectives for the program, there is no articulation of what problem is sought to be addressed by accreditation. The lack of clarity on this point makes it difficult to determine if the proposed program will be effective.

The language of the draft and the proposed accreditation standards themselves confirm that the standards for market regulation activities – the Core Competencies and Standards – exist already in the NAIC Market Regulation Handbook. As a result, this logically calls into question whether it is necessary or appropriate to create another accreditation program with its attendant cost, both to the NAIC and to state insurance regulators, and whether the creation of such a program is essential to meeting the stated goals. There may be other effective means to achieve a similar result.

Additionally, regardless of the form used to address the goals of the working group, it would be prudent to carefully review the comments relating to market conduct regulation found in recent reports. For instance, the December 2013 Federal Insurance Office Modernization Report contains a list of recommendations related to market conduct regulation, including a recommendation that all states perform market conduct examinations in accordance with the NAIC Market Regulation Handbook.
The recently released IMF Detailed Assessment Report on U.S. observance of IAIS Insurance Core Principles also addressed market conduct regulation and argued for a more risk-focused supervisory framework, enhanced analysis of risk and broader supervision of more significant intermediaries. These recommendations take a slightly different approach, and argue for the creation of a more risk-based market conduct regulation process, instead of the routine, more audit-like examinations that are currently conducted by many states.

In essence, these recommendations support the market regulation analysis we are currently conducting, but argue that we change our focus. Instead of institutionalizing in an accreditation program what is already in place, it may be more appropriate to look critically at the Handbook and the market regulation process itself with fresh eyes. The insurance market has changed dramatically in the last decade. Our approach to market conduct and market regulation may need to be dramatically revised to remain effective and responsive to changing market trends.

We look forward to discussing these and other issues with the Market Regulation Accreditation Working Group members in the coming months.

Sincerely,

Kevin M. McCarty
Commissioner
MARKET REGULATION ACCREDITATION PROGRAM PROPOSAL
March 28, 2015

OBJECTIVES OF THE MARKET REGULATION ACCREDITATION (D) WORKING GROUP

1. Provide a process whereby state regulation of the conduct of regulated entities in the insurance marketplace can be enhanced and objectively monitored for the benefit of regulators, consumers and industry.

2. Utilize the NAIC Market Regulation Handbook as the basis for the application of Create substantially similar standards and regulatory activities for market regulation among NAIC member jurisdictions, while recognizing that deviations from these standards and activities may be necessary to meet state specific targeted objectives.

3. Develop a formal market regulation accreditation proposal for consideration by NAIC membership by providing recommendations for the following: 1) accreditation standards; 2) process for state implementation of standards; 3) process to measure state compliance with standards; and 4) process for future revisions to the standards.

GUIDING PRINCIPLES

1. The goals to be achieved through the Market Regulation Accreditation Program should be clearly defined.

2. The interests of regulators, consumers, and industry should be addressed so that all parties achieve benefits relating to effectiveness and efficiency.

3. The success of an objective and cost efficient Market Regulation Accreditation Program will depend, in part, upon the systematic sharing of market regulatory activities and information among NAIC member jurisdictions. A measure of success is the avoidance of duplication in the market regulatory activities within and among NAIC member jurisdictions.

4. Market Regulation Accreditation Program standards should utilize, to the extent appropriate, existing systems and processes adopted by NAIC member jurisdictions to coordinate market regulation activity wherever feasible to promote uniformity and efficiency of process, while recognizing that deviations from these standards and activities may be, and only deviate to the extent necessary to meet state specific targeted objectives.

5. The establishment and implementation of a Market Regulation Accreditation Program will be an evolving process and will be phased-in over a defined period of time.

6. A Market Regulation Accreditation Program should provide flexibility for differences among NAIC member jurisdictions, such as the number of insurers, population, budgets, statutes and administrative codes.

7. The Market Regulation Accreditation Program should initially be a stand-alone program and not be combined or incorporated into the existing Financial Regulation Standards and Accreditation program.

GOALS OF A MARKET REGULATION ACCREDITATION PROGRAM

1. Continuously improve the effectiveness and efficiency of state insurance market regulatory activities through consistent application of the Core Competencies and Standards in the NAIC Market Regulation Handbook.

2. Strengthen the quality of market regulatory activities through promoting consistency and eliminate duplication wherever possible.

3. Continuously improve the effectiveness and efficiency of state insurance market regulatory activity through interstate collaboration and coordination.

4. Establish standards for the qualifications and competencies of state insurance market regulation professionals.
5. Identify areas where a common standard is beneficial, realistic and achievable in NAIC member jurisdictions and develop the standard accordingly. For areas where a common standard is not realistic, develop best practices to be used by all NAIC member jurisdictions.

6. Develop a core training program and additional resources for NAIC member jurisdictions in support of market regulation activities.

**ACCREDITATION STANDARDS**

In 2004, the NAIC recognized that state departments of insurance¹ need uniform standards to optimize the effectiveness and efficiency with which they address market regulatory issues. Core competencies were created to fulfill that need. Building upon the core competencies, accreditation standards will strengthen the ability of states to uniformly address regulatory issues; ensure compliance by regulated entities with state statutes, rules and regulations; and provide greater consumer protection. The initial accreditation standards proposed in this document are organized within 4 categories: Category I – Resources; Category II – Market Analysis; Category III – Market Conduct Examinations; Category IV – Inter-jurisdictional Collaboration.

**CATEGORY I - RESOURCES**

**Standard 1** The Department of Insurance shall have staff sufficient to perform the continuum of regulatory options including market analysis, market conduct examinations and market conduct investigations.

*Core Competency – Resources – Staff and Training*

**Standard 2** The Department of Insurance shall have authority to analyze, investigate, examine entities that transact the business of insurance and take corrective action, when necessary.

*Core Competency – Resources – Regulatory Authority – Standards 1 and 2*

**Standard 3** 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.

*Core Competency – Resources – Regulatory Authority - Standard 3*

**Standard 4** The Department of Insurance shall have a Market Analysis Chief to oversee its market analysis activities and ensure ongoing inter-jurisdictional communication regarding market analysis results and best practices. The Market Analysis Chief shall have sufficient authority to effectively enforce the use of the NAIC market information systems by Department staff and its consideration prior to any continuum actions.

*Core Competency: Market Analysis – Market Analysis Chief – Standards 1-5*

**Standard 5** The Department of Insurance shall have a Collaborative Action Designee (CAD) who is responsible for all communications related to inter-jurisdictional and multi-jurisdictional collaboration.

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¹ For purposes of this Market Regulation Accreditation Proposal, “state departments of insurance” include all NAIC member jurisdictions.
Standard 6  The Department of Insurance shall establish and enforce minimum educational and experience requirements for all professional staff positions and all contractual professionals in the market regulation and market analysis area that are commensurate with the duties and responsibilities of the position. For new staff, the Department shall have requirements and policies established to ensure the appropriate educational requirements are continually pursued and accomplished within five (5) years of the employment date through job-related college courses, professional programs, and/or other training programs.

Core Competencies – Resources – Staff and Training – Standard 2; Resources – Contract Examiner – Standard 2

CATEGORY II – MARKET ANALYSIS

Standard 1  The Department of Insurance shall fully participate in the Complaints Database System (CDS), the Regulatory Information Retrieval System (RIRS), Exam Tracking System (ETS), and Market Analysis Review Systems (MARS).

Core Competency: Market Analysis – Data Collection – Standard 1

Standard 2  The Department of Insurance shall conduct analyses of regulated entities by compiling and analyzing available data elements and indicators on no less than a quarterly schedule.

Core Competency – Market Analysis – Analysis – Standard 8

Standard 3  The Department of Insurance shall establish and implement procedures for regular communication between the Market Analysis Chief (MAC) and appropriate Department of Insurance staff in areas including consumer services, enforcement, legal, forms and rates, financial, market analysis and market conduct to ensure that the MAC is notified of unusual activity that may be of interest for market analysis.

Core Competency – Market Analysis – Market Actions Chief – Standard 3

Standard 4  A state shall enter its analysis and reasons for a market conduct examination in the NAIC’s Market Analysis Review System prior to sending an examination call letter to the regulated entity subject to the examination.

CATEGORY III – MARKET CONDUCT EXAMINATIONS

Standard 1  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.

Core Competency – The Continuum – Market Conduct Examinations – Standards 1-19

Standard 2  If the Department of Insurance deviates from the standardized data request contained in the Referenced Documents section of the Market Regulation Handbook Web Page, it shall notify the NAIC’s Market Regulation Department of the deviations within 60 days for possible future inclusion in the standardized data requests.

Core Competency – The Continuum – Market Conduct Examinations – Standard 8

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2 For purposes of this Market Regulation Accreditation Program Proposal, “full participation” in insurance department data reporting is defined as electronic submissions from state departments of insurance that are complete, timely and accurate.
Standard 3  If the Department of Insurance retains a contractor for an examination, it shall have Department personnel responsible to oversee the performance of the contractor and ensure the contractor adheres to the standards of the Market Regulation Handbook. The Department shall comply with the Core Competency standards in the Market Regulation Handbook for Contract Examiners.  

Core Competency – Resources – Contract Examiner – Standards 1 - 6

CATEGORY IV – INTER-JURISDICTIONAL COLLABORATION

Standard 1  The Department of Insurance shall establish and implement procedures for the Collaborative Action Designee to communicate with appropriate Department of Insurance staff, in areas including, but not limited to, consumer services, enforcement, market analysis and market conduct, regarding potential collaborative action issues and ongoing collaborative actions.  

Core Competency – Interstate Collaboration – Collaborative Action Designee - Standard 3

Standard 2  The Collaborative Action Designee, in coordination with the Department of Insurance MAC, shall participate in at least 50% of MAWG meetings and calls.

Standard 3  The Department of Insurance shall review and respond to MAWG referrals within 30 days of receipt.  

Core Competency – Interstate Collaboration – Standard 9

WHO WILL PERFORM MARKET REGULATION ACCREDITATION

A new NAIC Market Regulation Standards and Accreditation Committee will determine whether a jurisdiction meets the accreditation standards. Members of that Committee shall be appointed annually by the NAIC Officers through the normal NAIC committee appointment process. Discussions of state accreditation matters will be held in regulator-only sessions at NAIC national meetings to protect the states, regulators, and regulated entities from disclosure of confidential information.

HOW THE MARKET REGULATION ACCREDITATION PROGRAM WILL WORK

The proposed Market Regulation Accreditation Program establishes requirements under which a state insurance department may seek and maintain accreditation. 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.

States will have 2016 to assess their compliance with the proposed standards. An NAIC Review Team (similarly constructed as the Financial Regulation and Accreditation Standards Accreditation Review Team) will begin accreditation reviews in 2017. Each jurisdiction would then be reviewed every 3 years to assess that jurisdiction’s ongoing compliance with the accreditation standards.
Accredited jurisdictions will be required to submit an annual self-evaluation to the Market Regulation Standards and Accreditation Committee. If the NAIC Review Team finds during the annual self-evaluation that a jurisdiction no longer meets the accreditation standards, the state’s accreditation may be suspended or revoked. The Market Regulation Standards and Accreditation Committee will consider any such action on a case-by-case basis, including an assessment of any mitigating factors that warrant further inquiry or indicate, for example, that continued accreditation should be conditioned upon implementation of a satisfactory remedial plan. A state insurance department also may voluntarily withdraw from the program.