

TO: Director Bruce Ramage, Chair
Market Conduct Examination Standards (D) Working Group

FROM: Brent Kabler, Chair
Market Information Systems Research and Development (D) Working Group

DATE: 7/12/16

SUBJECT: Market Regulation Handbook Proposed Changes and Recommendations

Earlier this year the Market Information Systems Research and Development (D) Working Group (MIS R&D) reviewed the *Market Regulation Handbook* for potential changes to reflect the retirement of the Examination Tracking System (ETS) and Market Initiative Tracking System (MITS) and the introduction of the Market Action Tracking System (MATS). During this review other, unrelated changes were also proposed. These are described in detail below. Included with some proposed changes are comments from Working Group members.

The section below contains other non-technical changes that are being referred for consideration.

I would be happy to answer any questions. Thank you for your consideration.

Chapter 1 – Introduction

Proposed Change 1.1

Location: D. The Players and Their Tools / Core Competencies

From:

Core competencies were developed by regulators to meet expectations from consumers, the insurance industry and all interested parties for effective state-based regulatory oversight of the insurance marketplace. Core competency standards are uniform standards that measure an individual state insurance department's overall ability to effectively and efficiently regulate the insurance marketplace. The four broad categories of core competency are set forth below. The currently adopted core competency standards are contained within Appendix D of this handbook.

- Resources—Standards regarding a state's regulatory authority, staff and training, and standards relating to a state's utilization of contract examiners;
- Market Analysis—Standards regarding market analysis, data collection, the role and responsibilities of a state insurance department Market Analysis Chief (MAC) and required skills and knowledge of a market analyst;
- Continuum—Standards regarding the use of [continuum](#) options, market conduct examinations, investigations and consumer complaints; and
- Interstate Collaboration—Standards regarding the NAIC Collaborative Actions Guide document and the role and responsibilities of a state insurance department Collaborative Action Designee (CAD).

To:

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- Resources—Standards regarding a state's regulatory authority, staff and training, and standards relating to a state's utilization of contract examiners;
- Market Analysis—Standards regarding market analysis, data collection, the role and responsibilities of a state insurance department Market Analysis Chief (MAC) and required skills and knowledge of a market analyst;
- Continuum—Standards regarding the use of [Market Action Tracking System](#) options, market conduct examinations, investigations and consumer complaints; and
- Interstate Collaboration—Standards regarding the NAIC Collaborative Actions Guide document and the role and responsibilities of a state insurance department Collaborative Action Designee (CAD).

Comment: The change from continuum options to MATS doesn't make sense in this instance. Suggest removing reference to MATS and replace with language similar to the following:

Continuum Options - Standards regarding the use of focused inquiries, non-exam regulatory interventions, market conduct examinations, investigations and consumer complaints; and ...

Proposed Change 1.2

Location: D. The Players and Their Tools / NAIC Staff/Research Resources

From:

The NAIC offers financial, actuarial, legal, computer, research, market conduct and economic expertise. The NAIC Market Regulation Department supports state insurance regulators in fulfilling the state insurance departments' responsibility of protecting the interests of insurance consumers by helping coordinate state market regulatory functions, such as consumer complaints, market analysis, producer licensing and regulatory [interventions](#).

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[Chapter 2 – Continuum of Regulatory Response](#)

Proposed Change 2.1

Location: First paragraph

From:

Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern. The continuum can be used to guide the decision-making process when regulators move from analysis to a regulatory response. This chapter will provide considerations for selecting regulatory responses to specific situations, as well as providing lists and descriptions of the categories of continuum actions.

“Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern.

To:

Insurance regulators can access a broad continuum [or choice](#) of regulatory responses when determining the appropriate regulatory response to an identified issue or concern. The continuum can be used to guide the decision-making process when regulators move from analysis to a regulatory response. This chapter will provide considerations for selecting regulatory responses to specific situations, as well as providing lists and descriptions of the categories of continuum actions.

“Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern.

Comment: The addition of the word “choice” is awkward. I’d recommend retaining the original phrase, or substitute something like “range of regulatory responses.”

Proposed Change 2.2

Location: A. Considerations / 1. Questions to Evaluate

From:

Consumers

- How immediate is the concern? What is the likelihood or severity of any potential consumer harm?
- What is the nature and potential scope of the harm to consumers?
- How extensive is the issue? Does the concern involve one regulated entity or multiple regulated entities?

To:

Consumers

- How immediate is the concern? What is the likelihood or severity of any potential consumer harm?
- What is the nature and potential scope of the harm to consumers?
- How extensive is the issue? Does the concern involve one regulated entity or multiple regulated entities?
- Is it confined to one state, one region, or is it nationwide?

Proposed Change 2.3

Location: B. Regulatory Responses

From:

The continuum of regulatory responses can be roughly divided into four categories: Contact, Examination, Enforcement and Market Actions (D) Working Group. The continuum is not a “ladder,” whereby one step must be taken prior to advancing to the next. Rather, it should be viewed as a range of decision-making options.

A brief discussion of each category follows. Examples are provided only for clarity and should not be considered the sole use for each type of response. Note: The principles outlined in Section D Confidentiality in Chapter 8—Examination Introduction of this handbook can also be applied to the continuum of regulatory responses.

To:

The continuum or choice of regulatory responses can be roughly divided into four categories: Contact, Examination, Enforcement and Market Actions (D) Working Group. The continuum is NOT a “ladder,” whereby one step must be taken prior to advancing to the next. Rather, it should be viewed as a range of decision-making options.

A brief discussion of each category follows. Examples are provided only for clarity and should NOT be considered the sole use for each type of response. Note: The principles outlined in Section D Confidentiality in Chapter 8—Examination Introduction of this handbook can also be applied to the continuum of regulatory responses.

Comment: The addition of the word “choice” is awkward. I’d recommend retaining the original phrase, or substitute something like “range of regulatory responses.”

Proposed Change 2.4

Location: B. Regulatory Responses / 1. Contact with the Regulated Entity

From:

The continuum begins with the contact category, dealing with various opportunities to connect directly with the regulated entity, such as:

- Correspondence;
- Interrogatories;
- Interviews with the entity;
- Contact with other stakeholders;
- Targeted information gathering;
- Policy and procedure reviews;
- Review of self-audits and self-review documents; and
- Review of voluntary compliance programs.

To:

The choices begin with the contact category, dealing with various opportunities to connect directly with the regulated entity, such as:

- Correspondence;
- Interrogatories;
- Interviews with the entity;
- Contact with other stakeholders;
- Targeted information gathering;
- Policy and procedure reviews;
- Review of self-audits and self-review documents; and
- Review of voluntary compliance programs.

Chapter 6 – Collaborative Actions

Proposed Change 6.1

Location: A. Collaborative Action Guidelines / 3. Assumptions

From:

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 who reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State, 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 their behalf. However, if a Participating State does designate another state to review information on their behalf, it is the Participating State’s responsibility to outline their interpretation of their own laws they 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.

To:

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- 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, [non-examination regulatory intervention](#), examination or re-examination.

Proposed Change 6.2

Location: A. Collaborative Action Guidelines / 4. Determinations / a. Determining Need for Collaboration

From:

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 to 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.

To:

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 to the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market Analysis reviews and [continuums](#) 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.

Proposed Change 6.3

Location: C. Market Actions (D) Working Group (MAWG) / 2. Request for Review (RFR) / MAWG Request for Review Workflow/ Last flow chart object

From:

Lead States conduct exam or [continuum action](#) and propose resolution.

To:

Lead States conduct exam or [non-examination regulatory intervention](#) and propose resolution.

Comment: For consistency's sake, in the last flow chart object, "continuum action" should be changed to "non-examination regulatory intervention;" also continuum action technically includes examinations.

Proposed Change 6.4

Location: D. Multistate Examination Process / 1. Document the Need for an Examination

From:

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 regulatory responses 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.

To:

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 [a non-examination regulatory intervention is](#) not adequate or appropriate. At the point of determining the need for an examination, the CAD should take the following steps.

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- 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.

Proposed Change 6.5

Location: D. Multistate Examination Process / 10. Finalize the Examination Report

From:

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 company response; and
 - Include company response as part of the report.
- b. Each state CAD finalizes their state's examination report; and
- c. Each Participating State should record the applicable administrative resolution for their state in the [appropriate NAIC database](#).

To:

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 company response; and
 - Include company response as part of the report.
- b. Each state CAD finalizes their state's examination report; and
- c. Each Participating State should record the applicable administrative resolution for their state in the [Market Action Tracking System](#).

Comment: Is use of MATS appropriate in this instance or should it be RIRS? My understanding is that only the state that entered an action in MATS can make changes to that item. Should there be a comment that the participating state would need to enter a separate MATS item or the lead state could insert a note in the main action on that state's behalf?

[Chapter 7 – Market Regulation Investigation Guidelines](#)

Proposed Change 7.1

Location: B. Guidelines for Conducting Market Regulation Investigations / Enforcement Options

From:

There are several enforcement options available to an insurance department. These options include, but are not limited to, the following:

- An administrative complaint may be filed against the licensed entity or individual who is the subject or target of the investigation. As with other administrative complaints, the respondent has 30 days to respond to the allegations and, in most cases, a hearing will then be scheduled.
 - Cease and desist order: In certain circumstances, it may be appropriate to issue a cease and desist order against the subject of an investigation;
 - The insurance department has the authority to enter into settlement agreements and/or issue a consent order with regard to violations of a state's insurance code which are uncovered during an investigation. A settlement agreement may be entered into after or before the filing of an administrative complaint, and the

same is true for a consent order. It is important to remember that it is not necessary to file a formal complaint against the target of an investigation before a settlement agreement or consent order can be entered into to resolve any outstanding issues and violations;

- Suspension or revocation of licenses;
- Corrective action plan;
- Referral to appropriate law enforcement or other regulatory agencies, if warranted and/or required by law;
- Restitution; and
- Information-sharing with other states.

All states should report any significant findings to other affected states, through their Collaborative Action Designee (CAD) and through the Market Actions (D) Working Group. Since an investigation is a separate and distinct process from an examination, the existence of an investigation may not be reported to MATS, nor are the findings of an investigation always reported to RIRS.

- Some entities will request that a department of insurance enter into what may be referred to as a confidential settlement to resolve any violations found during an investigation. Confidential settlements are not allowed under many state public record laws. Fellow regulators expect NAIC databases to maintain accurate information. All violations and monetary payments should be reported to the appropriate NAIC databases unless prohibited by law.

To:

There are several enforcement options available to an insurance department. These options include, but are not limited to, the following:

...

- Information-sharing with other states.
All states should report any significant findings to other affected states, through their Collaborative Action Designee (CAD) and through the Market Actions (D) Working Group. Depending on the confidentiality of the investigation, the results may be entered into the MATS and/or RIRS databases, to demonstrate to other interested jurisdictions the material findings and monetary payments concerning the action.

Comment: Why is this paragraph eliminated?

Chapter 10 – Types of Examinations

Proposed Change 10.1

Location: A. Types of Examinations / Target Examinations

From:

Target Examinations

Target examinations are a focused examination reviewing either a specific line of business or a specific business practice, such as underwriting, marketing or claims. Prompt-pay examinations are another example of a target examination.

Target examinations are specific as to the area of concern and may be called by any jurisdiction at any time, with or without notice to the insurer as circumstances dictate. In the event of a target examination, it is recommended that a review of the company's current complaints, as well as a review of its operations/management area be conducted.

To:

Targeted Examinations

Target examinations are a focused examination reviewing either a specific line of business or a specific business practice, such as underwriting, marketing or claims. Prompt-pay examinations are another example of a target examination.

Target examinations are specific as to the area of concern and may be called by any jurisdiction at any time, with or without notice to the insurer as circumstances dictate. In the event of a target examination, it is recommended that a review of the company's current complaints, as well as a review of its operations/management area be conducted.

Comment: Should the references to Target examinations in the text also be updated?

Proposed Change 10.2

Location: A. Types of Examinations/ Limited-Scope Examinations

From:

Limited-Scope Examinations

Limited-scope examinations usually involve alternative examination methods available other than, or in addition to, the traditional on-site market conduct examination.

Examples of a limited-scope examination are as follows:

- **Interrogatories—A compilation of written questions regarding a specific subject, procedure or product submitted to the company in order to obtain information. Verification of the information is accomplished by a review either in-house or during an on-site examination.**
- **Re-examinations or compliance examinations—These types of examinations confirm compliance with a previously issued order of the director/commissioner or other administrative action and serve to verify that the company has initiated corrective actions for adverse findings detailed in a prior examination report.**
- **Desk examinations—Used as a means of follow-up on an issue found during an examination that did not rise to the level of a clear violation, but still caused the insurance department some concern.**
- Small company examinations (small is defined as county mutual companies, fraternal organizations or a company that has written a predetermined premium volume)—An opportunity to review a small company's practices when the expense and time required for a traditional examination might not be warranted. Because of the potentially smaller field sizes, this is an opportunity to use ACL and other computer programs to conduct portions of the review.

To:

Limited-Scope Examinations

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Comment: Interrogatories are addressed in continuum chapter; Re-examinations or compliance examinations refer to a sequence; and Desk examinations are addressed in methods.

Proposed Change 10.3

Location: F. Use of Hierarchical Description

Delete:

F. Use of Hierarchical Description

An examination type will be reasonably precise if the user identifies the examination with a descriptive phrase from each of the six areas in this chapter. This creates a hierarchical description of the areas of an examination, describing the types of market conduct examinations that could be conducted by a state.

Selection of Type + Exam Sequence + Specialty Area (LOB) + Scope + Jurisdiction + Method. Some examples of usage of hierarcharical descriptions are noted below:

| | | | | |
|------------------------|------------------------|-----------------------|----------------------|------------------------|
| <u>Type Selection</u> | <u>Routine</u> | <u>Target</u> | <u>Target</u> | <u>Target</u> |
| <u>Exam Sequence</u> | <u>Subsequent</u> | <u>Initial</u> | <u>Initial</u> | <u>Follow-up</u> |
| <u>Specialty (LOB)</u> | <u>P&C</u> | <u>Health</u> | <u>Title</u> | <u>Life</u> |
| <u>Scope</u> | <u>Limited (Undwr)</u> | <u>Limited (Clms)</u> | <u>Comprehensive</u> | <u>Limited (Undwr)</u> |
| <u>Jurisdiction</u> | <u>Single state</u> | <u>Single state</u> | <u>Single state</u> | <u>Multistate</u> |
| <u>Method</u> | <u>On-site</u> | <u>Desk</u> | <u>On-site</u> | <u>Combination</u> |

Chapter 11 – Automated Examinations Tools and Techniques

Proposed Change 11.1

Location: D. Data Requests and Access / 1. Example of a Data Request for ABC Insurance Company

From:

1. Example of a Data Request for ABC Insurance Company

Please provide the following data files for the examination period of Jan. 1, [2011](#) through Dec. 31, [2011](#). The files will be used on a PC, so please provide the information on a CD. The files should contain fixed length records in the layouts shown. The file format requested, in the order of preference, is delimited (comma or tab) text files or a Microsoft Access database. If a company's computer systems use different field sizes, please submit the company's data files and send revised file layouts with the files.

Complaints—[Please](#) provide a list of all complaints received from [state name] policyholders from the period of Jan. 1, [2011](#) through Dec. 31, [2011](#). Please include both complaints received directly and those forwarded from the [state name] insurance department.

To:

1. Example of a Data Request for ABC Insurance Company

Please provide the following data files for the examination period of Jan. 1, [2016](#) through Dec. 31, [2016](#). The files will be used on a PC, so please provide the information on a CD. The files should contain fixed length records in the layouts shown. The file format requested, in the order of preference, is delimited (comma or tab) text files or a Microsoft Access database. If a company's computer systems use different field sizes, please submit the company's data files and send revised file layouts with the files.

Complaints—[p](#)lease provide a list of all complaints received from [state name] policyholders from the period of Jan. 1, [2016](#) through Dec. 31, [2016](#). Please include both complaints received directly and those forwarded from the [state name] insurance department.

Proposed Change 11.2

Location: I. Marketing and Sales / 2. Unfair Discrimination

Note: Currently the NAIC style guide for NAIC publications prescribes ‘homeowners’ (no apostrophe). A recommendation to modify that guideline can be made if appropriate.

From:

When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a [homeowners](#) insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

To:

When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a [homeowners'](#) insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

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To:

When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a [homeowners'](#) insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

Proposed Change 11.4

Location: K. Underwriting and Rating / 1. Comparison of Insurance Department/Company Records

From:

Data File Supplied by the Company:

Homeowners New Business Written—List of all new business [homeowners](#) policies issued in this state during the exam period, provided in the following format:

and

ISO protection class codes should be kept in a database format. Both of the ISO protection class codes and the company’s [homeowners](#) new business can be analyzed using Microsoft Access or ACL. By comparing or linking the policies’ City, County, Township/Village (if applicable) and ZIP Code fields to the corresponding ISO City, County, Township/Village (if applicable) and ZIP Code fields, it can be determined if the Protection Class Codes match. A separate list can be generated for the policies where the Class Codes do not match. The company or the examiner can then determine by looking at the policy file if the class code is correct or in error.

and

Data File Supplied by the Company:

Homeowners New Business Written—List of all new business [homeowners](#) policies issued in this state during the examination period, provided in the following format:

To:

Data File Supplied by the Company:

Homeowners New Business Written—List of all new business [homeowners'](#) policies issued in this state during the exam period, provided in the following format:

and

ISO protection class codes should be kept in a database format. Both of the ISO protection class codes and the company’s [homeowners'](#) new business can be analyzed using Microsoft Access or ACL. By comparing or linking the policies’ City, County, Township/Village (if applicable) and ZIP Code fields to the corresponding ISO City, County, Township/Village (if applicable) and ZIP Code fields, it can be determined if the Protection Class Codes match. A separate list can be generated for the policies where the Class Codes do not match. The company or the examiner can then determine by looking at the policy file if the class code is correct or in error.

and

Data File Supplied by the Company:

Homeowners New Business Written—List of all new business [homeowners'](#) policies issued in this state during the examination period, provided in the following format:

Chapter 16 – General Examination Standards

Proposed Change 16.1

Location: A. Operations/Management / 2. Techniques / e. Antifraud Plans

From:

The guidelines set forth in the NAIC *Antifraud Plan Guideline* (#1690), adopted by the NAIC in March 2011, are intended to provide a road map for state fraud bureaus, insurers' Special Investigative Units ([SIUs](#)) or contracted SIU vendors for preparation of an antifraud plan.

To:

The guidelines set forth in the NAIC *Antifraud Plan Guideline* (#1690), adopted by the NAIC in March 2011, are intended to provide a road map for state fraud bureaus, insurers' Special Investigative Units ([SIUs](#)) or contracted SIU vendors for preparation of an antifraud plan.

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