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Via Email: Kschutte@naic.org

RE: Business Entity Licensing Issues for Travel Insurance Producers

Dear Ms. Schutter:

As a leading provider of travel insurance and a representative company of the U.S. Travel Insurance Association (USTIA), Mondial Assistance appreciates this opportunity to supplement our comments of April 25, 2008 to the NARAB (EX) Working Group ("Working Group"). At that time, under the name of affiliated company World Access, we provided overall comments on the NAIC's Producer Licensing Assessment Aggregate Report ("Assessment Report"). Specifically, we stressed that the Uniform Licensing Standards ("Standards") and Producer Licensing Model Act ("Model Act") unintentionally undermines the goal of reciprocity and increases compliance burdens both on sellers of travel insurance and state regulators, without improving consumer protection.

Now, in response to your most recent request for comments, we focus on the Assessment Report's findings and recommendations regarding business entity licensing. We do this while keeping in mind that the Assessment Report also found state regulations lack consistency for limited lines. We believe a key component for addressing non-uniformity, as it relates to business entity licensing for limited lines providers, is to focus on how the product is distributed in the marketplace.

Travel insurance is not normally distributed by traditional insurance agents. Instead, travel insurance is typically offered at the retail level by sellers of travel, whose main business is arranging travel and who only offer travel insurance coverage as an ancillary service. Sellers of travel include various travel or ticket "retailers" including traditional travel agencies, travel websites, and credit-card call centers, all of whom act as a conduit to the licensed travel insurance provider or "wholesaler."

In fact, distribution for travel insurance is more similar to service contracts. Like travel insurance, those offering service contracts do so more through identification with business entities--whether it be "brick and mortar" or on-line retailers. Examples include Best Buy store clerks offering service contracts, real estate agents offering home warranties and car dealers with extended warranties. Those offering ancillary products such as these are not in the business of selling insurance.

Instead, much like sellers of travel who offer travel insurance only as an ancillary product, they are in the businesses of selling appliances, electronics, homes or vehicles.

The NAIC and state regulators seem to understand this because they do not tag these truly ancillary insurance products (except travel) as a major or limited line under the NAIC's standards.<sup>1</sup> This suggests that regulators find it impractical, if not impossible, to realistically license and track all retail sales clerks, real estate agents, or car salespeople who offer these products. We believe these issues and challenges are the same for retail sellers of travel. This includes travel agents, travel website aggregators and client call center personnel who offer travel insurance only as an add-on to their non-insurance products.

For these reasons, we encourage the NARAB Working Group (and PLWG) to reconsider the licensing requirement of those retail business entities offering travel insurance. We believe that the characteristics of travel insurance--a non-essential, low-cost, first-party coverage, offered primarily through non-insurance networks—argue for treatment as a truly ancillary insurance product, not unlike service contracts and extended warranties.

### **Proposed Regulatory Strategy**

The Assessment Report identifies as a top-priority the need to streamline business entity licensing while maintaining consumer protections. One suggestion in the Assessment Report is to eliminate licensing for business entities and license only the individuals who ultimately sell, solicit or negotiate the insurance. We believe that this would not be in the best interests of consumers or the industry and instead should embrace business entity licensing as a better way to regulate a product like ours, travel insurance.

As discussed above, travel insurance is distributed primarily through the internet and retail travel suppliers. Consequently, travel insurance consumers do not have the same type of contact as they would with individual professional auto or homeowner insurance agents. Instead, companies like ours make it clear on internet sites and through retail travel suppliers that we are licensed and our contact information in case there are questions or difficulties.

**We consequently recommend requiring resident and non-resident limited lines licensing only for business entities who are the primary providers, or “wholesalers” of travel insurance. This would include companies like ours who provide scripts, training, phone and web-support to “retailers” of travel insurance, including travel agents, website aggregators and call center personnel.**

Regulation at this level would dramatically simplify reciprocity and compliance issues by reducing the number of required licenses and also focusing regulatory resources, effort and oversight on the key distribution point at the “wholesale” level. Wholesalers such as us, who sell in multiple jurisdictions, would remain strongly motivated to ensure compliance by retailers since we remain responsible for compliance activities and would be the focus of market conduct and compliance exams. This would also make state regulation more effective, because compliance and enforcement efforts would be focused on key participants (such as us) who have both a high volume of transactions and the staff and systems required for compliance.

In turn, retailers like travel agents and internet suppliers of travel, whose main business is not insurance would be exempt from producer licensing. The exemption would apply to both the business entity and individual retailer as long as it is communicated clearly to the customer that the

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<sup>1</sup> The NAIC Service Contract Model Act (685) provides that “administrators”, meaning those responsible for the administration of the service contract and any filings, need only register with the commissioner. Model 685 s 3. “Providers” including those who administer, issue, make, provide, sell or offer to sell a services contract are obligated to insure the service contract or maintain a funded reserve. Id. Otherwise, there is no producer licensing requirement for those offering service contracts.

product is being offered on behalf of a licensed wholesale provider. The retailer would also be allowed to give basic information, including contact information for the wholesaler or insurer, general coverage benefits, features, frequently asked questions and price. All such information would be provided to the retailer by the wholesale provider, and the wholesale provider would be responsible for providing more detailed information in response to customer inquiries.

This approach would also address the practical challenge of tracking non-insurance call center personnel, whose turnover rates are commonly 100% over 6 months, and who are not likely to be the target of a regulator's inquiry. Instead, under this proposed plan, the regulator (and consumer) could more easily identify the wholesaler or insurer as the true provider of the travel insurance and gauge its activities as the ultimate responsible party.

## Recommendations

Based on the discussion above, our recommendations include the following:

- **Producer Licensing Model Act**
  - **Section 2. Definitions**
  - **Section 4. Exceptions to Licensing**

In Section 2 of the Model Act, *“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.*”

For retail sellers of travel, like travel agencies, website travel aggregators, retail client call centers and other non-insurance groups offering travel insurance, it is difficult to clearly distinguish between those activities that require a license and those that do not.

This issue is compounded by the “advertising exception” in Section 4 of the Model Act, which states that: *“Persons and entities that are exempted from licensing (include):...5) A person whose activities in a state are limited to advertising without the intent to solicit insurance in that state.”*

The combination of these two provisions suggests that any non-insurance retailer of travel insurance would need to be licensed. As stated above, we do not believe this is either practical or necessary *for either business entities or individuals*. Therefore, in an effort to provide more clarity, we suggest an additional exception in Section 4 of the Model Act:

**(8) A person whose insurance activities in the state are limited to offering or soliciting limited lines coverage as an add-on to the person's non-insurance product or service, for and under the direction of a licensed producer or insurer, who is clearly identified to the prospective consumer.**

We believe this language not only sets a workable framework for travel insurance, but also provides a solid foundation for states to regulate the sale of other ancillary or limited insurance products. The regulator and consumer will know the proper, knowledgeable person to contact if there are questions or concerns about the insurance coverage. Moreover, neither retailers nor regulators will be burdened to track non-insurance professionals who are simply acting as a conduit to a properly licensed producer who has been identified to the consumer.

The above language also provides an alternative to Exception 2, which exempts from licensing “persons who secure and furnish information for or enroll individuals in...group property and casualty insurance.” Model Act, Section 4. This exception is available in the 35 states that permit travel insurance to be written under a group policy. This exception is

difficult to implement uniformly, however, because travel insurance is commonly offered nationally, through client's websites and call centers.

Also, in line with this approach, we recommend that on page 20 of the NAIC Producer Licensing Handbook (2/29/08 draft) ("Handbook") that the following activity be changed from a LICENSABLE "AGENT" ACT to a NON-LICENSABLE "CLERICAL" ACT, **or** that the following underlined language be added:

*Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates, unless it is a published quote provided by an identified licensed producer or insurer.*

- **Producer Licensing Model Act**
  - **Section 6B. (Business Entity Licensing)**

The Limited Lines section on page 41 of the Handbook states:

*In some states, a business entity is permitted to maintain a limited license on behalf of individuals who make the limited line of insurance available to its customers.*

We would encourage the NAIC to make this approach part of the standard for providers of travel insurance. Again, this makes the most sense for insurance products that are offered multi-jurisdictionally through the internet or by retailers who are directed by a clearly identified licensed provider.

Accordingly, we would not object to requiring DRPs to have resident and non-resident licensing that matches the business entity. We also believe that the entity's organizational documents should only be required in its home state as long as they are also made available to non-resident states. Finally, as long as the licensed "wholesale" agent like us are clearly identified to the consumer and regulator, we do not believe that there is a need to license each branch or to separately track and list each producer.

We appreciate the opportunity to present our comments. Many of these items may warrant further discussion, and we would gladly make ourselves available to answer questions and consider further alternatives.

With best regards,

Jack Zemp, CPCU  
Deputy General Counsel

cc: USTIA Law and Regulation Committee  
Attorney John Fielding