

## Chapter 4—Collaborative Actions

This chapter offers guidelines and techniques that may assist states in determining the need to collaborate on regulatory response when an issue impacting multiple jurisdictions is detected. Additionally, the chapter explains how a Request for Review (RFR) can result in regulatory responses coordinated through the Market Actions (D) Working Group and identifies key players in a Market Actions (D) Working Group collaborative action. Although a variety of approaches among the continuum of market actions may be appropriate and should be considered, the final portion of the chapter offers guidelines for conducting the collaborative regulatory response of multistate examinations.

### A. Collaborative Action Guidelines

#### 1. Goal

By collaborating, states that identify issues or concerns with regulated entities can respond in a more effective, efficient and expedient manner. By implementing market analysis techniques and sharing pertinent information with other states and the Market Actions (D) Working Group, states can identify those regulated entities where there is a shared concern regarding the regulated entities' market practices. The goal of this chapter is to establish procedures and guidelines for state Collaborative Action Designees (CADs) to use in facilitating the communication and coordination of regulatory responses between and among the states. Moreover, this chapter is designed to identify alternatives to performing a single state market conduct examination and assist the states in effectively addressing problem insurers or other regulated entities whose business crosses jurisdictional boundaries. Coordinated, collaborative regulation will benefit both regulated entities and the states.

Examples of some of the benefits of collaborating efforts instead of pursuing individual state responses include the following:

- States may address specific regulatory issues that cross jurisdictional boundaries more efficiently;
- States will benefit from sharing techniques, skills, resources and experience;
- States may achieve greater regulatory leverage to resolve multistate market regulatory issues or concerns;
- Fewer individual state market conduct examinations will result in less expensive market regulation oversight and will reduce the amount of regulatory intervention needed to resolve regulatory concerns;
- Corrective action may be enforced on a multistate or national basis rather than a state-by-state basis; and
- Greater consistency among state regulatory responses.

#### 2. Definitions

**Collaborative Action Designee (CAD):** The one person appointed by the commissioner or each state to be their representative in market conduct collaborative matters.

**Final Report:** A final document prepared by the Managing Lead State in conjunction with the other Lead States in accordance with this handbook and issued by the Participating States upon completion of the response. Any recommendations for continued review or state-specific addenda should also be included in this document, if appropriate.

**Initiating State:** The state insurance department that determines the need for a response and brings it to the attention of other states, the regulated entity's domestic state, or to the Market Actions (D) Working Group.

**Interested State:** A state insurance department that expresses an interest in the concern or problem with said regulated entity.

**Lead State:** One or more states that assist in leading the collaborative regulatory response.

**Managing Lead State (MLS):** The state insurance department identified by the Market Actions (D) Working Group or the Lead States to coordinate the collaborative regulatory response.

**Market Actions (D) Working Group:** A group of regulators chosen for their market conduct expertise to act as a forum and resource for states on issues suitable for collaboration.

**Market Analysis:** The process by which a state reviews data and information to determine whether specific areas of regulatory concern are occurring in the marketplace.

**Non-Participating State:** A state that decides not to assume any role in regulatory response or does not have an interest in the area of review.

**Participating State:** An interested state that decides to participate in a regulatory response but does not necessarily take an active role in the action.

**Referring State:** The state that submits a Request for Review (RFR) to the Market Actions (D) Working Group.

**Regulated Entity:** Any person, firm or company engaging in, proposing or attempting to engage in any transaction, kind of insurance or surety business; and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of a state insurance commissioner.

**Regulatory Review Trigger:** An event or identified concern that prompts a regulatory review.

**State Addendum:** A document containing state-specific findings and recommendations based on that state's statutes and regulations.

### 3. Assumptions

These guidelines are based on several assumptions defined and agreed upon by the members of the NAIC:

- a. Collaborative actions will be considered when there is an issue or area of concern that impacts multiple jurisdictions. Collaboration would not be appropriate when the issue involves compliance with a state-specific law if other states do not have similar statutes;
- b. Collaborative actions can be conducted for both nationally significant and non-nationally significant regulated entities;
- c. All impacted states will be encouraged to participate in the collaborative regulatory response when possible;
- d. The collaborative action, depending on the severity of the problem and the level of the response taken, can be handled by one designated state that reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State (MLS), others are designated as additional Lead States and together the "Lead States" work collaboratively while other states may passively participate in the process;
- e. States retain the ability to choose to participate in a collaborative action and may designate another state to review the information on its behalf. However, if a Participating State does designate another state to review information on its behalf, it is the Participating State's responsibility to outline its interpretation of its own laws it would like included in the review;
- f. Participating states retain their authority to initiate their own regulatory response if a collaborative action does not cover the scope of an area of concern to that state;
- g. The collaborative review will follow the guidelines and standards outlined in this handbook. Lead States should agree on the appropriate standards to be applied during the review;
- h. Each Participating State will determine if state-specific recommendations and actions are needed at the end of the collaborative action process, based on the findings by the Lead States;
- i. Verification that the regulated entity has complied with findings and recommendations of a final report is a separate administrative function that may or may not occur through either a collaborative or individual state follow-up effort, continuum response, examination or re-examination;
- j. Regulator resources responsible for completing the work to review data and information will be available for any follow-up proceedings required. Each state participating in the collaborative action is responsible for any expenses associated with the appearance of regulators at a proceeding arising out of the regulatory effort;

- k. If an examination is the collaborative action selected, Lead States will determine, and agree to use, computer software programs that will be employed in conjunction with the examination;
- l. Whenever a regulatory response is taken collaboratively, the Managing Lead State will provide a final report to Participating States and the Market Actions (D) Working Group; and
- m. In the case of Market Actions (D) Working Group actions, when selecting Lead States and Managing Lead States, the Market Actions (D) Working Group chair will consider at least the following criteria:
  - The domestic regulator of the regulated entity;
  - The top five premium volume and/or market share states;
  - The referring states requested participation level;
  - A state in which the identified issue appears to be more problematic;
  - Geographic balance between zones;
  - Specialized experience of a state’s staff members;
  - A state’s experience in managing complex investigations or collaborative actions; and
  - The ability to perform the duties and responsibilities of a Lead State and/or Managing Lead State.

#### 4. Determinations

States should gather information from data currently available, including any state surveys and required data reports, information collected by the NAIC, information shared on NAIC regulatory forums, a variety of sources in both the public and private sectors, and information from within and outside of the insurance industry. Such information should be analyzed in order to develop a baseline understanding of the marketplace and to identify practices that deviate from the norm or that may pose a potential risk to insurance consumers in their state. States should refer to this handbook as one resource on how to perform analysis of a regulated entity’s market activities.

When further inquiry into a particular insurer or practice is determined necessary, the states’ Collaborative Action Designees (CADs) should consider collaboration as part of the continuum of market actions. If the regulated entity is a small regional insurer, then collaboration with one or more states may be beneficial. If the regulated entity is one of national significance, CADs should report their findings to the Market Actions (D) Working Group. Through the Market Actions (D) Working Group, CADs will be able to identify all other states that may have similar issues or concerns with the market practices of a regulated entity. In this way, the Market Actions (D) Working Group helps to eliminate duplicative inquiries and ensure more consistent consumer protection.

##### a. Determining Need for Collaboration

The following questions are designed to assist state Collaborative Action Designees (CADs) in determining whether an issue is appropriate for collaboration. CADs are encouraged to review these questions when an issue of concern is raised that involves a regulated entity that does business in more than one state.

1. Is your state’s concern something that would be of concern to other states?  
 Yes  No

*General issues such as the timely payment of claims or inappropriate marketing and sales practices could be an issue of concern to multiple states. If the issue is based on a specific state statute, such as the suitability of life insurance product sales or a specific state-mandated benefit for health plans, the CAD should determine how many other states have similar statutes. The NAIC research librarians can provide a compendium or model law adoption chart to assist the CAD with this determination.*

2. Is this a high-profile issue that has the potential to impact multiple jurisdictions?  
 Yes  No

3. Does the regulated entity have written premiums reported in two or more states for the previous calendar year?
- Yes  No

*If “Yes,” the CAD should contact all states where there is a new, open or called examination listed in the Market Action Tracking System (MATS) and discuss whether there are common issues or the ability for the other state to assist with the review of your area of concern. Note: All new, open or called examinations should be reviewed and the calling state’s CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.*

4. Are there any entries in the NAIC Market Information Systems or the Market Regulation electronic bulletin boards?
- Yes  No

*If there are, the CAD should contact CADs in states that appear to have common concerns and/or where there is a new, open or called examination status. The CADs can discuss whether there are common issues and the interest of other states to assist with regulatory responses in the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market Analysis reviews and initiatives should be reviewed and the state CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.*

5. Is this regulated entity already on the Market Actions (D) Working Group agenda?
- Yes  No

6. Was the regulated entity selected by any other states for Level 1 or Level 2 Analysis reviews, and did at least one review recommend further analysis or referral to the Market Actions (D) Working Group?
- Yes  No

*If the answer to each of the above questions is “No,” this is probably not a good candidate for collaboration. If one or more responses are “Yes,” the CAD should consider collaboration and answer the questions in the next section to determine if the issue should be referred to the Market Actions (D) Working Group.*

#### **b. Determining Level of Collaboration**

Once the need for collaborative has been determined, the questions below can assist in determining if the issue should be referred to the Market Actions (D) Working Group or addressed on a regional level.

1. Is the regulated entity nationally significant?
- Yes  No

*Note: It is not necessary that a regulated entity be nationally significant for Market Actions (D) Working Group referrals. However, if a regulated entity is nationally significant, it is more likely that other states are interested in the regulated entity’s activities or engaged in contact with the regulated entity for other or related issues.*

2. Has the regulated entity previously been included on the Market Actions (D) Working Group agenda for this issue or any other issue?
- Yes  No

*If this information is unknown, NAIC staff may be able to provide some assistance. If available, the CAD should review the closing report, final report or other documentation created from previous Market Actions (D) Working Group action. If this is a related or similar issue that should have been resolved based on a prior collaborative effort, the CAD should submit the Request for Review (RFR) to the Market Actions (D) Working Group.*

3. Has the regulated entity been chosen as part of the Market Actions (D) Working Group’s National Analysis Project?  
 Yes  No
4. Does the issue involve a significant amount of consumer harm?  
 Yes  No
5. Does the issue lend itself to a multistate resolution?  
 Yes  No

*If the answer to any of these questions is “Yes,” the CAD should consider submitting a referral to the Market Actions (D) Working Group. If the answer to all of these questions is “No,” follow the Multistate Examination Process outlined later in this chapter.*

## **B. Responsibilities of Key Players in a Collaborative Action**

The different roles played within a collaborative action are often driven by the domestic, the state that brought the issue forward and top premium states. In the case of the Market Actions (D) Working Group, once members agree to a collaborative response, the Working Group chair will determine Lead States and the Managing Lead State (MLS). The Lead States will also issue an invitation for additional states to participate. Below are the responsibilities that different individuals assume as part of their role in a collaborative action.

### **1. Managing Lead State (MLS) Responsibilities**

The MLS bears the overall responsibility to facilitate communication and coordinate activities in an efficient manner. The MLS is the key contact with the regulated entity under review. If necessary, the MLS will directly contract with and supervise any vendors hired. The MLS will carry out the collaborative action from the continuum of market actions as it is collectively determined by the Lead States. In addition to general Lead State responsibilities (see Section C2 below), MLS duties include:

- Determining the number of Lead States needed and recruiting additional Lead States, if needed, in collaboration with the Market Actions (D) Working Group chair if applicable;
- Convening the Lead States for initial strategy planning to determine the appropriate course of action and scope of issues to be addressed;
- Considering all options in the continuum of market actions and determining an effective course of action. An examination is only to be conducted if other regulatory options in the continuum are not considered sufficient;
- Organizing an initial meeting with the regulated entity to review collaboration or Market Actions (D) Working Group processes and discuss issues. Sample initial meeting notice letters are available to regulators through NAIC staff;
- Entering and updating the action in the Market Action Tracking System (MATS);
- Scheduling regular meetings and calls with the regulated entity to ensure that the process continues to be efficient and effective;
- Keeping the domestic state apprised of the status of the collaborative action and requesting any assistance from the domestic state as necessary, if the MLS is not the domestic state;
- Scheduling regular meetings with all Lead States, vendors and/or independent contractors;
- Closely monitoring all vendors and/or contractors for appropriate billing practices;
- If state staff are to be used as part of the collaborative action, communicating with CADs to obtain resources and schedule activities; and

- If the issue is a Market Actions (D) Working Group action:
  - Providing a presentation to the Market Actions (D) Working Group outlining the general scope of the collaborative action prior to the initiation of the effort. The presentation shall include a preliminary timeline for various stages and completion of the regulatory effort;
  - Providing an update and revised timeline to the Market Actions (D) Working Group within 30 days of the Lead States' decision to change the plan, if the MLS determines that circumstances require a substantial change in the planned course of action;
  - Providing an update on the progress of the action to the Market Actions (D) Working Group at each NAIC national meeting and, upon request, on the Market Actions (D) Working Group conference calls. Providing details on action findings when they are available, and terms of proposed resolutions/settlements; and
  - Completing the Market Actions (D) Working Group Managing Lead State Post-Mortem Report Form.

## **2. Lead State Responsibilities**

The Lead States commit to serve as team members who share an equal responsibility to make all key decisions in the collaborative action. The Lead States shall work collaboratively to determine the following:

- If violations occurred and the extent of any violations found;
- An appropriate corrective action by the regulated entity that will help prevent further, similar violations;
- A plan of remediation, if necessary, and its scope;
- Post-collaborative action reporting by the regulated entity, if any;
- The scope of post-collaborative action monitoring necessary by the Lead States;
- An administrative sanction, as necessary, its scope; and
- Applicable use of the Market Actions (D) Working Group *Best Practices for Multistate Settlement Agreements*, as needed.

In general, a Lead State should be prepared to do the following:

- Attend conference calls and in-person meetings to discuss the collaborative action;
- Carry out assignments related to the collaborative action in a timely manner; and
- Review all materials prior to meetings.

## **3. Replacement of a Lead State**

In the event that a Lead State or Managing Lead State is unable to continue to serve, the Managing Lead State or other Lead States by agreement will appoint a replacement. In the case of a Market Actions (D) Working Group action, the Working Group chair will appoint a new Managing Lead State, and if a team fails to make efficient progress to conduct or finalize the collaborative action, the chair has discretion to relieve any of the Lead States of their duties and appoint new Lead States. If any one of the Lead States believes that the conduct of a Lead State is detrimental to the collaborative action, that state should contact the Managing Lead State, or the Market Actions (D) Working Group chair if applicable, to discuss these concerns. The Working Group chair has discretion to remove and replace a Lead State at any time during a Market Actions (D) Working Group collaborative action.

## **4. Participating State Responsibilities**

Any state may elect to participate in a collaborative action by executing the participation agreement form sent by the Managing Lead State at initiation of the action. The invitation and form will outline the major issues found and, in most cases, briefly outline the scope of the action. All Participating States will have access to confidential and privileged information, provided that the state has signed the NAIC Master Information Sharing and Confidentiality Agreement.

Participating States do not take an active role in the action; however, they should contact the Managing Lead State to discuss any new issues of consideration for inclusion in the collaborative action. Participating States agree to provide interpretation of the Participating State's laws if requested and respond to any requests for information. If the Managing Lead State finds that the state issue is not an appropriate part of the collaborative action, the state may then initiate a separate regulatory effort.

In some cases, only Participating States may be eligible to receive a portion of any monetary sanction imposed on the regulated entity. A Participating State is not required to accept the proposed resolution presented by the Lead States; however, a Participating State does agree to consider the proposed resolution.

## **C. Market Actions (D) Working Group**

The Market Actions (D) Working Group is the forum for identifying and addressing issues of multistate concern. Members of the Market Actions (D) Working Group are chosen for their experience and qualifications within the market conduct arena. Members meet at each NAIC national meeting and hold periodic conference calls in the interim. Each state's CAD is invited to attend calls and NAIC national meetings and is able to participate but not vote on acceptance of actions.

In addition to referring issues to the Market Actions (D) Working Group and participating in its activities, CADs should remain cognizant of the issues that the Working Group addresses by attending meetings and calls to determine their importance in the market in a regulator's state.

The Market Actions (D) Working Group has an interest in monitoring all multistate enforcement efforts and will work to assist collaboration and communication on all such efforts. However, the Working Group must focus its efforts on projects and entities that will impact a significant number of NAIC members and consumers. Issues that impact only a few states will be monitored and, should a small group of states decide to conduct a collaborative action independent of the Market Actions (D) Working Group, the Working Group or NAIC staff will provide assistance upon request with communications, general information or other, similar resources.

### **1. National Analysis Project**

This annual project coordinated by the Market Actions (D) Working Group members uses market conduct and financial annual statement information to identify companies that are exhibiting indications of current or potential concerns and then coordinates analysis of the identified entities. Issues found through this process may be handled on an individual state basis or eventually be referred to the Working Group through the Request for Review process. The goal is to uncover issues sooner, decreasing consumer harm and reducing the number of duplicative actions.

### **2. Request for Review (RFR)**

When a Market Analysis Chief (MAC) discovers an issue that impacts multiple jurisdictions, the MAC should consult with their state Collaborative Action Designee (CAD). Working together and answering the questions in Subsection 4a and 4b of this chapter, the CAD and MAC may determine that a referral should be made to the Market Actions (D) Working Group. The referral form is available to regulators and once completed, it should be submitted to the Working Group's designated NAIC staff support. The RFR should include the results of Level 1 and Level 2 Analysis reviews, if available, as well as any supporting documentation. NAIC staff will assist state regulators to ensure proper RFR procedures are followed.

The Market Actions (D) Working Group will consider each RFR and determine whether to pursue the matter as a Working Group collaborative action. Among other criteria, Working Group members consider whether a material issue or pattern of conduct exists that demonstrates a systemic failure of the internal control systems of an entity that affects multiple jurisdictions. The Working Group will also consider whether consumers are at risk of not receiving contracted benefits or of suffering other serious harm.

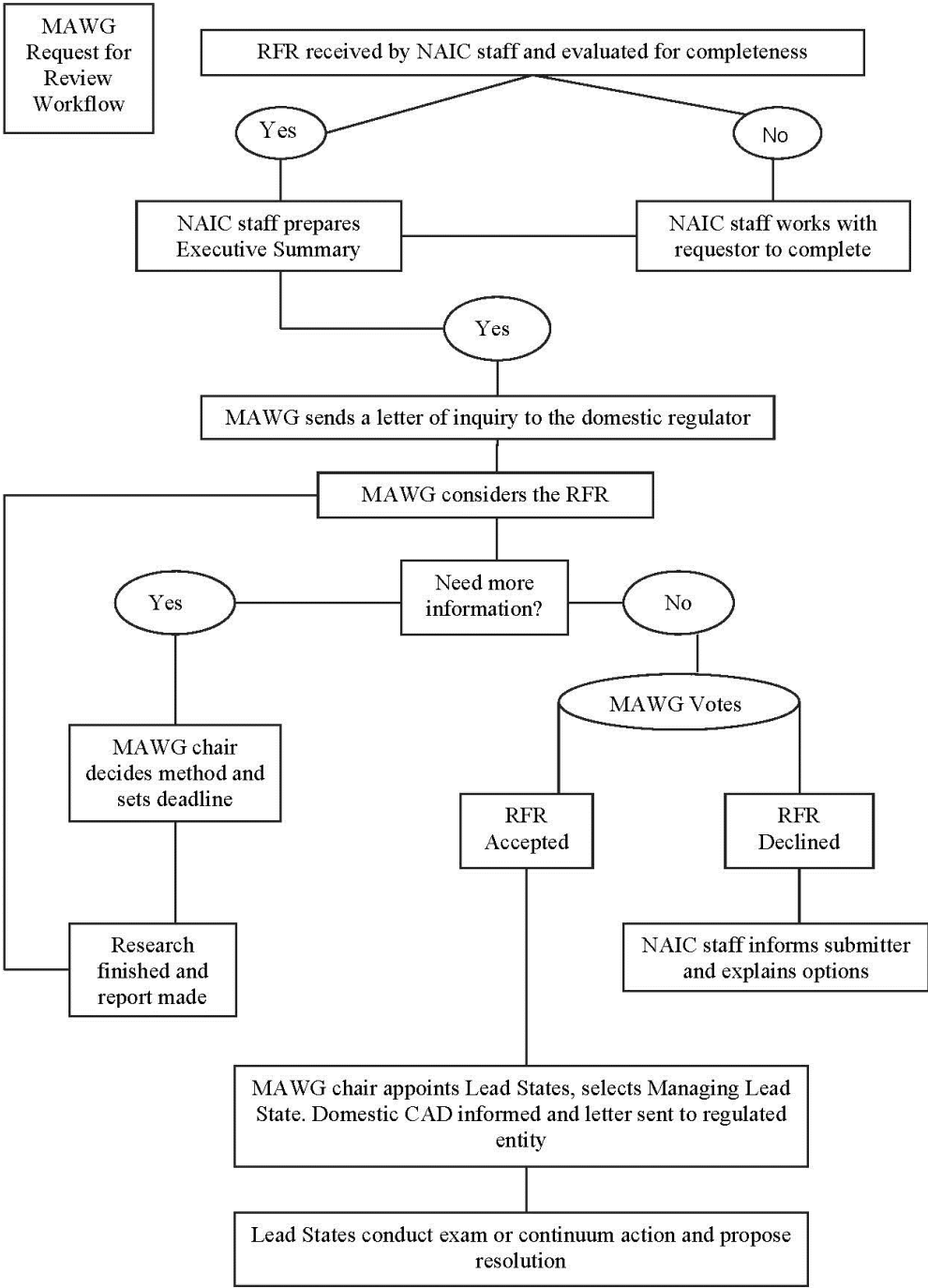
Prior to the Market Actions (D) Working Group's vote on acceptance, if the referring regulator is not the domestic, or has not previously contacted the domestic, the Working Group chair will contact the domiciliary state insurance department and request information concerning the RFR. The letter may include questions about the regulator's awareness of and actions related to the alleged problem and whether the state has any plan of action or monitoring in place.

Once the Market Actions (D) Working Group chair determines there is sufficient information to make a decision, if there is a quorum, a vote is taken. A three-fourths majority is required to accept the RFR for a Working Group collaborative action. If an RFR is declined, NAIC staff will contact the CAD of the referring state and provide guidance and suggestions as to other steps that may be taken.

The steps in the RFR process are outlined in the flowchart on the following page.

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## D. Multistate Examination Process

This section contains the steps to determine the need for, and how to best conduct a multistate market conduct examination. For purposes of this discussion, the proposed deliverable is assumed to have been met/achieved before moving on to the next section.

### 1. Document the Need for an Examination

The state Collaborative Action Designee (CAD) will work with the Market Analysis Chief (MAC) to determine which entities should be the focus of attention for the state. Through internal decision-making processes, the CAD and other state staff should ascertain that other choices from the continuum of market actions are not adequate or appropriate. At the point of determining the need for an examination, the CAD should take the following steps:

Steps:

- a. Document the need for an examination based upon identified triggers;
- b. Prepare a justification memo; and
- c. Obtain necessary approvals and support from the commissioner and legal department.

Deliverable:

A justification memo, which documents the need for an examination.

### 2. Determine if Multistate Examination is Appropriate

Several jurisdictions may have a joint interest in the market performance of a company, and their collective concerns may be best met through a multistate examination of that company. In determining appropriateness of a multistate examination, the state CAD should consider the similarity of product(s) across jurisdictions, differences in state regulations of product(s) and location of the offices of the insurer, and any other factors that may apply. Multistate examinations are not appropriate when company behaviors are specific to one jurisdiction.

Steps:

- a. Follow Steps 1 through 6 in Subsection 4a of Section A of this chapter to determine if a collaborative action is appropriate;
- b. Follow Steps 1 through 5 in Subsection 4b of Section A of this chapter to determine if a Market Actions (D) Working Group Request for Review (RFR) is appropriate; and
  - If yes, confirm commissioner support for a potential Working Group collaborative action, complete and submit the RFR to the Working Group.
  - If no, the issue is not appropriate for the Working Group but is appropriate for collaboration.
- c. In either case, the collaborative action itself will typically follow the path outlined below.

Deliverable:

A possible Market Actions (D) Working Group RFR recommending a collaborative examination based on documented triggers.

### 3. Work with the Domiciliary State

At this point, the CAD of the initiating state (if not the domiciliary state) will contact the CAD of the domiciliary state to determine what that department of insurance may have done previously to uncover or address the issue.

Steps:

- a. The initiating state CAD notifies the domiciliary state of concerns and interest, and receives and reviews any response/input from domiciliary state; and
- b. The initiating state CAD and domiciliary state determine the scope of the problem and draft notification to all states.

Deliverable:

A listing of all potentially affected states and description of the issues of concern, including magnitude. A clear understanding of the role of the domiciliary state and which state will lead the examination.

#### **4. Initiate Collaborative Examination**

The CAD of the Lead State, whether the initiating state or domiciliary state (if different) will still want to use the Market Actions (D) Working Group's forum to provide information on the action and solicit other potentially impacted states.

Steps:

- a. Notify the Market Actions (D) Working Group and each state's CAD of the intended collaborative action. Include at least the following:
  - A brief description of the issue;
  - A list of possibly affected states;
  - An invitation for any interested states to join the action;
  - A request for information from any other states that have addressed the issue; and
  - Possible assistance desired from the Working Group or NAIC staff.
- b. Interested states submit participation responses, including the following:
  - Whether the state intends a passive or lead role;
  - If the state wishes to take a lead role:
    - Number of staff that will be dedicated by that state; and
    - Staff availability dates;
  - The state's statutory authority to examine company records;\* and
  - An authorization to review records.
- c. Review invitation responses to determine:
  - Any state-specific concerns of Participating States;
  - If other states have addressed the problem(s), collect information on findings; and
  - Which states wish to be named a Lead State.
- d. Enter the examination call in the Market Action Tracking System (MATS), noting that it is a multistate action.

\*The domiciliary state has authority to look at all records of their domiciled companies. Most states can authorize another state to review their own records.

Deliverable:

A list of Participating States with desired participation level, resources available and authorization to review records. (All information is entered into NAIC systems as the examination proceeds.)

#### **5. Plan the Examination**

The Managing Lead State Coordinator assumes the role of coordinating and planning the examination. This function may be part of the state CAD's responsibility, or another staff member may be designated. The CAD may still be responsible for any communications with the Market Actions (D) Working Group or NAIC staff to request advice or assistance.

Steps:

- a. The Managing Lead State (MLS) assigns the Examiner-in-Charge (EIC). Criteria for selecting an EIC include:
  - Minimum qualifications;
  - Expertise based on scope of the examination; and
  - A representative from the Lead State (recommended).

- b. The MLS and EIC plan the examination in coordination with other Lead States, addressing:
  - Scope statement (market conduct areas to be covered);
  - Number of examiners and other resource requirements;
  - List of runs or records needed based on period of review;
  - Role Participating States will play;
  - Tasks that go into the plan;
  - Tentative schedule (time frame and sequence of examination events); and
  - Location(s);

Note: The MLS should consider input from Participating States to prepare the examination plan.

- c. The MLS and EIC set the start date and date of pre-examination conference;
- d. The MLS and EIC develop a confidentiality clause for the examination;
- e. The MLS finalizes the examination plan. The examination plan, including confidentiality clause, should be distributed to and signed by all Participating State CADs; and
- f. The MLS updates the Market Action Tracking System (MATS).

Deliverable:

A formal examination plan that has been agreed to by all Lead States. The plan should include details regarding:

- Statutory authority of Participating States;
- Roles of Lead and Participating States;
- Estimated number of examiners;
- Expected resources required;
- Resources available;
- Identity of the EIC;
- Scope statement;
- Examination start date and estimated completion date; and
- List of runs, records and information required.

## 6. Notify Company

Let the company or companies know that an examination has been called.

Steps:

- a. The Managing Lead State (MLS) sends examination notification to the company. Timing and content follow guidelines for regular examinations;
- b. The MLS receives the company's response, including identification of the company's examination coordinator;
- c. The EIC assembles the company's response information:
  - Coordinator/contact name;
  - Location of documents; and
  - Other requested information.

Deliverable:

Examination notification is sent to the company.

## 7. Perform Pre-Examination Activities

Pre-examination activities for a multistate examination follow the guidelines outlined in this handbook. It is the responsibility of the Managing Lead State to coordinate pre-examination activities and the responsibility of the Lead State CAD to ensure adequate communication activities among all Participating States.

## 8. Conduct Examination

Conduct the examination following the guidelines outlined in this handbook. It is the responsibility of the EIC to coordinate and conduct the examination and the responsibility of the Managing Lead State (MLS) to ensure adequate communication among all Participating States.

### Steps:

- a. The EIC is responsible for conducting the examination;
- b. The EIC is responsible for on site coordination;
- c. The EIC is responsible for addressing state-specific concerns of Participating States during the examination;
- d. The EIC is responsible for communication with company management;
- e. The Lead State CAD is responsible for communication with the Participating States;
- f. The MLS and EIC coordinate a wrap-up session with the company; and
- g. All Participating States should continue to maintain applicable confidentiality until the conclusion of the examination and/or settlement.

## 9. Write the Multistate Examination Summary

Upon conclusion of the examination, a multistate examination summary is drafted by the EIC. The Managing Lead State (MLS) will help coordinate the communication of comments on the summary by Participating States.

No state-specific examination findings or recommendations are included in the multistate examination summary. These will be handled with state-specific addendum and will incorporate conclusions based on individual state statutes and regulations.

### Steps:

- a. The EIC coordinates the drafting of the multistate examination summary and state-specific findings (which are not included in the summary itself);
- b. The Lead State CAD exposes a draft of the multistate examination summary;
  - Distribute to all Participating States;
  - Gather Participating State responses; and
  - Resolve discrepancies.
- c. The EIC finalizes the multistate examination summary and obtains a sign-off from Participating States;
- d. The MLS or EIC distributes the approved multistate examination summary to the company, and the Lead State CAD distributes the final copy to all Participating State CADs; and
- e. The Lead State CAD updates the Market Action Tracking System (MATS).

## 10. Finalize the Examination Report

### **Final Examination Report = Multistate Examination Summary + State Addendum**

Each Participating State may issue an examination report or choose to adopt the Lead State report that consists of the multistate examination summary. Alternatively, each Participating State may issue an optional state addendum, taken from the EIC's report on findings related to state-specific issues.

### **Examination Report**

The state addendum details the state's specific examination findings and recommendations, based on that state's own statutes and regulations.

### Steps:

- a. Each Participating State CAD sends the state's final examination report to the company:
  - Receive and evaluate the company response; and
  - Include the company response as part of the report.
- b. Each state CAD finalizes its state's examination report; and
- c. Each Participating State should record the applicable administrative resolution for its state in the appropriate NAIC database.

## E. Conclusion of Collaborative Enforcement Actions

When a collaborative effort produces findings for which a regulatory penalty or sanction is contemplated, such action should be memorialized in a written consent order, voluntary settlement agreement or similarly titled settlement document. States may contemplate a collaborative enforcement action at the same time as a pending civil court action concerning similar issues, such as a class action lawsuit. Such an enforcement action may or may not occur simultaneously with a settlement of the civil action. Negotiations for coordinated regulatory and civil settlement should be the responsibility of the Lead State(s).

In the event a collaborative effort is challenged, or Lead States cannot reach a settlement, they should develop a resolution strategy. Lead States should outline their strategy and recommendations to ensure violations are appropriately addressed in the correct jurisdictions. Examiners from Participating States must be made available for follow-up proceedings, if required. Expenses associated with the appearance of any examiners at a proceeding arising out of the examination must be borne by the states conducting the action.

### 1. Best Practices for Multistate Settlement Agreements

The purpose of this document is to outline best practices that will meet the needs of multiple jurisdictions affected by the business practices of regulated persons/entities. It is important to recognize that although state departments of insurance have the authority to perform multistate examinations and investigations of potential violations of insurance law, the states cannot require regulated persons/entities to participate in a multistate settlement agreement (MSA). Thus, multistate settlement agreements are commonly entered into by way of mutual agreement with the applicable regulated entity as a way to uniformly and efficiently resolve regulatory matters.

The *Best Practices for Multistate Settlement Agreements* document is intended to provide guidance to regulators with respect to engaging in multistate settlement negotiations and drafting multistate settlement agreements. It is recognized that the terms of the agreement may vary depending on the subject matter of the examination/investigation, the nature of the violation, the duration of noncompliance, the number of consumers affected, and the number of states in which the regulated entity is doing business, among other considerations. However, agreements should be negotiated and drafted in a manner that is intended to promote participation by regulators and effectively address the issues of concern to regulators. With this in mind, best practices have been developed to effectuate the greatest amount of participation among the states in multistate settlement agreements. A complete copy of the *Best Practices for Multistate Settlement Agreements*, adopted by the Market Actions (D) Working Group, is available to regulators. Below are some provisions of the document, which have been provided in order to promote transparency about the MSA process.

### A. Procedure

#### Who Leads Settlement Negotiations?

States seeking to initiate a multistate settlement are encouraged to bring such matters to the attention of the Market Actions (D) Working Group (MAWG). MAWG's main role is to support collaborative actions among the states to address common regulatory compliance issues. MAWG reviews submissions from state regulators or other sources that identify regulated entities that have a current or potential market regulatory issue that impacts multiple jurisdictions. MAWG determines if it will take a role in initiating regulatory action.

If MAWG does take a role in initiating a multistate regulatory action, according to established procedures, MAWG will participate in determining whether the Managing Lead State (MLS) in any MAWG initiative should be the state of domicile or another state. More than one Lead State may be designated by MAWG. The Lead State(s) will assume the responsibility for developing final action, including developing any MSA.

## **Provide Periodic MAWG Updates**

At least one Lead State should be available to participate in MAWG and Collaborative Action Designee (CAD) conference calls. Participation in these calls will provide an opportunity for the Lead State(s) to address issues and questions presented by MAWG members and CADs and to update the states on the progress and direction of active collaborative actions.

## **B. Contents of MSAs**

### **1. Background**

#### **a. Statutory Authority**

The MSA should include any and all relevant statutory authority of the MLS.

#### **b. The Parties**

The MSA should define the parties to the agreement:

1. Regulated Entity – The MSA should state the name of each and every company and/or individual that is party to the agreement. Because state databases, as well as NAIC databases, are populated on a company level, insurance companies that are a party to the agreement should be listed separately rather than as a group;
2. Lead State(s) – The MSA should indicate the states that have taken a leadership role in the examination/investigation and development of the MSA;
3. Domestic Regulators – The MSA may indicate the state where the regulated entity is domiciled;
4. Participating State(s) – Often defined in an MSA as “the insurance regulators of each of the remaining jurisdictions and the District of Columbia that agree to and approve the MSA;
5. Signatory Regulators – Often defined in an MSA to include the Lead State(s) and Participating State(s) collectively; and
6. Monitoring Regulators – If the regulators who will be overseeing corrective action plans, claims reassessments, progress reports, or follow up examinations subsequent to the MSA are different from the Lead State(s), a set of monitoring regulators should be defined.

#### **c. Recitals/Recitation of Events Leading Up to the Action**

The MSA should include a statement of the facts that gave rise to the necessity of an MSA. The recitals should contain:

1. A statement regarding the jurisdiction of the Lead State(s) over the regulated entity;
2. An explanation as to the commencement or initiation of the action that gave rise to the MSA;
3. Identification of multistate areas of concern. The MSA should list the issues that gave rise to collaborative action; and
4. Violations that are being pursued by the Lead State(s).

#### **d. Scope of the MSA**

The MSA should include a statement as to the scope of the agreement with as much specificity as possible. As part of determining the scope of the MSA, the Lead State(s) should review the particular company’s corporate governance to determine if the agreement should include corporate governance features.

The parties to the MSA may agree that specific issues will not be addressed by the MSA. Any stipulations between the parties to reserve an issue from consideration should be specifically stated in the MSA. Any potential Participating State that wishes to reserve an issue yet participate in the collaborative action must notify the MLS of the state’s conditions for participation. Such reservation should be for good cause and

as limited as possible. The reservation of an issue should be communicated to the regulated entity by the MLS. Such a reservation may require a separate written agreement between the potential Participating State and the regulated entity. It should be understood that the regulated entity is not required to accept the reservation. In such instances, the state and regulated entity may choose to handle that state's issues in a separate action.

## **2. Remedies/Remediation**

### **a. Corrective Action**

A primary goal of any MSA should be to achieve compliance with the regulated entity on a national basis. The MSA should define any required corrective action with specificity, including a specified period of time for completion. Corrective actions should be reasonably calculated to undo past harm, where possible, and to eliminate future violation of the insurance laws in the Participating State(s).

The Lead State(s) or Monitoring Lead State(s) should retain the authority to oversee any compliance efforts that require communication with policyholders/consumers to ensure that the regulated entity communicates directions, instructions and information in a manner that is easily understood by affected consumers. Further, the corrective action plan should incorporate contact information that affords policyholders/consumers an opportunity to seek information from persons with knowledge over the subject matter.

### **b. Follow-up Audits/Examinations**

A follow-up audit or examination process in an MSA should proceed in a timely manner after any period of corrective action and should be as objective and transparent as possible. The MSA should indicate:

1. The regulators that will be responsible for the follow-up audit or examination;
2. The date the follow-up audit or examination is scheduled to begin;
3. The time period that the follow-up audit or examinations is expected to cover;
4. The examination standards from the handbook that will be applied during the audit/examination;
5. The compliance expectations of the examination team;
6. Consequences that will be applied as a result of the regulated entity failing to meet specified compliance thresholds; and
7. Whether participating regulators are precluded from conducting their own examinations until the adoption of the follow-up examination for the issues involved.

### **c. Self-Reporting**

The MSA may provide for a follow-up audit, examination, or periodic self-reporting. If self-reporting is required as a condition of the MSA, the Lead State(s) or Monitoring State(s) must be prepared to review and provide feedback to the regulated entity that is required to provide the reports. Should the Lead State(s) determine that self-reporting is a condition to settlement, the MSA should specify the following:

1. Reporting deadlines;
2. Required contents of the reports;
3. The regulator(s) responsible for receiving the reports;
4. The expectations of the regulator(s) responsible for receiving the reports;
5. Expected compliance standards;
6. Any penalties or other consequences for failing to meet compliance standards based solely on reporting; and
7. Any penalties or other consequences for failing to meet reporting deadlines without obtaining an extension.



#### **d. Penalties/Fines Costs**

Penalty and fine provisions should be structured in a manner that is consistent with the laws of the Participating States. For instance, many states do not permit penalties to be designated as “administrative costs” or “assessments.” Further, some states do not have a mechanism that allows a penalty to be paid to a third party in the form of a contribution or charitable donation.

#### **C. Consent Orders of Other Adoption Orders**

A Participating State may elect or be required by law to execute a Consent Order or other type of Adoption Order that adopts an MSA. Any Consent Order or other Adoption Order executed should be consistent with the terms of the MSA and should not include any additional duties or obligations upon the parties to the agreement that are not specifically required by that state’s law. A Participating State should not reserve any issues from inclusion in the MSA that were not communicated to the MLS at the time of indicating a willingness to participate in the collaborative action.

Any required or elected Consent Order or other Adoption Order shall be executed and final within any participation deadlines established by the MSA.

Any state that had indicated a willingness to participate in the collaborative action but does not intend to execute or participate in the MSA shall advise the MLS of the Participating State’s intent to not participate. The Participating State is encouraged to explain the reasons for not intending to participate in the MSA. By doing so, the Lead State(s) may be in a position to renegotiate with the regulated entity in order to address the outstanding reservations or concerns of the Participating State.

#### **D. Confidentiality**

##### **1. Report**

Final examination/investigation reports establish the foundation for future administrative action. These reports should be shared with participating regulators as soon as is practicable after they are completed.

Where permitted by law, final examination/investigation reports should be open for public disclosure after final administrative action has been taken. Any limitation to the public distribution of final examination/investigation reports should be clearly stated in the MSA, including any waiting period required prior to public disclosure. It may be practical to include the report as an exhibit in the MSA. Reasons for any limitations for making documents public should be listed.

##### **2. Exhibits**

In many instances, final examination/investigation reports include exhibits. Exhibits attached to reports should be handled with the same confidentiality and public disclosure standards applied to the final examination/investigation reports.

##### **a. MSA and Other Adoption Orders**

Unless otherwise required by law, the MSA and any other order entered into by the Participating State adopting the MSA should not be confidential after the order is executed and final. Rather, final actions of regulators, as well as duties imposed upon regulated persons/entities pursuant to the MSA, should be transparent and available for public disclosure.

**b. Settlement Offers/Negotiations**

Notes, materials, draft documents, discussions, and any other information developed during the course of settlement negotiations should be considered a component of the examination/investigation work papers and should not be subject to public disclosure after the MSA has been finalized. The release of preliminary settlement information to the public that is an integral part of negotiations would have a chilling effect on future settlement negotiations.

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