April 24, 2015

Market Regulation Accreditation (D) Working Group
c/o Randy Helder
Assistant Director, Market Regulation
National Association of Insurance Commissioners
Via Email: rhelder@naic.org

Re: Draft Market Regulation Accreditation Proposal

Dear Randy:

On behalf of our members, the Insured Retirement Institute appreciates the opportunity to respond to the request of the NAIC Market Regulation Accreditation (D) Working Group (the “Working Group”) for comments with respect to the draft Market Regulation Accreditation Proposal dated March 28, 2015 (the “Draft Proposal”). As we indicated in our remarks at the NAIC Spring National Meeting last month, we commend the Working Group and the NAIC staff for developing a draft that addresses much of the feedback provided to date and provides a solid foundation for continued dialogue among the regulators, industry and consumer advocates.

Enclosed with this letter is a mark-up of the Draft Proposal reflecting our members’ feedback, including suggested revisions to the sections on interstate collaboration, which we view as critical to the success of this effort. Brief explanations of our suggestions are included below.

Need for National Structure and Process

Category IV of the Draft Proposal focuses on the Market Analysis Working Group (MAWG). We urge the Working Group to expand the inter-jurisdictional collaboration standards to routine and targeted examinations by establishing a single market conduct regulatory structure with clear and agreed upon procedures among the states. Specifically, we have previously proposed a lead state concept under which the domestic state and/or one or more other states would conduct coordinated interstate examinations of companies on a consolidated basis, with all other states having the ability to participate in the coordinated examination process if they desire to do so. All states would still retain the authority to examine a company outside the coordinated process after review and consideration of the scope and
findings of a previous state or federal examination within the previous three years if a risk of consumer harm exists that cannot be addressed during the coordinated process.

We continue to believe that market conduct reform along these lines would provide obvious benefits for insurance companies as well as the regulatory community, particularly many states with limited resources. More importantly, we believe such a streamlined process would greatly benefit consumers nationwide, all of whom should be entitled to the same level of protection regardless of where they live. As such, we have included suggested language in Category IV of the attached mark-up to incorporate this concept into the accreditation standards.

Other Key Comments

Category I – Resources

Standard 1 – While we understand the rationale for proposing to require adequate staffing as a condition of accreditation, we are concerned that the Draft Proposal sets the bar too high and could inadvertently prevent smaller insurance departments from obtaining and maintaining accreditation. To ensure that all states have the ability to meet this standard, we are proposing to only require adequate staffing to conduct the market analysis needed to determine whether to pursue regulatory actions such as examinations or investigations. In addition, we believe the lead state concept described above would greatly enhance the ability of smaller departments to meet the accreditation standards.

Standard 2 – We are recommending a minor change in the wording to clarify that the phrase “when necessary” applies only to the taking of corrective action. As originally drafted, this could have been misinterpreted to imply that the analysis, investigation, and examination of entities that transact the business of insurance many not always be necessary.

Standard 3 – We believe the inclusion of a standard to facilitate sharing of confidential and privileged information among regulators is an important element of the Draft Proposal. However, we believe it would be more appropriate to include this in Category IV (Inter-Jurisdictional Collaboration). In its place, we are recommending a new standard to ensure that accredited jurisdictions maintain the confidentiality and privileged status of sensitive documents, materials and other information.

Category II – Market Analysis

Standard 2 – We believe the intent of this quarterly review standard is to require that accredited jurisdictions review the information in their possession on a regular basis. However, we are concerned that this could be misinterpreted to require quarterly industry data calls and reports, which would be a significant drain on industry resources and a particular challenge for smaller and mid-sized insurance companies. We have proposed revisions to clarify that this standard does not require insurance departments to collect new information from regulated entities every quarter.

We would also question whether it is necessary to require reviews of this information on a quarterly basis. For smaller departments, it may not be practical or feasible to conduct reviews so frequently. We are not proposing that the Working Group increase the frequency of these reviews; rather, we are simply suggesting that the Working Group consider whether the specified frequency will work for all states.
Category III – Market Conduct Examinations

Proposed New Standard – We are proposing additional language to clarify that any decision by an accredited jurisdiction to commence examinations or take other regulatory actions against a regulated entity must be supported by the Market Analysis or have some other material and appropriate basis. We believe it would be appropriate to include this limitation in the accreditation standards to ensure that accredited jurisdictions do not pursue regulatory action without sound justification.

Proposed New Standard – Our members report that examinations are often not preceded by the planning process outlined in the Market Regulation Handbook, which impedes their ability to appropriately budget, plan and forecast for expenses. Given the importance of this Market Regulation Handbook requirement, we believe it merits additional emphasis through the inclusion of a new standard to require accredited jurisdictions to provide estimates of the costs for which companies will be responsible. To assist states in complying with this requirement, the Working Group could explore the development of a standardized format for examination and market analysis review expense projections.

Standard 2 – We are concerned about the ease with which this standard would allow accredited jurisdictions to implement deviations from the standardized data request. While we appreciate the need to preserve each regulator’s authority, the long-term effectiveness of the accreditation program could be compromised if every accredited jurisdiction adopts its own unique deviations. As an alternative, we are suggesting language to allow accredited states to request approval for deviations or modifications to the standardized data request.

If the Working Group agrees with this suggestion, we would encourage the Working Group to consider whether it would be appropriate to specify the basis for approval of any deviation request (e.g., showing that the requested deviation is necessary to enable examination of state-specific rules) or any requested modification to the standardized data request, which we believe should be a higher threshold (e.g., showing that the requested change is necessary to enable examination of rules adopted in at least 10 states).

Standard 3 – We believe the same rules should apply to all examiners, regardless of whether they are contractors or employees of the Department of Insurance. As such, we are suggesting revisions to expand this standard to cover both contractors and employees.

Who Will Perform Market Regulation Accreditation

We are concerned about the proposal to limit discussions of state accreditation matters to regulator-only sessions at NAIC national meetings. While we recognize the need for confidentiality during certain meetings of the new Market Regulation Standards and Accreditation Committee, we are suggesting the addition of language to give regulated entities the ability to provide feedback and input based on their experiences to help the Committee determine whether an accredited jurisdiction or a jurisdiction applying for accreditation meets the standards of the accreditation program.

If the Working Group agrees with this suggestion, we would encourage the Working Group to explore the most appropriate ways to facilitate the submission of feedback by regulated entities. Among the options we have identified are periodic surveys to be sent by the Committee to industry requesting
input on specific questions, or establishing a process by which regulated entities could proactively submit comments for consideration by the Committee. Working Group members may have other thoughts, and we would welcome the opportunity to discuss them.

Conclusion

Thank you again for the opportunity to provide these comments on the Draft Proposal. Please contact me (jberkowitz@irionline.org or 202-469-3014) or Lee Covington, IRI’s Senior Vice President and General Counsel (lcovington@irionline.org or 202-469-3002) if you have any questions.

Sincerely,

Jason Berkowitz
Vice President, Regulatory Affairs and Compliance
Insured Retirement Institute (IRI)

Enclosure

Cc: The Honorable Bruce Ramge, Director, Nebraska Department of Insurance
The Honorable Stephen W. Robertson, Commissioner, Indiana Department of Insurance
Tim Mullen, Director, Market Regulation, National Association of Insurance Commissioners
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. 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 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.
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 insurance 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, to determine whether to undertake market conduct examinations, and market conduct investigations or other regulatory options.

*Core Competency: Resources – Staff and Training*

**Standard 2**
The Department of Insurance shall have authority to analyze, investigate, and examine entities that transact the business of insurance and, when necessary, to 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. The Department of Insurance shall have the ability maintain the confidentiality and privileged status of any and all confidential and privileged documents, materials or other information in its possession, whether received from a regulated entity or from other state, federal, and international regulatory agencies, law enforcement authorities, or the National Association of Insurance Commissioners or its affiliates or subsidiaries. The Department of Insurance shall implement and comply with appropriate policies and procedures to ensure the confidentiality and privileged status of all such documents, materials, and other information, including policies and procedures for storage (physical and electronic) and destruction of such documents, materials, and 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*

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1 For purposes of this Market Regulation Accreditation Proposal, “state departments of insurance” include all NAIC member jurisdictions.
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.

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 already in the Department’s possession or otherwise available to the Department 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

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 2  The commencement of market conduct examinations or other regulatory activities shall be supported by the results of Market Analysis or some other material and appropriate basis.

Standard 3  Prior to the commencement of an examination, the Department of Insurance shall provide the regulated entity with an estimate of the costs for which the regulated entity will be responsible in connection with the examination and market analysis review, as well as the scope and a plan for the examination, including timelines for each phase of the examination.

Standard 4  If the Department of Insurance may request approval from the new NAIC Market Regulation Standards and Accreditation Committee described below for a deviation 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

Standard 35  If the Department of Insurance retains a contractor for an examination, it shall have Department personnel responsible to oversee the performance of employee and contract examiners to the contractor and ensure the contractor adheres to the standards of the Market Regulation Handbook. The Department shall comply with the Core Competency standards for Examiners in the Market Regulation Handbook for Contract Examiners.

Core Competency – Resources – Contract Examiner – Standards 1 – 6 [insert appropriate section reference]

CATEGORY IV – INTER-JURISDICTIONAL COLLABORATION

Standard 1  The Department of Insurance shall conduct all examinations of regulated entities in collaboration with other Departments on a consolidated basis through the new National Coordinated Market Conduct Program (NCMCP). One or more Departments will be designated as the lead state for each regulated entity. The regulated entity’s domestic state regulator will typically be a lead state, although any other state may request to be the lead state for a particular regulated entity, either in addition to or in lieu of the domestic regulator. Any other accredited jurisdiction may choose to participate in the coordinated examination process if they desire to do so. All accredited jurisdictions would retain the authority to examine a regulated entity outside the coordinated process after review and consideration of the scope and findings of a previous state or federal examination within the previous three years if an imminent risk of consumer harm exists that cannot be addressed through the coordinated process.

Standard 2  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. Any state that decides to conduct an examination outside the NCMCP shall notify the NAIC Market Regulation and Consumer Affairs (D) Committee.

Standard 3  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 24 | The Collaborative Action Designee, in coordination with the Department of Insurance MAC, shall participate in at least 50% of MAWG meetings and calls. |

| Standard 35 | 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. *Regulated entities will have the opportunity to provide feedback and input to assist the Committee in assessing whether an accredited jurisdiction or a jurisdiction applying for accreditation meets the accreditation standards.* 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.