CARLTON FIELDS

Market Conduct Examinations: Are You Prepared?

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Introduction

Market analysis and market conduct examinations provide insurance regulators with information to assess how the insurance marketplace as a whole, and the individual insurance entities that make up that market, are in compliance with state regulations. **Market Conduct Surveillance**

Market conduct surveillance refers to a regulatory framework that includes:

- Processes and systems for identifying, assessing and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants.
- Market conduct actions by insurance commissioners to substantiate such market conduct problems and a means to remedy significant market conduct problems.
- Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources.

Market Analysis

Historically, market analysis by insurance regulators focused largely on monitoring complaints and complaint trends. However, since 2003 the National Association of Insurance Commissioners (NAIC) and state insurance departments have moved toward a more systematic and analytical approach to market analysis that also includes other types of information, such as data from financial reports, rate and form filings, other company filings, data calls, and information from other state and federal regulators. Currently, market analysis is designed to: (1) provide tools for each state to review its entire market; (2) identify companies operating in each state that are potentially harming consumers due to noncompliance with state laws and regulations designed to protect consumers; and (3) assist in narrowing the scope of regulatory action that a state determines it must use to address those companies that appear to be experiencing compliance problems. Market conduct analysis is generally conducted no less frequently than annually. The data analyzed for a given market analysis year includes the prior calendar year financial and market conduct annual statement data. Companies must report all of their financial and market conduct annual statement data for a given calendar year by April 30. **Market Analysis Tools**

There are several tools available for market analysis. The Market Analysis Prioritization Tool (MAPT) was created by market regulators and the NAIC as a prioritization tool containing a scoring system for each of the 11 lines of insurance business in any state or U.S. territory. MAPT provides the analyst a high level comparison of companies for a particular line of business based on financial, complaint, and regulatory activity information available from NAIC databases. Beginning in 2008, the NAIC became the central repository of data gathered through the Market Conduct Annual Statement (MCAS). Companies report their data to each jurisdiction through the NAIC's online MCAS application. Currently, 46 states participate in MCAS data reporting. MCAS is used to collect claims and underwriting data for the auto, homeowners, life and annuity lines of business. It is anticipated that additional lines of business will be added in the future. For example, all companies with any in-force LTC policies, Life-LTC hybrid products, or Annuity-LTC hybrid products are required to report data in MCAS beginning April 30, 2015. The first report will cover the 2014 calendar year. Companies of a certain size are required to report MCAS data for a particular participating state:

- For life and annuity insurers: The company is licensed and reports at least $50,000 of individual life insurance premium (excluding credit life) for the data year or at least $50,000 of individual annuity consideration for the data year in that participating state. For Arkansas filings only, the threshold is $7 million in life insurance premium or $7 million in annuity consideration; or both. If the company meets the threshold for either individual life insurance or individual annuities in a state, but does not meet the threshold for the other line of business, reporting to the state is made only for the one line of business that meets the threshold.

- For automobile and homeowner insurers: The company is licensed and reports at least $50,000 in private passenger automobile insurance premium for the data year; or $50,000 in homeowners insurance premium for the data year; or both for that participating state. For Arkansas filings only, the threshold is $7 million in individual private passenger auto insurance premium; or $7 million in homeowners insurance premium; or both. If the company meets the threshold for either private passenger automobile or homeowners insurance in a state, but does not meet the other, reporting to the state should be made only for the one line of business that meets the threshold.

Unlike other insurance regulatory filings, each company in a holding company system must file separately for each state in which it does business. Data for the members of a group or insurance holding company cannot be combined into a single filing, but instead, must be reported separately for each group member unless it involves only inter-company arbitration. If two or more companies merged during the reporting period, the companies should report under the corporate structure that is in effect as of the last day of the reporting period. If the merger was effective before or during the review period, then the surviving company should do the combined reporting. If the merger will become effective after the reporting period, the companies involved should file separate reports. MAPT and MCAS are considered baseline analysis tools that provide a snapshot of company data as of a certain date. By themselves, they are insufficient to definitely identify companies with market conduct concerns. Market analysis should undergo further review and refinement through Level 1

and Level 2 Analysis. Level 1 Analysis is a template with a series of questions divided into 12 areas or components each dealing with a specific area of concern of a company: company operations, financial ratios, existence of substantive entries in the NAIC's Special Activities Database (SAD), regulatory actions, examinations, premiums, U.S. market share, loss and expense ratios, resisted or unpaid claims, complaints, and results of MCAS. Each Level One analysis is eventually approved by the state's market analysis chief (MAC) before being made available for viewing by other member state market analysts in the Market Analysis Review System pursuant to an information sharing agreement. Furthermore, the examiner has several alternatives or conclusion possibilities at the end of a Level 1 Analysis, ranging from direct company contact, scheduling of an investigation, examination, or regulatory action, contacting other states' regulators with similar concerns for possible collaborative activity, conducting a Level 2 analysis, or no further analysis is needed. A Level 2 Analysis involves the analyst's review of six core areas: consumer complaints, continuum activity examinations, interdepartmental communications, market analysis and regulatory actions. Furthermore, there are 15 additional areas of review an analyst may review and comment upon for the Level 2 Analysis. These additional areas of review are: insurance department filings (rates, rules, policy forms, and/or underwriting manuals), dispute resolution activity, financial analysis, financial rating agencies, geographic analysis, human resource department, Internet information, legal information, NAIC bulletin boards, other governmental and quasi-governmental agencies, producer licensing, special activities database, state-required items (e.g., reports, data calls, and surveys), trade publications and other media sources, and, voluntary accreditation or certification programs.

Continuum of Regulatory Responses/Intervention

The continuum of regulatory response is a range of decision making options that may guide the regulator's decision making process when moving from analysis to a regulatory response for market conduct issues. There are four categories of continuum of regulatory responses: contact, examination, enforcement, and closure. Examples of continuum responses include such things as telephoning or meeting with company officials, issuing an interrogatory, conducting a policy and procedure review or issuing a data call, performing a desk audit or scheduling an on-site examination. Two NAIC systems are used to register continuum-type activities. The examination tracking system (ETS) is used to register on-site examinations and desk-audit examinations. The Market Information Tracking System (MITS) is used to record other types of continuum responses. Copies of examination reports can be uploaded to ETS. These tools help regulators coordinate and determine whether specific issues or concerns have already been addressed by other states. **Market Conduct Examinations**

There are several types of market conduct examinations a state insurance regulator may initiate. The type of market conduct examination may vary for many reasons, such as the size of the insurer; the line of business; the jurisdiction; reason or regulatory objective for the examination; insurance department resources; or state of insurance market place in the jurisdiction. On-site market conduct examinations are considered the traditional approach to market conduct oversight. A comprehensive or full scope examination generally involves a review of all of a company's business practices, which would include: (1) company operations/management; (2) complaint handling; (3)

marketing and sales; (4) producer licensing; (5) policyholder service; (6) underwriting; and (7) claims. Comprehensive or full scope examinations are conducted as on-site examinations. Comprehensive or full scope examinations are also used when a multistate examination is called. Factors considered in determining whether a multistate examination is commenced include (1) whether the company reports premium in multiple jurisdictions; (2) whether the market conduct issue has the potential to impact other jurisdictions; (3) whether there any entries in the NAIC Market Information System; (4) whether the company was selected for Level 1 or Level 2 Analysis review; and (5) whether the company is already on the NAIC Market Actions (D) Working Group agenda. Generally, insurance departments are moving away from the full scope examination process and utilizing target examinations and limited scope examinations more frequently, in part due to the expansion and focus on market analysis. A target examination is specific as to the area of concern and may be called by a jurisdiction without notice. Target examinations are usually conducted on-site. A limited scope examination generally involves use of alternative examination methods other than, or in addition to a traditional on-site examination. A desk examinations by the insurance department (where a company provides materials to a state insurance department by mail or electronically) is an example of a limited scope examination. **Conclusion**

Understanding the market surveillance framework and market analysis process are critical to preparing for and navigating a market conduct examination. Moreover, understanding market analysis data sources and process assist a company in developing integrated and proactive internal surveillance of its operations. **Resources - NAIC**

- Market Regulation Handbook
- Market Analysis Working Group (MAWG)
- Market Analysis Review System (MARS)
- Market Analysis Prioritization Tool (MAPT)
- Market Initiative Tracking System (MITS)
- Market Regulation Bulletin Board

- NAIC Model References - Acts and Regulations
  - Advertisements of Accident and Sickness Insurance Model Regulation
  - After Market Parts Model Regulation
  - Annuity Disclosure Model Regulation
  - Discrimination Against Subjects of Abuse in Disability Income Insurance Model Act
  - Health Carrier External Review Model Act
  - Health Information Privacy Model Act
  - Home Service Disclosure Model Act
  - Improper Termination Practices Model Act
  - Life Insurance and Annuities Replacement Model Regulation
  - Life Illustrations Model Regulation
  - Long Term Care Model Act
  - Market Conduct Record Retention and Production Model Regulation
  - Military Sales Practices Model Regulation
  - Model Law on Examinations
  - Model Regulation for Complaint Records to Be Maintained Pursuant the NAIC
  - Unfair Trade Practices Act
  - Model Regulation on Unfair Discrimination on the Basis of Blindness or Partial Blindness
  - Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment
  - NAIC Model Rules Governing Advertisements of Medicare Supplement Insurance with Interpretive Guidelines
  - Privacy of Consumer Financial and Health Information Regulation
  - Producer Licensing Model Act
  - Prohibition on the Use of Discretionary Clauses Model Act
  - Suitability in Annuity Transactions Model Regulation

- Third Party Administrator Model Act
- Unauthorized Transaction of Insurance Criminal Model Act
- Unfair Claims Settlement Practices Act
- Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act
- Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act Unfair
- Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance
- Unfair Life, Accident and Health Claims Settlement Practices Model Regulation
- Unfair Property/Casualty Claims Settlement Practices Model Regulation
- Unfair Trade Practices Act
- Universal Life Insurance Model Regulation

Resources - Florida

- Section 624.316, Fla. Stat. - Examination of insurers
- Section 624.3161, Fla. Stat. - Market conduct examinations
- Section 624.317, Fla. Stat. - Investigation of agents, adjusters, administrators, service companies, and others
- Section 624.318, Fla. Stat. - Conduct of examination or investigation; access to records; correction of accounts; appraisals
- Section 624.319, Fla. Stat. - Examination and investigation reports
- Section 624.320, Fla. Stat. - Examination expenses
- Section 624.321, Fla. Stat. - Witnesses and evidence
- Sections 626.951-626.99, Fla. Stat. – Unfair Insurance Trade Practices Act

- Forms to be submitted to Market Investigations Section
  - OIR-B3-493 - PPA Rescinded Policies Form [Word] due within 90 days of rescission
  - OIR-B2-1552 - Rescission Reporting (Appendix A) Due March 1 Annually [Word] due annually by March 1
  - OIR-B2-1553 - Claims Denial Report Form (Appendix E) Due June 30 Annually [Word] due annually by June 30
  - OIR-B2-1555 - Replacement and Lapse Reporting Form (Appendix J) due June 30 Annually [Word] due Annually by June 30
  - Suitability report as required by Rule 690-157.116(8), Florida Administrative Code due annually by June 30

Resources - Texas

- Chapters 541 – 563- Unfair Method of Competition and Unfair or Deceptive Acts or Practices.

Resources - Utah

- 31A-21-104 Insurable interest and consent — Scope
- 31A-21-202 Explicit approval required
- 31A-21-307 Other insurance
- 31A-21-308 Limitations on loss to be borne by insurer
- 31A-21-312 Notice and Proof of Loss
- 31A-21-313 Limitation of actions
- 31A-21-314 Prohibited provisions
- 31A-22-319 Prohibition on insurer requiring certain parts - Disclosure (After market crash parts). Other related statutes include:
- 31A-22-316 Title
- 31A-22-317 Definitions
- 31A-22-318 Identification
- 31A-22-321 Use of arbitration in third party motor vehicle accident cases
- 31A-26-103 Workers' Compensation claims

- 31A-26-301 Timely payment of claims
- 31A-26-301.6 Health Care Claims
- 31A-26-303 Unfair claim settlement practices
- 31A-26-305 Request for accepted check
- 31A-26-307 Claim reports to commissioner
- 31A-26-308 Settlement of liability insurance claim not admission of liability
- R590-190 Unfair Property, Liability and Title Claims Settlement Practices. This includes auto, homeowner and business policies.
- R590-191 Unfair Life Insurance Claims Settlement Practices.
- R590-192 Unfair Accident & Health & Income Replacement Claims Settlement Practices

Related Practices

Life, Annuity, and Retirement Litigation
Government Law & Consulting