Market Regulation Certification (D) Working Group
Conference Call
February 20, 2020

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Feb. 20, 2020. The following Working Group members participated: John Haworth, Chair (WA); Bill Cole, Vice Chair (WY); Lindsay Bates (IA); Erica Weyhenmeyer (IL); Mary Lou Moran (MA); Jason Decker (MD); Paul Hanson (MN); Cynthia Amann (MO); Tracy Biehn (NC); Reva Vandevoorde (NE); Edwin Pugsley (NH); Robert Doucette (NM); Angela Dingus (OH); Landon Hubbart (OK); Brian Fordham (OR); Christopher Monahan (PA); Michael Bailes (SC); Julie Fairbanks (VA); Christina Rouleau (VT); and Theresa Miller (WV). Also participating were: Pam O’Connell (CA); Jill Huisken (MI); and Matt Gendron (RI).

1. Adopted its Jan. 30 Minutes

The Working Group met Jan. 30 to discuss the pilot volunteers’ suggested revisions to the Voluntary Market Regulation Certification Program (Program).

Mr. Doucette made a motion, seconded by Ms. Moran, to adopt the Working Group’s Jan. 30 minutes (Attachment 1). The motion passed unanimously.

2. Discussed Comments Concerning Certification Pilot Volunteers’ Suggestions

Mr. Haworth said one set of comments was received since the Working Group’s Jan. 30 conference call. The comments were from Michael Lovendusky (American Council of Life Insurers—ACLI). Mr. Haworth said the comments recommended requirement 5 include a provision that the department of insurance (DOI) have cybersecurity requirements equal to or more rigorous than those required of regulated entities. He said the comments also discussed requirement 3 for overseeing contractors. Because contractor costs can be very high, the ACLI comment letter recommends companies be allowed to enter into tri-party agreements with contract examiners. Finally, the comment letter said the ACLI cannot support requirement 6 because the Market Actions (D) Working Group policies and procedures are for state insurance regulators only and cannot be viewed by the regulated entities.

Mr. Haworth said the NAIC Market Regulation Handbook (Handbook) summarizes the Market Actions (D) Working Group processes. Mr. Lovendusky said there was no understanding by industry of the Market Actions (D) Working Group deliberation processes. He suggested it may be helpful for the Working Group to hold an open meeting with industry to discuss industry concerns.

Ms. Moran said she took issue with Mr. Lovendusky’s comments concerning contractor costs. She said Massachusetts is very careful about keeping costs for examinations down. She said Massachusetts only uses approved contractors and requires and reviews the contractor budgets for every examination. The DOI will conduct an examination if it is too costly. No work is begun until there is direct approval from the DOI. The DOI makes sure that costs are as low as possible. She said most states control the cost of contractors. Mr. Doucette said the New Mexico DOI has a robust procedure for selection and takes Mr. Lovendusky’s charges seriously. Mr. Cole said the Wyoming DOI use contractors frequently because of the DOI’s size and if the cost is exorbitant, the DOI would find another way to address a concern.

Lisa Brown (American Property Casualty Insurance Association—APCIA) said the cost of contractors has been a concern for many years and is beyond the scope of the Working Group’s discussion regarding the certification program revisions. She said she has been told the Market Actions (D) Working Group’s policies and procedures are confidential and cannot be shared with industry. She agreed with Mr. Lovendusky’s comments that the APCIA cannot support requirement 6 for this reason. She suggested that the requirement could reference the Handbook’s description of the Market Actions (D) Working Group’s processes rather than reference its policies and procedures manual. She also asked if a request could be made to the Market Actions (D) Working Group to make their policies and procedures public. Mr. Haworth said that is a consideration for the Market Actions (D) Working Group to take up.

3. Discussed Pass and Fail Metrics

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Mr. Haworth said the discussion of the definitions for “unqualified pass” and “provisional pass” in requirement 4 leads to a broader discussion of what the criteria for passing or failing for each requirement should be, as well as the passing and failing of the entire certification program. He noted the terms “unqualified pass” and “provisional pass” are only found in requirement 4. He asked if those measurements should be used for other requirements or not used at all. He noted within requirement 4, it was not clear when a pass would be unqualified or provisional. Mr. Cole said he sees the usefulness of allowing a jurisdiction to pass provisionally if there are conditions outside of their control such as a collective bargaining agreement.

Mr. Haworth suggested possibly using a percentage of positive responses to all the checklist questions to determine whether a jurisdiction passes or fails. For example, if a jurisdiction had a positive response for 70% of the questions, it would pass. He said it would make sense, however, to weight some requirements more than others. He said, for example, if a jurisdiction failed the requirement to be able to maintain confidentiality, the jurisdiction should fail the entire certification program. Mr. Doucette agreed with the importance of weighting more important requirements heavier than the less important requirements. Mr. Cole noted the requirement for participation in the Market Conduct Annual Statement (MCAS) may be weighted less. He said the Working Group would need to determine which requirements are weighted heavier and by how much.

Ms. Amann asked whether each requirement would be rated as “1, 2, 3” or “High, Medium, Low,” and Mr. Haworth said it seemed to be the way the Working Group was leaning. He said in that manner, a jurisdiction would also know which requirements it needs to work on. Ms. Huisken suggested using the financial accreditation program scoring methodology as a template. Mr. Gendron said he supports a weighted scoring. Ms. Dingus also said a weighted option is appropriate but said she needs some time to consider how each would be weighted.

Ms. O’Connell said it makes sense that some requirements are make or break but others are not so important. A single aggregate score may not be appropriate if they are missing a requirement that must be in place.

Mr. Haworth said that he and Mr. Cole would develop a matrix for scoring based on the discussions.

Having no further business, the Market Regulation Certification (D) Working Group adjourned.

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