CARLTON FIELDS

Will the UK's Scrutiny of Insurers' Use of Big Data Impact US Regulators?

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On November 24, the United Kingdom's financial regulator, the Financial Conduct Authority (FCA), issued a "Call for Inputs" regarding insurers' use of Big Data. The FCA asked for views, supported by examples and evidence, of how the use of Big Data affects consumers and competition. It also expressed interest in learning more about how insurers' use of Big Data may permit consumers with disabilities and other vulnerabilities to access otherwise unavailable insurance. The FCA plans to meet with firms, consumer groups, industry bodies, and other interested parties to better understand the impact of Big Data in relation to three broad topics:

- Does the use of Big Data affect consumer outcomes?
- Does the use of Big Data foster or constrain competition?
- Does the FCA's regulatory framework affect developments in Big Data in retail General Insurance?

The FCA seeks to understand Big Data's impact on product design, underwriting, marketing, distribution, and claims assessment and processing. It will also consider whether the use of Big Data, especially when mined from social media and other aggregator sites, is disadvantageous to consumers. Because of the significance of the sectors, the FCA's initial focus will be on auto and homeowner's insurance. The FCA's Call for Inputs closes on January 8, 2016, at which point the FCA will analyze its findings to determine the appropriate next steps. This could include a full market study, adjustments to policy or guidance, or other necessary interventions. The FCA plans to publish feedback from its findings in mid-2016. In the United States, there are many groups already scrutinizing insurers' use of Big Data, including state regulators, the National Association of Insurance Commissioners (NAIC), the National Conference of Insurance Legislators (NCOIL), federal regulators including the Federal Trade Commission (FTC) and the Federal Insurance Office (FIO), the White House, and consumer groups. State regulators have been looking into property and casualty insurers' use of Big Data in connection with price optimization. Several states have already issued Bulletins containing guidance on the issue. Multiple groups within the NAIC are examining insurers' use of Big Data. On the property and casualty side, the Market Regulation Committee is reviewing the use of Big Data in claims settlements while the Consumer Liaison Committee is looking into the use of Big Data in price optimization. On the life side, the Life Actuarial Task Force is examining the use of Big Data in accelerated underwriting and seeks to modify Valuation Manual 51 to require that insurers report on the data being used in connection with their underwriting models. Additionally, consumer advocates have been vocal at various NAIC meetings about concerns over insurers' use of Big Data, including that consumer data is being improperly used, may contain inaccuracies, is not protected by the Fair Credit Reporting Act, and that there is a lack of transparency to consumers who may never know they have been harmed. At a recent NAIC Market Regulation and Consumer Affairs Committee meeting, a consumer advocate from the Center for Economic Justice pushed for that Committee to add as a charge a review of insurers' use of Big Data. NCOIL is examining the consequences of allowing property and casualty insurers to use information on consumers' pricing behavior, including credit data, education, and occupation, in their price optimization techniques. At the federal level, the White House and the FTC have published a number of papers in which they have noted the potential risks associated with the use of Big Data in connection with financial services products, including the potential to discriminate against underserved segments of the population, and the potential impact on consumer privacy. The FIO is also becoming involved, particularly as to regulation surrounding price optimization. It is possible that the FCA's investigation into insurers' use of Big Data in the U.K. could spur more inquiry by state and federal regulators in this country.

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