

By Sheri Marston, NAIC Collaborative Actions Coordinator, Market Regulation

◆ INTRODUCTION

Interstate collaboration has been expanding, and multistate market conduct examinations have become more commonplace in the past five years. However, the single-state market conduct exam is still the predominant type of examination. While regulators were already beginning to focus on consumer protection as early as 1906 with the Armstrong Report¹ and later efforts, market conduct regulation has received increasing attention in the last decade, which has resulted in changes and additions to both NAIC systems and personnel to assist regulators with addressing consumer protection issues. This article will discuss key market conduct studies over the last 10 years, the participants involved, tools available, and levels of collaboration.

◆ RECENT STUDIES: A 10-YEAR PERSPECTIVE

In September 2003, the NAIC issued the Insurance Regulatory Modernization Action Plan. This plan included a section on market regulation which specified the NAIC established market analysis, market conduct, and interstate collaboration as the three pillars on which the states' enhanced market regulatory system would rest.

In 2003, the Government Accountability Office (GAO) issued a report on market conduct regulation. The GAO recommended the NAIC:

“give increased priority to identifying a common set of standards for a uniform market oversight program that will include all states. These standards should include procedures for conducting market analysis and coordinating market conduct examinations. Further, we recommend that a mechanism be established to encourage state legislatures and insurance departments to adopt and implement the identified minimum standards.”²

The GAO then followed up its 2003 report with a report in 2009. This report highlighted that while improvements had been made, there was still a need for increased collaboration among the states. The report also pointed out the NAIC had “created a set of 99 core competency standards in 2008 intended to be part of a proposed market conduct accreditation program. However, NAIC officials also noted that, as of March 2009, the accreditation plan had not yet been finalized and that the core competency standards did not include specific guidance for conducting market conduct examinations.”³

Finally, during the drafting of this article, the Federal Insurance Office (FIO) released (December 2013)⁴ its report on

how to modernize and improve the system of insurance regulation in the United States. The report recognized state regulators for the wide adoption of the NAIC's *Market Regulation Handbook* and for the creation of the Market Actions (D) Working Group and its activity.

At the same time, the report noted state regulators often fail to adequately coordinate market conduct examinations, resulting in multiple examinations for the same or similar sets of issues. The report contains the following observations on the need for collaboration: “Coordination between states and standardization of market analysis, investigations and examinations are essential to modernization. Aside from promoting efficiency and consistency, improved coordination could present an opportunity for state regulators to pool already scarce resources. Moreover, standardization provides consistent and uniform consumer protection for all policyholders irrespective of where the policyholder resides.”⁵

Based upon these observations, the FIO provided four recommendations in the area of market conduct. The NAIC should: 1) mandate that all examinations are conducted in accordance with the *Market Regulation Handbook*; 2) ensure states confer with other states prior to contacting insurers to reduce duplication of efforts; 3) develop national standards regarding contract examiners' pay and qualifications; and 4) create a national registry of approved contractors.

◆ MULTI-STATE MARKET CONDUCT EXAMINATION PLAYERS

Within market conduct are several groups and individuals working in different roles. At the NAIC, the primary group overseeing consumer protection activity is the Market Regulation and Consumer Affairs (D) Committee. The mission of the D Committee is to monitor all aspects of the market regulatory process for continuous improvement. This includes market analysis, regulatory interventions with companies and multi-jurisdictional collaboration. The D Committee will also review and make recommendations regarding the underwriting and market practices of insurers and producers as those practices affect insurance consumers, including the availability and affordability of insurance.

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¹ Report of the Joint Committee of the Senate and Assembly of the State of New York, Appointed to Investigate the Affairs of Life Insurance Companies 263-273 (1906).

² GAO-03-433 Insurance Regulation 26 (September 2003).

³ GAO-09-372 Insurance Reciprocity and Uniformity.

⁴ “How to Modernize and Improve the System of Insurance Regulation in the United States.” Federal Insurance Office, U.S. Department of the Treasury. December 2013.

⁵ Id. 53.

Within the structure of the D Committee is the Market Actions (D) Working Group (MAWG). MAWG is the national forum used to identify and address issues of multistate concern and for states to coordinate multistate regulatory actions, including market conduct examinations and the broader continuum of regulatory responses. MAWG consists of 16 individuals chosen for their regulatory experience while maintaining a balance between the four zones.⁶ While MAWG focuses its efforts on nationally significant insurers that exhibit characteristics indicating current or potential market regulatory issues impacting multiple jurisdictions, states also use MAWG's forum to explore whether they are targeting the same companies and to notify other states of issues they are seeing that may not reach a national level.

Working closely with MAWG, Collaborative Action Designees (CADs) are appointed by each state insurance commissioner and are responsible for collaborating with other states on market conduct issues. A state's CAD is the point of contact for all multistate actions, and is expected to share information with any jurisdiction they believe will be affected. They may have an internal title such as Chief Market Conduct Examiner or Market Conduct Chief. CADs work closely with MAWG. They are invited to all MAWG sessions at NAIC national meetings and interim calls. When MAWG actions are accepted, a state CAD may be asked to take an active role in an action or even lead the action.

The Market Analysis Chief (MAC) assists a state in identifying, through market conduct analysis, the entities and issues their state needs to address. In addition, a state's MAC is the principal liaison with the NAIC's Market Analysis Procedures (D) Working Group, which is the national forum for states to share and coordinate their market analysis programs. The Market Analysis Procedures Working Group reviews and coordinates state market analysis programs and develops procedures for uniform, nationwide analysis. MACs work closely with the CADs in determining when to take action, what the scope of the action should be and if information should be shared with another state or MAWG. The same person may handle both the MAC and CAD roles.

Because state market conduct units have an ongoing need for ad hoc training on changing NAIC market information systems and policy, the NAIC has a dedicated Market Regulation Trainer.⁷ This person is an expert in training methodologies and works exclusively with NAIC market regulation staff and regulators to develop the training opportunities most needed by new regulatory staff.

Regulators realized to effectively work together they would need someone to act as a central coordinator. As a result of

this need, the NAIC established the position of Collaborative Actions Coordinator to facilitate communication regarding multistate actions. As a resource for advice on how and when to bring an issue to MAWG, the Coordinator can provide education and information on the use of the continuum, the *Market Regulation Handbook* and ways to best collaborate. The Coordinator also assists in researching issues, creating referrals to MAWG, and responding to questions about the status of current and past actions.

Finally, regulators may use contract examiners because of state budget constraints or the need for specific expertise; however, the use of contractors has been criticized. The most recent FIO report stated: "Another factor that may augment the variability of rigor and professionalism from one state to another is the increasing dependence of state regulators on contract examiners to perform market conduct examinations."⁸

◆ NAIC TOOLS AND MANUALS

The groups and individuals listed above have many resources at their disposal to use in collaboration. The NAIC provides regulators with a forum for confidential discussion. In this forum states share information and advice with each other, as well as forms and templates used in market analysis and examinations. If a state has discovered an issue with a company that is urgent, one of the fastest ways to alert other states is by use of this forum. This is often the first step in a multistate action.

In addition, the NAIC's *Market Regulation Handbook* is a resource created for use by regulators in how and when to conduct analysis, examinations and continuum actions. While many of the topics covered are addressed at the single-state level, most if not all would also apply to a multistate action, and at least one chapter is devoted to collaboration. Some sections provide general information, such as a review of basic analytical tools, while other sections provide detailed instructions. For example, the largest section of the Handbook sets forth market conduct examination standards. This section is segmented by the line of business and area under review; it provides a list of documents and criteria for review and cross-references the appropriate NAIC model law. There is also a companion publication⁹ which summarizes the examination standards in a checklist, which assists regulators in creating their own examination templates.

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⁶ To help organize the NAIC's efforts, the United States has been divided into four geographic zones: Northeastern, Southeastern, Midwestern and Western.

⁷ For additional information on the Market Regulation Trainer see: www.naic.org/market_reg_home.htm.

⁸ Id. 54.

⁹ *Market Regulation Handbook Examinations Standards Summary*.

Chapter 2 of the Handbook covers the continuum of regulatory actions, which focuses on taking a more ad-hoc approach to regulation as opposed to reliance solely on examinations. Using guidance in the Handbook, a regulator would answer several questions about the scale and scope of an issue and review a company's history before choosing from among several options to best address the issue. Generally, the goal is to begin with the least intrusive option that still provides the necessary consumer protection. For example, if a company with a record of compliance suddenly develops complaint issues regarding a specific marketing campaign, a state may communicate directly with the company through a phone call to the company or a simple data call. Taking this approach allows for better allocation of state and company resources, quicker resolution, and greater consumer protection.

MAWG has a confidential, regulator-only *Policy and Procedures Manual*, separate from the *Market Regulation Handbook*, which outlines the procedures MAWG follows, the responsibilities for a state that refers an issue to MAWG, and the responsibilities for members of the lead state team that conduct the action. Regulators are expected to have completed some level of analysis and investigation before bringing an issue to MAWG to ensure that the issue is appropriate. That information is used to complete a referral form which is sent to the NAIC.

NAIC staff review the referral and create a packet of information that is used by MAWG members to determine the appropriate next steps. Once MAWG accepts a referral, a participation invitation is sent to all CADs and a team is selected to lead the action. Teams are given wide latitude in how to proceed but are asked to complete update forms and provide verbal updates at each MAWG meeting or call. The MAWG Policy and Procedures Manual contains templates for communications with a company or another regulator and best practices for conducting and negotiating multistate examinations and settlements.

Chapter 6 of the Handbook is focused on collaboration. This chapter outlines the steps involved, how a multistate collaborative action differs from a single-state action and when a state should bring an issue to MAWG. This chapter has some overlap with the MAWG Manual but delves deeper into the process of collaboration and how to determine the correct level of collaboration for an action. With definitions of terms, a checklist for collaboration, and specified deliverables at each step of the process, this chapter is a "how-to" on collaboration.

Finally, the Handbook offers the Core Competencies mentioned earlier in the 2009 GAO report. The Core Competen-

cies were adopted in fall 2005¹⁰ and were intended to form the preliminary basis for a formal accreditation program. The competencies address issues such as regulatory authority, staff and contractor training, market analysis data collection and participation in the NAIC database systems. They provide detail on what departments of insurance should have in place for effective consumer protection.

Regulators have access to databases that provide information specifically about complaints (Complaint Database System), examination history (Examination Tracking System) and regulatory orders and fines (Regulatory Information Retrieval System). These systems are essential for state collaboration because another state's analysis of a company is often the first item a state will review to determine which companies may have issues needing further attention.

There are several ways to conduct the analysis. Because of this, the NAIC has developed tools to allow regulators to evaluate companies on a consistent basis using standardized questions that can be answered with prepopulated data pulled from the previously mentioned databases as well as financial and market conduct annual statements. These standardized questions allow regulators to determine if there are any preliminary indicators of concern, such as frequent or excessive changes in leadership or significant changes to premium volume.

Once an issue with a company has been addressed, a best practice is for a state to report its results to the appropriate NAIC databases. This allows other regulators to access the information and determine whether they should act as well, or if the issue has been resolved to their satisfaction. While states voluntarily report their results to the NAIC, the goal is full participation by all states to provide a complete historical record of all regulatory activity, which would be available to every jurisdiction and therefore, theoretically, provide a reduction of duplicative actions.

In addition to the NAIC trainer dedicated to market conduct training, the NAIC's Education and Training Department offers designations, scholarships and numerous webinar and self-study courses for regulators. This ongoing training is coupled with an annual conference that focuses on current topics of regulatory interest, market analysis training, and networking opportunities for state market conduct examiners and analysts.

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¹⁰ 2005 *Proceedings of the National Association of Insurance Commissioners*. Fourth Quarter Volume I, 11.

The NAIC continues to provide regulators a forum to address issues at all levels. Regulators have various opportunities to become involved with a working group, task force, or committee.

◆ TYPES OF COLLABORATION

Multistate market conduct collaboration can begin with two jurisdictions working together. For example; two jurisdictions may determine they have similar issues with a company and work together to resolve an issue. This might involve coordinating their examination activities or entering into a joint settlement agreement with a company.

A broader context of collaboration might be in the form of a zone examination. In 1937, the NAIC membership divided the country into four distinct geographic zones: Northeastern, Southeastern, Midwestern and Western. Today, the NAIC zones continue to meet to discuss key issues they are facing. Zone examinations work well for financial regulation because accreditations¹¹ are based on financial solvency standards for all of the states in which a company may operate. For market conduct collaboration, zone examinations do not necessarily work as well because states that share a physical border may have different markets and underlying market conduct laws.

State insurance regulators may also coordinate more widely with each other through MAWG. While MAWG has no regulatory authority, its members use their individual state regulatory authority to work collaboratively on issues. Issues are generally brought to MAWG through individual state referrals and also through national analysis designed to determine which nationally significant companies are at greatest risk of non-compliance with common regulations.

In addition, insurance companies and groups have reported directly to MAWG when they have uncovered an issue at a national level. The benefit for the insurer in bringing an issue to regulators via MAWG is that the issue is handled quickly without multiple individual state examinations. MAWG actions on average enjoy participation by 41 jurisdictions, and MAWG has recently taken on multistate continuum actions in addition to examinations, which even further enhances the benefit of the multistate approach.

Finally, an issue may be so all encompassing that a temporary group is formed within the NAIC committee structure to address the issue. Issues that have warranted a specific working group include life insurance sales to members of the military, the use of retained asset accounts, stranger owned life insurance, and the use of the Death Master File to settle life and annuity claims.

◆ CONCLUSION

When a company fails to adhere to state market conduct requirements, the effects are cumulative and may take years to be discovered. That is why market conduct collaboration is a vital part of consumer protection. A reading of the reports provided by the GAO, FIO and others have highlighted the need for enhanced market conduct collaboration, and collaboration does appear to be on the rise, as evidenced by regulatory participation in MAWG and other recent multistate actions. Today, there are CADs and MACs working collaboratively on national analysis and multistate actions to address issues of national importance as well as issues that only affect a few states. The more states work together, the more familiar they will become with state statutory similarities and differences, which will continue to enhance future collaboration. In addition, NAIC staff remain available to assist with all levels of collaboration and training for state regulators.

Whether formally communicating through the NAIC committee structure, NAIC bulletin boards or simply accessing NAIC databases to review company history and conduct analysis, state insurance regulators have and continue to work to enhance state market conduct collaboration.

While most states use the *Market Regulation Handbook*, regulators have not moved forward with a formal market conduct accreditation program, which outlines specific procedures all states would follow. Despite the lack of a formal accreditation program, one thing is sure—as the insurance industry changes so will state insurance regulation and market conduct collaboration.

ABOUT THE AUTHOR



Sheri Marston, MCM, ARC, is the Collaborative Actions Coordinator for the NAIC's Market Regulation Department. In her position, Ms. Marston assists each state's Collaborative Actions Designee (CAD) in conducting interstate collaboration. She promotes a holistic approach to market conduct regulation by educating regulators and recommending practices and procedures that encourage efficiency and uniformity. She provides staff support for the Market Actions (D) Working Group (MAWG) and the Investigations of Life Insurance and Annuity Claims Settlement Practices (D) Task Force. Ms. Marston earned a Bachelor of Science in both Political Science and Communication Studies from the University of Missouri-Kansas City. She has earned her Market Conduct Manager (MCM) and Associate in Regulation (ARC) designations and is currently pursuing her Chartered Property and Casualty Underwriter (CPCU).

¹¹ For more on the NAIC Accreditation Program, see CIPR topic page: www.naic.org/cipr_topics/topic_accreditation.htm



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