

**DRAFT - FOR DISCUSSION PURPOSES ONLY**

**August 5, 2009**

The Special Accreditation Standards (D) Working Group's discussions at the NAIC's quarterly meeting in Minneapolis established quite convincingly the inappropriateness of basing a market regulation accreditation program on a standard similar to that used for financial accreditation of a fixed number of examinations of domestic insurers every so many years. In light of that discussion, the question necessarily becomes what would an appropriate standard be? This document suggests a possible approach.

**Market Regulation Accreditation Proposal**

There are three principal goals, which must be considered and, ultimately, reconciled in developing an accreditation performance standard. First, the standard must be one which is objectively measurable so its achievement or not can be determined. Second, the standard should be one that will raise the level of insurance department market regulation activities. And third, the standard must be sufficiently flexible to accommodate the substantial legitimate variations, which exist between and among states and their respective insurance markets. In market regulation, one size won't fit all, nor should it.

These three goals are harmonized by a market regulation accreditation system in which states would be required to develop and adopt specific written market regulation plans, consistent with certain agreed-to required principles, with a state's performance measured against that plan.

An accreditation system developed in this fashion acknowledges an insurance department's need to make choices of how and where it is going to deploy its limited market regulation resources. Of necessity, states are making these choices now. The proposed accreditation system would help to make these choices more deliberate by imposing greater structure and discipline on how they are made.

For example, based on the number of consumer complaints and other evidence, the number one area of consumer concern in many states with respect to insurers' behavior in the market involves health insurance. While that fact does not necessarily mean that market regulation of health insurers should command a disproportionate share of regulatory resources, certainly that fact warrants serious consideration when a department is deciding how it will deploy its resources. To the extent that an insurance department decides to deploy the bulk of its market regulation resources in areas other than health insurance, despite evidence that health insurance is consumers' number one concern, the department should have good reasons for making this decision and those reasons should be articulated in its state-specific market regulation plan.

Market regulation plan accreditation standards (ultimately to be adopted by states by statute or regulation) would establish the required elements of the plan, leaving it to each state to determine its regulatory priorities and how best to address them. For purposes of

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discussion, attached is a list of topics or elements which might be among the required elements of a state's market accreditation plan.

A market regulation accreditation program under a state-specific plan approach would involve the following:

- (1) adoption of the required elements of a state's plan;
- (2) each state would adopt a market regulation plan consistent with the required elements; and
- (3) the market regulation accreditation review decision would be based on (a) whether a state's plan was sufficient (meaning it satisfied at least the minimal plan requirements), and (b) the state's actual demonstrable market regulation activities as compared to and as measured against the state's plan.

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### Sample Market Regulation Accreditation Plan Requirements

Each state shall submit a written Market Regulation plan for approval. The plan will necessarily include how the state will use market analysis, continuum actions, market conduct examinations and interstate collaboration to handle market related issues for effective and efficient market regulation in its jurisdiction.

The plan shall address the following topics clearly and precisely. If any topic is not addressed in a state's plan, the state shall provide justification for the exception.

1. The processes through which the state gathers data and information on all companies conducting business in its jurisdiction.
2. The procedures through which the state uses data and information gathered when performing market analysis.
3. The state's processes for completing sufficient baseline market analyses to be able to identify companies that are potentially harming consumers and that need further, more detailed analysis.
4. The state's processes for conducting Level 1 and Level 2 market analysis reviews based on the findings of baseline analysis or other specific information.
5. The state's monitoring procedures to ensure the NAIC market analysis framework and the state's procedures are consistently followed.
6. The state's processes to determine and document whether a marketplace issue requires a continuum action or market conduct examination prior to scheduling an examination.
7. The state's procedures for placing and prioritizing companies on a market conduct examination schedule.
8. The state's processes for planning and conducting market conduct examinations.
9. The state's monitoring procedures to ensure adopted NAIC examination procedures and the state's own examination procedures are consistently followed.
10. How the state becomes aware of regulatory issues in its marketplace.
11. The state's procedures to determine what, if any, action to take in response to its awareness of a major regulatory issue.
12. The state's ongoing plan to manage the potential risks presented by large market-share insurers.

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13. The state's ongoing plan to manage the potential risks presented by small market-share insurers.
14. The state's procedures to determine its response to a company or an issue that is not addressed by general regulatory strategies (e.g. not expected or planned for).
15. How the state identifies when an issue qualifies as a multijurisdictional concern.
16. The state's procedures to communicate and collaborate with other potentially impacted states regarding multijurisdictional concerns.
17. The state's processes for determining whether to lead, to participate in or to decline participation in a Market Actions (D) Working Group collaborative action or other multijurisdictional continuum action or examination.
18. The state's monitoring procedures to ensure the above communication, collaboration and participation processes are consistently followed.
19. The state's procedures for assigning and tracking resources used for activities including market analysis, continuum actions, examinations and collaboration.
20. The state's plan for ensuring entry of appropriate data in NAIC's Market Regulation databases (such as the Market Analysis Review System (MARS), Market Initiative Tracking System (MITS), Complaint Database System (CDS), Regulatory Information Retrieval System (RIRS)).
21. The state's ongoing strategy to manage the risks of its insurance marketplace through expedient use of resources.