February 13, 2015

Market Regulation Accreditation (D) Working Group
c/o Tim Mullen
Director, Market Regulation
National Association of Insurance Commissioners
tmullen@naic.org

Subject: Initial Market Regulation Accreditation Proposal – Discussion Draft

Dear Mr. Mullen:

On behalf of our member companies, America’s Health Insurance Plans (AHIP), the American Insurance Association (AIA), the National Association of Mutual Insurance Companies (NAMIC), and the Property Casualty Insurance Association of America (PCI) submit an Initial Market Regulation Accreditation Program Proposal Discussion Draft in response to the request made by the Market Regulation Accreditation (D) Working Group ("Working Group"). The Working Group charge is to 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 for measure of state compliance with standards; and 4) process for future revisions to the standards. This submission addresses only the first component, the accreditation standards.

We hope that this initial proposal will assist the Working Group in its deliberations, but we wish to note that these submitted standards are indeed preliminary and subject to modification as the discussion evolves.

The provisions within our proposal are based on Core Competencies set forth in NAIC’s 2014 Market Regulation Handbook ("Handbook"). Since the Core Competencies were intended to fulfill a need for
uniform standards and solutions to effectively and efficiently address market regulatory issues, they represent essential areas of the market regulatory function. It is our understanding that many state insurance departments already have practices and procedures in place which allow, or would allow, them to comply with many of the Core Competency standards in the Handbook. It follows that a logical starting point in the development of Market Regulation Accreditation Standards should begin with the framework of the Handbook’s Core Competencies: 1) Resources; 2) Market Analysis; 3) Continuum; 4) Interstate Collaboration.

We also realize that as there are 99 Core Competencies, incorporating them into an accreditation program will take years to fully develop, so our proposal is offered only as a first step in building out the standards for a full accreditation program.

We believe that the Working Group should first develop its idea of “Standards” before moving on to process for implementation of those standards; process for measure of compliance, or process for future revisions. It seems that without the Standards established, it is difficult to determine what would be required for the next steps in the process.

We thank the Working Group for engaging in such a collaborative effort in moving forward with such an important process and look forward to continuing to work with you as you continue to develop a proposal for consideration by NAIC membership.

Sincerely,

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INITIAL MARKET REGULATION ACCREDITATION PROGRAM
PROPOSAL DISCUSSION DRAFT

OBJECTIVE

The objective of this proposed Market Regulation Accreditation Proposal is to further enhance public confidence in-state based market regulation oversight of insurers, thereby further enhancing consumer confidence through improved efficiency and effectiveness in insurance market oversight.

It is guided in part by the important strides in the area of financial regulation the NAIC membership has made demonstrating to the public, to consumers, and to governments at all levels, that they can have confidence in the financial health of licensed insurers. That program has significantly addressed the public's concern with insurers' financial conditions. This Proposal is designed to build upon increased confidence in the insurance market through state-based market regulation by improving marketplace oversight.

The success of market conduct regulation should not be measured just on level of enforcement activity of a given jurisdiction, but also on the way jurisdictions monitor compliance with laws and regulations. Consumers are best served by a market that is effectively and efficiently regulated but also a market that encourages competition and innovation.

MEANS OF OBTAINING OBJECTIVE

This objective will be accomplished through the establishment and continuing implementation of effective and cost efficient methods for providing marketplace oversight, and by state insurance commissioners establishing an effective market oversight self-regulatory scheme under the designation of a Market Regulation Accreditation Program.

NATURE OF THE PROPOSAL

It is proposed that market regulation accreditation evolve over time both as to its content and as to its implementation schedule. While components of the Proposal may be self evident at this time, and as thus included within this document, it is anticipated that additional components be identified and incorporated over time.

IMPLEMENTATION TIMEFRAME

This Proposal will not be fully implemented quickly and it is reasonable to anticipate that full membership compliance could take five to ten years to complete. It will require full engagement and continuing involvement of NAIC leadership, Commissioners, industry and consumers.

It is proposed that the NAIC implement these initial Proposal elements over a sufficient timeframe, anticipated to be two or more years depending on the component, so as to permit Commissioners and their departments to undertake any required organizational and procedural changes, and to obtain any required legislative and gubernatorial support.
CORE COMPETENCIES - IN GENERAL

The NAIC’s Market Regulation Core Competencies is a listing of NAIC adopted market regulation guidance and standards for state departments of insurance are expected to meet in a number of essential areas of market oversight. The core competencies have been adopted to promote efficient and effective execution of essential market regulatory functions in compliance with agreed upon standards, promote inter-state collaboration of market analysis and continuum actions, and to provide for coordination in addressing regulatory issues involving multiple jurisdictions.

The Core Competencies focus on four primary areas: state resources, market analysis, the continuum of regulatory options and interstate collaboration. Within each Core Competency area, uniform standards have been developed. Today there are 99 standards contained in the Core Competencies. While a fully developed and implemented Market Regulation Accreditation Program would most likely address each of the 99 competencies, at this time it is proposed, with the exception of those Core Competencies identified below, that the Core Competencies be considered within this Proposal as NAIC Best Practices to guide state market regulatory and oversight activities. As market regulation accreditation matures over time, it is anticipated additional Core Competencies will become integral components of accreditation.

SPECIFIC REQUIRED CORE COMPETENCIES ON PROPOSAL ADOPTION

The following are those Core Competencies that should be included within the provisions of the proposed Market Regulation Accreditation program:

**Resources** - Each accredited insurance department shall commit to have (1) adequate and enforceable market conduct statutes and regulations; (2) professional standards for trained staff; (3) procedures regarding the use of contract examiners to protect that state's insurance consumers from harm caused by regulated entities’ market practices, policies and/or procedures; and (4) to populate and utilize all of the NAIC market regulation data bases and information systems and tools.

1. **Adequate and enforceable market conduct statutes and regulations** - This Proposal requires the following components:
   - Adoption of the NAIC Unfair Trade Practices Act or substantially similar statutory provisions
   - Adoption of the NAIC Unfair Claims Settlement Practices Act or substantially similar statutory provisions
   - Adoption of the NAIC Model Law on Examination or substantially similar statutory provisions
   - Requirement in statute or regulation that the Department actively implements the continuum of regulatory options
   - Certification by Commissioner that the Department requires implementation of corrective actions as appropriate.
   - Requirement in regulation or standard operating procedures that the Department maintains the confidentiality of records pursuant to state law or federal law.

2. **Professional standards for trained staff** - This Proposal requires the following components:
   - Build upon the past efforts of the NAIC and state regulators to further enhance the technical qualifications of all market analysts and examiners. Further this commitment by requiring all
accredited department analysts and examiners possess minimum experience and complete training that matches their job requirements. When appropriate, establish trainee programs where department personnel can obtain training and job experience under the guidance and supervision of qualified market analysts and examiners or department supervisors.

- Charge the Market Conduct Examinations Standards (D) Working Group with establishing minimum standards training levels for market analysts and examiners; establish simple process for Commissioners to certify prior work experience in lieu of required formal training.
- Charge the Market Conduct Examinations Standards (D) Working Group with establishing dates by which market analysts and examiners need obtain necessary training and training designations.
- Charge the Market Conduct Examinations Standards (D) Working Group with the establishment of a continuing education standard and education programs for state regulators and external examiners to comply with an established set of educational and experience requirements. Obtain NAIC financial and technical support for establishment of new education programs at the NAIC or support of existing programs, such as those offered through the Insurance Regulatory Examiners Society (IRES).
- In order to create sustainable training programs, design education programs that encourage Permit interested parties to participate at reasonable cost.

3. Procedures regarding the use of contract examiners - This Proposal requires the following components:
   - Requirement in statute or regulation that contract examiners utilized by the insurance department meet the Professional Standards for Trained Staff.
   - Requirement in statute or regulation that contract examiners comply with the market analysis and examination requirements, procedures and protocols applicable to department personnel performing the same or similar tasks.
   - Requirement in statute or regulation that contract examiners performing market analysis and examination tasks comply with confidentiality and conflict of interest standards as set forth in the Market Regulation Handbook, including only sharing information within contract examiner firms on a "need to know" basis.
   - Requirement in statute or regulation that all charges and invoices or other billings are reviewed and approved, or otherwise expressly authorized, by the department before submission to a billable party.
   - Establish process in statute or regulation to allow regulated entities to provide feedback to regulators regarding contract examiners without directing communication through the contract examiner.

4. Population and utilization of NAIC market regulation data bases and information systems and tools - This Proposal requires the following components:
   - Certification by the Commissioner that department policies require the timely and complete population and use of NAIC market regulation data bases, information systems, and tools by market regulation staff as adopted by the Market Regulation and Consumer Affairs (D) Committee.

5. Consumer Complaints -- This Proposal requires the following components:
   - Each accredited insurance department shall commit to have processes and procedures to receive, attempt to resolve, or track inquiries and complaints in accordance with guidelines developed by the NAIC Market Analysis Procedures (D) Working Group and
state law. Standards developed by the Working Group shall be utilized by the accredited department in addition to state law to address complaint investigations and resolutions, referrals to insurance department market regulation staff or to the Attorney General or law enforcement agencies as required under state law, and for reporting confirmed closed complaints to the NAIC.

**Market Analysis - Departmental market analysis processes and procedures.** Each accredited insurance department shall establish and utilize procedures for information and data collection and regularly perform in-depth analysis of relevant data in accordance with procedures and time frame as determined by the Commissioner to identify regulated entities activities which may require further analysis. This Proposal requires the following components:

- **NOTE:** Nothing in this standard shall prevent a Commissioner from undertaking any form of review or enforcement action contemplated within the continuum or state law at any time or in any manner authorized under state law if found by the Commissioner to be in the public interest.

**1. Department procedures to perform market analysis as contemplated with the Market Regulation Hand Book** - This Proposal requires the following components:

- Written procedures based upon the size and the nature of the state's several insurance markets to guide staff in the performance of market analysis.
- Documented market analysis activities performed in accordance with established timelines making the greatest possible use of information and data already collected or analyzed by the insurance department, or available through public information sources or rating or accreditation organizations and minimizing duplicative requests for information and data.
- Procedures established by the Commissioner utilizing Best Practices for analysis identified within the Market Regulation Handbook.
- Documented analysis and recommendations for further regulatory intervention filed with the NAIC prior to initiating such intervention.
- Procedures for regulated entities to independently verify data before it is shared with other jurisdiction or relied upon for resolution of market regulation issues.

**Continuum** - Unless otherwise determined to be in the public interest, each accredited insurance department should evaluate, document, and resolve issues in the insurance marketplace by using the NAIC's Continuum of Regulatory Responses to guide its decision-making process when market analysis has identified an issue of regulatory concern.

- **1. Department procedures for addressing and resolving market regulation and oversight issues.** - This Proposal requires each of the following components:
  - Establishment of a problem identification and escalation process utilizing the continuum concept and Best Practices within the Market Regulation Handbook. While recognizing consumer protection is the primary goal, department procedures should encourage market regulatory and oversight issue resolution through the least intrusive means to ensure the efficient use of state and company resources.
  - Documentation of issues indentified under such process and resolve issues utilizing the continuum concept and Best Practices within the Market Regulation Hand Book.
**Interstate Collaboration** - This Proposal requires that each accredited insurance department shall, to the extent permitted by law, follow the collaborative action guidelines for referrals to the Market Actions (D) Working Group (MAWG) and, unless not in the public interest pursuant to a finding of the Commissioner, participate in multistate collaboration activities as necessary to support efficient and effective issue resolution.

**NOTE:** Nothing in this standard shall prevent a Commissioner from undertaking any form of review or enforcement action contemplated within the continuum or state law at any time or in any manner authorized under state law if found by the Commissioner to be in the public interest.

**Examinations** - This Proposal requires that each accredited insurance department shall endeavor to follow the Market Regulation Hand Book *Chapter 12 Scheduling, Coordinating and Communicating*, which at the commencement of the Proposal are to serve as best practices.

**NOTE:** Nothing in this standard shall prevent a Commissioner from undertaking any form of review, to include on site examination, contemplated within the continuum at any time or in any manner authorized under state law if found by the Commissioner to be in the public interest.

1. **Company selection** - This Proposal requires each of the following components:
   - Each accredited insurance department shall develop a standard planning process for examinations based upon statutory examination requirements, market analysis, participation with multistate actions and circumstances that require investigation or examination.
   - Each accredited insurance department shall file with the NAIC, at least 90 days prior to the examination date, a memorandum summarizing all relevant data used to determine the necessity of the response or examination. A call sheet should be prepared, along with the examination plan and estimated time sheet, to the appropriate insurance department personnel for approval.
   - Each accredited insurance department shall notify the company in writing of the examination at least 60 days prior to the examination date. This notification should specify examination procedures, requirements and arrangements, and company information and data that will be the subject of the examination.

2. **Conduct of examinations** - This Proposal requires each of the following components:
   - Each accredited insurance department shall conduct a pre-examination conference with the company coordinator and key personnel to clarify expectations prior to the commencement of an examination.
   - Each accredited insurance department shall develop a procedure for document retention and handling.
   - Unless company procedures have been revised within the examination period, or the insurance department has reason to review information, processes or data from prior years, the initial focus of the examination should look back one year. If the examination identifies issues within the look-back period that suggest further review, information, processes or data from prior years should be subject to examination.
• Each accredited insurance department shall ensure that if all issues relating to the report are not mutually agreed upon, the company may request an informal conference with the insurance department. This conference should be held at the insurance department’s office.
• Each accredited insurance department shall conduct an exit conference at the end of an examination where the examiners and company can raise issues or concerns arising from the examination to include examination costs, fees and expenses payable by the company.
• Each accredited insurance department shall establish a process to address unresolved issues with examination costs, fees and expenses payable by the company.

NOTE: While the Proposal does not require insurance departments follow the remaining provisions addressing the conduct of examinations within Chapter 12 of the Market Regulation Handbook, this Proposal encourages their use as NAIC Best Practices.

Implementation and Enforcement - This Proposal makes no suggestions or recommendations concerning implementation or enforcement. It assumes that these matters will be addressed following resolution of the above issues and will depend in great part on how those issues are resolved. It is also assumed that both efficiency and effectiveness will be objectives along with encouraging competition and innovation.