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The Honorable Ralph Tyler
Maryland Commissioner of Insurance
Chair of the Special Accreditation Standards (D) Working Group,
National Association of Insurance Commissioners
2301 McGee Street
Kansas City, MO 64108

VIA Electronic Mail

RE: *Comments on NAIC Market Regulation & Accreditation Standards (9/1/09 Draft)*

Dear Commissioner Tyler:

The September 1, 2009 draft of the proposed market regulation standards, including the compliance guidelines, adds significant clarity and structure to the proposal for an accreditation program. An overall concern is whether the standards as currently drafted are sufficiently objective to allow an accreditation team to assess and measure a state's market regulation activities, laws and resources.

General Comments

As the standards and the corresponding guidelines develop, the Working Group should "keep the end in mind" and consider how an accreditation team might measure or determine whether a state has met each standard. The more objective and measurable the standards are, the more credible and meaningful the accreditation program will be.

In particular, the requirements at all levels of market regulation for supervisory review, file documentation, involvement of management in determining the outcome of market analysis efforts and the elevation of adverse findings to the Commissioner or appropriate designee are positive steps. Also noteworthy are the requirements for states to develop standards, policies and procedures for complaint handling, selection of a regulatory response, investigations, and other market regulation functions.

The requirement that states have procedures and specific factors to consider in determining the outcome of any market regulation activity is also a positive step. Requiring the publication of the procedures and factors would add some degree of certainty to enforcement matters. This could be done while still preserving the Commissioner's discretion.

The standards include having adequate personnel, including qualified and experienced staff. With all the professional designations in the industry, including the AIE and CIE designations offered by the Insurance Regulatory Examiners Society and the more recent MCM designation, it is not clear why the standards would not include some minimum national qualifications for market regulation staff. At the very least, perhaps minimum education and experience standards could be established for EICs and management.

It is also encouraging to note the emphasis on states having adequate and sufficient resources but it is unclear whether that will be a subjective standard left to the accreditation team to determine on a case-by-case basis or whether the Working Group intends to articulate minimum and measurable expectations. This is not to suggest that all states must have the same resources. Having objective standards and requirements may make it easier for insurance departments to justify funding for additional resources.

In several places, there is a suggestion that market regulation efforts should focus on domestic companies or treat them differently than foreign companies. It would be helpful to understand whether and to what extent the Working Group intends to implement domestic deference in market regulation.

The emphasis on documenting analysis and regulatory actions, including the basis for actions taken, is encouraging and should enhance accountability within the insurance department.

The standards that attempt to coordinate and encourage the flow and sharing of information within an insurance department should increase efficiencies and help reduce redundancies.

It is a concern that most of the standards are couched in terms of what a state “should” do. If this is meant to be a true accreditation program, the standards should be requirements and not aspirations.

NAIC Policy Statement on Market Regulation Standards

Part A: Laws & Regulations

In the Preamble, it is troubling to find that an “established practice that implements the general authority given to a state” could be adequate to meet an accreditation standard. This is particularly true for Part A which outlines the minimum legal authority for market regulation. A practice can always be changed without notice or any procedural safeguards.

In Part A, paragraph 7, the standard for confidentiality of information shared with the NAIC is met merely by the NAIC indicating in writing its “intent” to keep the information confidential. That is not the same as an agreement to keep the information confidential and does not meet the requirements of most states’ information sharing laws.

Part B: Regulatory Practices & Procedures

Paragraph (1) (a) (Market Analysis) states that a state should have adequate resources to periodically review domestic insurers and foreign insurers that are outliers. It is not clear whether some type of domestic deference is being suggested. Will market analysis be conducted primarily by a company’s domestic regulator?

Paragraph (1) (e) (Market Analysis) provides that insurers should receive an appropriate level or depth of review that is “commensurate with their size and market position.” This raises a concern as to whether the Working Group anticipates that large companies or companies that have a significant market share in a state could be treated differently than other companies.

In Paragraph (3) (e) (Market Conduct Examinations), it is unclear why examination procedures would vary because of an insurer’s size or market position.

Part C: Organizational and Personnel Practices

As mentioned above, it would seem to make sense to establish minimum national requirements for market regulation staff that include education, designations and experience. This would help assure consistency among states and may increase states’ willingness to rely upon the work of other states.

Guidelines for Compliance with Standards

Part B: Regulatory Practices and Procedures.

Paragraph (1) (a) (2) states that professional designations may demonstrate expertise but the guideline sets no objective measure or explanation of the standard “appropriate experience levels.” It is unclear how a state will be measured on this standard.

In Paragraph (1) (a)(4) Ohio suggests that states should periodically review the compliance systems of domestic insurers. It is not clear how this could be done easily as part of market analysis or without an onsite visit. Additional clarification of this guideline would be appreciated.

The guidelines for sharing information internally within an insurance department are a positive step and should improve efficiency and reduce redundancy in market regulation efforts. See Paragraph (1) (b).

The guidelines for priority based analysis described in Paragraph (1) (d) appropriately require states to conduct baseline analysis using the same types of information and to establish factors for identifying priority companies. There is a question as to whether states will rely upon the domestic regulator's Level 1 analysis of a company. It is also unclear what Ohio means by the suggestion that market analysis should "also be priority-based to adequately address company problems with compliance systems."

The guidelines for communicating information to and from examination staff in Paragraph (3) (b) should require a process for obtaining interpretations of state law when questions arise during an examination. This is sometimes left up to the examiner in the field and can create problems later in the process. A procedure for addressing such issues could be included as part of the supervisory review and file documentation requirements.

The handling of exam documentation is addressed in Paragraph (3) (e) (8) of the guidelines and should be strengthened by including electronic data. In some cases, nearly all information provided during an exam (or analysis) is provided electronically. The guidelines should address the necessary minimum data security requirements for regulators' systems, those used by contractors and for devices such as laptops and portable drives.

In Paragraph (3) (e)(9) of the guidelines, it is unclear why an accreditation standard would permit sampling techniques that are different from those that have been adopted in the Market Regulation Handbook.

Attention should be given to Ohio's suggestion that regulators have authority to hold as confidential information provided when a company self-reports a problem, data submitted in response to a data call and any data that is shared with the NAIC. See Paragraph (5) (a)(5).

Sincerely,

Deirdre Manna