

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE

Market Regulation and Consumer Affairs (D) Committee March 24, 2023, Minutes

Market Regulation Certification (D) Working Group Feb. 27, 2023, Minutes (Attachment One)

Market Regulation Certification (D) Working Group Dec. 9, 2022, Minutes (Attachment One-A)

Draft Pending Adoption

Draft: 3/29/23

Market Regulation and Consumer Affairs (D) Committee
Louisville, Kentucky
March 24, 2023

The Market Regulation and Consumer Affairs (D) Committee met in Louisville, KY, March 24, 2023. The following Committee members participated: Jon Pike, Chair (UT); Mike Causey, Co-Vice Chair, represented by Tracy Biehn (NC); Michael Humphreys, Co-Vice Chair, and David Buono (PA); Peni Itula Sapini Teo represented by Elizabeth Perri (AS); Karima M. Woods and Sharon Shipp (DC); Trinidad Navarro and Susan Jennette (DE); Sharon P. Clark (KY); Chlora Lindley-Myers, Cynthia Amann, and Jo LeDuc (MO); Jon Godfread represented by John Arnold (ND); Michael Wise (SC); Cassie Brown represented by Jessica Barta, Matthew Tarpley, and Jamie Walker (TX); Kevin Gaffney represented by Karla Nuisl (VT); and Jeff Rude (WY). Also participating were: Erica Weyhenmeyer (IL); Matt Gendron (RI); Rebecca Nichols (VA); and John Haworth (WA).

1. Adopted its 2022 Fall National Meeting Minutes

Biehn made a motion, seconded by Commissioner Navarro, to adopt the Committee's Dec. 15, 2022, minutes (*see NAIC Proceedings – Fall 2022, Market Regulation and Consumer Affairs (D) Committee*). The motion passed unanimously.

2. Heard a Presentation on the Emerging Cyberthreat of Technology-Enabled Claims Instigation

Joseph Petrelli (Demotech) said multiple insurers in Florida have become insolvent in the last few years. Research by Demotech and 4Warn has shown a disproportionate increase in litigation in Florida, and they have tied this increase in litigation to the insolvencies. Petrelli said law firms have targeted the insurance companies. He said Demotech asked Todd Kozikowski (4Warn) to investigate the reasons for the insolvencies.

Kozikowski said Google sells keywords, which are used by its search engine to prioritize results obtained in searches. Entities that pay for the keywords that are used in the searches will appear as the first results for a search. Buying keywords to push up the prioritization of an entity's advertisement is called search engine optimization (SEO). He said an analysis of the keywords and the sites that own them show that the keywords include insurance company names; public adjuster names; and generic searches, such as "public insurance adjusters near me" or "claims department." The keywords will be purchased just prior to a National Oceanic and Atmospheric Administration (NOAA) named storm arriving along an affected path. Kozikowski said average monthly spending on SEO keywords by six major multinational companies—McDonald's, Ford Motor Company, Starbucks, Nestle, Costco, and Anthem Blue Cross Blue Shield—was \$296,000. He said the average monthly spending by one substantial law firm was \$741,000. He noted that one Florida public adjuster paid an average of \$57,000 per month, or about \$650,000 per year, to buy keywords. The 1,200 paid keywords generated 3,700 clicks compared to 1,200 clicks from 2,600 organic searches that did not use paid keywords.

Petrelli said six Florida insurance companies failed due to a significant increase in new lawsuits that often exceeded the number of lawsuits in entire states. He said law firms used Litify to increase lawsuit filings by 480%. He said litigation financing outperformed investments in private equity (PE), real estate, and hedge funds. He noted that the Louisiana Department of Insurance (DOI) issued a cease and desist on one law firm for fraudulent activity related to marketing practices related to promising large recoveries before a claim is investigated.

Kozikowski said he monitored search activities and the purchase of keywords prior to the landfall of Hurricane Ian. There was a substantial increase in the purchase of keywords to elevate the results for law firms and public adjusters when consumers searched for information on their insurance companies and claims information.

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Kozikowski said one law firm has targeted more than 90 insurance companies by buying keywords, including the company name, such as “Travelers insurance personal injury settlement” and “Travelers insurance claims.”

Commissioner Clark asked if there was evidence of public adjusters and litigators collaborating. Petrelli said there is no direct evidence, but he believes it is occurring. He said it would be necessary to coordinate with companies to see their claims files to know if there is collaboration. He said he believes litigators have carved up the Florida insurance marketplace.

Commissioner Navarro asked if the law firms and public adjusters were intercepting calls intended for the insurance companies. Kozikowski said by using SEO, a Google search will show as a top result the telephone number for a public adjuster or litigator who purchased keywords using the insurance company’s name. Commissioner Navarro said everyone assumed that the reason the companies went insolvent in Florida was because of the cost of the hurricane-related losses. He asked if Petrelli and Kozikowski believe the companies went insolvent because of lawsuits. Petrelli said it was death by litigation.

Arnold asked if other industries and regions of the country have the same SEO issues that 4Warn is noticing in the insurance industry. Kozikowski said other industries are experiencing the same, but he has no analysis on them. There are increased litigation levels in Chicago, San Francisco, and Florida. Gendron asked why no upticks are indicated in cities other than Chicago, San Francisco, and Miami. Kozikowski said the lawsuits are targeted at specified insurers, and the upticks would be in the cities where those companies have the most losses.

Birny Birnbaum (Center for Economic Justice—CEJ) said he would like to have an opportunity to present a rebuttal to the presentation by Petrelli and Kozikowski. He said he was outraged that the Committee provided a platform for this conspiracy theory.

Ken Klein (California Western School of Law) noted that regulatory and legislative efforts to reduce litigation reduce both frivolous and meritorious lawsuits. He asked if Kozikowski or Petrelli can identify how many of the lawsuits were frivolous or meritorious. Shipp asked how many of the litigated claims resulted in payments, and Petrelli said that is information that would have to be gathered from the insurance companies.

3. Adopted its Task Force and Working Group Reports

a. Antifraud (D) Task Force

Commissioner Navarro said the Antifraud (D) Task Force met March 23 to adopt its 2022 Fall National Meeting minutes and discuss its charges and priorities for the year.

Commissioner Navarro said the Task Force received an update from the Improper Marketing of Health Insurance (D) Working Group. He said the Working Group holds monthly regulator-only conference calls to discuss ongoing investigations and state efforts concerning lead generators. The Working Group is also continuing to work on its charge to “Review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products, and identify models and guidelines that need to be updated or developed to address current marketplace activities.” He said in 2022, the Working Group started reviewing the *Unfair Trade Practices Act* (#880) for potential amendments. The Working Group is finalizing the draft amendments. Commissioner Navarro said following the Spring National Meeting, the Working Group will distribute an updated draft for review and hold an open conference call in April to review and potentially adopt the amendments.

Commissioner Navarro said the Task Force received an update on the NAIC’s Online Fraud Reporting System (OFRS) redesign. He said the implementation process will include collaboration with the National Insurance Crime

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Bureau (NICB), the National Health Care Anti-Fraud Association (NHCAA), and state vendors. He said the Antifraud Technology (D) Working Group will begin reviewing suggested enhancements for OFRS moving forward.

Commissioner Navarro said the Task Force concluded its meeting with reports on matters of interest from the Coalition Against Insurance Fraud (CAIF), the Healthcare Fraud Prevention Partnership (HFPP), and the NICB.

b. Producer Licensing (D) Task Force

Commissioner Clark said the Producer Licensing (D) Task Force has not met this year.

Commissioner Clark said the Task Force will have three working groups in 2023. The Adjuster Licensing (D) Working Group will be chaired by Rachel Chester (RI). The Uniform Education (D) Working Group will be chaired by Richard Tozer (VA). The Producer Licensing Uniformity (D) Working Group will be chaired by Bryan Stevens (WY).

Commissioner Clark said last year, the Task Force circulated a draft template on the 1033 waiver process. She said following the 2022 Fall National Meeting, the draft was circulated for comment to the Producer Licensing (D) Task Force, the Antifraud (D) Task Force, and all interested parties with a comment deadline of Jan. 31. She said there were 17 comments submitted from both state insurance regulators and industry, and NAIC staff are reviewing and summarizing the comments. She said the comments will also be posted to the Producer Licensing (D) Task Force web page for further consideration prior to the Summer National Meeting.

Commissioner Clark said Commissioner Navarro will lead a new workstream on public adjusters for the Adjuster Licensing (D) Working Group. She said the National Association of Public Insurance Adjusters (NAPIA) has requested the following four items to be addressed: 1) unlicensed public adjusters; 2) contractors who are also acting as public adjusters on the same claims; 3) the assignment of benefit rights to contractors; and 4) the general claims appraisal process.

Commissioner Clark said with last year's adoption by the Executive (EX) Committee and Plenary of the "Guidelines for Amending the Uniform Producer Licensing Applications," NAIC staff will begin coordinating with the National Insurance Producer Registry (NIPR) and states, including any back-office system support vendors, to conduct an analysis of how long it will take to implement a proposed change and the cost to implement it.

c. Market Analysis Procedures (D) Working Group

LeDuc said the Market Analysis Procedures (D) Working Group will meet April 10.

LeDuc said during its April 10 meeting, the Working Group will discuss its charges for 2023, which include a new charge to assess the current market analysis data in the NAIC Market Information Systems (MIS) and identify needed improvements in the effectiveness of the data and the predictive abilities of the scoring systems that utilize the data. She said the Working Group will begin by identifying the data that is available in the MIS and how the states are using the data.

d. Market Conduct Examination Guidelines (D) Working Group

Tarpley said he and Market Conduct Examination Guidelines (D) Working Group vice chair Weyhenmeyer met Feb. 1, Feb. 7, Feb. 27, and March 15 to discuss the Working Group's 2023 charges and topics continuing from last year. He said last year's continuing topics include a new travel insurance policy in-force standardized data request (SDR), a new travel insurance claims SDR, revisions to Chapter 23—Conducting the Life and Annuity Examination of the *Market Regulation Handbook*. The revision to the chapter is to the best interest provisions of the *Suitability in Annuity Transactions Model Regulation* (#275).

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Tarpley said he and the Working Group vice chair are monitoring the work of the Accelerated Underwriting (A) Working Group and the Innovation, Cybersecurity, and Technology (H) Committee to prepare for the Market Conduct Examination Guidelines (D) Working Group's first meeting on March 28.

e. Market Regulation Certification (D) Working Group

Haworth said the Market Regulation Certification (D) Working Group met Feb. 27. He said during the meeting, the Working Group discussed its charges for 2023 and received an update on the revisions to the Voluntary Market Regulation Certification Program requirements, checklist, and guidelines.

Haworth said the work of the subject matter expert (SME) group revising the certification program requirements, checklist, guidelines, and scoring matrix is nearly complete. He said once the drafting group completes its final review of the revisions, the redline and clean versions of all these documents will be posted to the Working Group's web page in preparation for the Working Group's consideration and adoption.

Haworth provided an overview of the draft certification program for new members of the Market Regulation and Consumer Affairs (D) Committee. He said the current work on putting together a certification program for state market regulation departments differs from previous attempts in not insisting upon domestic deference. He noted that after the original drafting of this certification program, the Working Group oversaw a pilot of the certification program with 18 states. The states applied the certification standards to their departments and came up with a number of suggestions to improve the program prior to adoption.

Haworth said the draft certification program consists of 11 requirements that a department would be expected to achieve. The 11 requirements are broken into five broad categories covering: 1) the available statutory authorities; 2) use the *Market Regulation Handbook*; 3) staffing resources and qualifications; 4) use of NAIC MIS databases and the Market Conduct Annual Statement (MCAS); and 5) collaboration with other departments.

Haworth said the proposed implementation plan for the program anticipates an initial period where jurisdictions will be encouraged to self-certify that they meet the requirements and be provided with peer review, guidance, and training. After the initial self-certification period, jurisdictions can choose to continue to self-certify or seek full certification. Full certification would be measured by an independent panel appointed by the Working Group. A fully certified jurisdiction would submit annual self-assessments and be re-certified every five years.

Haworth said the Working Group should have the entire certification program ready for Committee consideration by the Summer National Meeting.

f. Speed to Market (D) Working Group

Nichols said the Speed to Market (D) Working Group has not met yet this year, but it is continuing its work on the revisions to the *Product Filing Review Handbook*. She said the *Product Filing Review Handbook* revisions are near completion, and the Working Group expects to have the exposure draft posted to its web page by late May or early June. She said the Working Group will consider the changes in three segments, and it anticipates having the entirety of the *Product Filing Review Handbook* changes adopted prior to the Fall National Meeting.

Additionally, Nichols said in June and July, the Working Group will conduct its annual consideration of suggestions for the product coding matrices (PCMs).

The Market Information Systems (D) Task Force and the Market Conduct Annual Statement Blanks (D) Working Group did not meet prior to the Spring National Meeting, and they did not report.

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Commissioner Navarro made a motion, seconded by Biehn, to adopt the following reports: 1) the Antifraud (D) Task Force; 2) the Producer Licensing (D) Task Force; 3) the Market Analysis Procedures (D) Working Group; 4) the Market Conduct Examination Guidelines (D) Working Group; 5) the Market Regulation Certification (D) Working Group (Attachment One); and 6) the Speed to Market (D) Working Group. The motion passed unanimously.

Having no further business, the Market Regulation and Consumer Affairs (D) Committee adjourned.

SharePoint/NAIC Support Staff Hub/Committees ...

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3/24/23

Draft: 3/6/23

Market Regulation Certification (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2023 Spring National Meeting*)
February 27, 2023

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Feb. 27, 2023. The following Working Group members participated: Mike Kreidler, Chair, represented by John Haworth (WA); Bill Cole, Vice Chair (WY); Lori K. Wing-Heier represented by Chelsy Maller (AK); Erica Weyhenmeyer (IL); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Robert McCollough (NE); Marlene Caride represented by Ralph Boeckman and Erin Porter (NJ); Judith L. French represented by Don Layson (OH); Glen Mulready represented by Landon Hubbart (OK); Michael Wise represented by Rachel Moore (NC); Tanji J. Northrup (UT); Don Beatty (VA); and Kevin Gaffney represented by Marcia Violette (VT).

1. Adopted its Dec. 9, 2022, and 2022 Fall National Meeting Minutes

Haworth said the Working Group conducted an e-vote that concluded Dec. 9, 2022, to adopt the revisions to the Market Regulation Certification Program implementation plan.

Cole made a motion, seconded by Biehn, to adopt the Working Group's Dec. 9, 2022 (Attachment One-A) and Nov. 28, 2022 (*see NAIC Proceedings – Fall 2022, Market Regulation and Consumer Affairs (D) Committee, Attachment Six*). The motion passed unanimously.

2. Discussed its Charges and Goals for 2023

Haworth said the only charge for the Working Group is to develop a formal market regulation certification proposal for consideration by the NAIC members. He said this has five parts.

Haworth said the first part is for the Working Group to develop the certification standards that a state's insurance department should or must meet to be certified. He said this, for the most part, has been achieved. He noted that 12 requirements were originally drafted into the certification program covering staffing, use of the NAIC Market Information Systems (MIS), participation in Market Regulation and Consumer Affairs (D) Committee Working Groups, participation in the Market Conduct Annual Statement (MCAS), collaboration with other departments, and the ability to enforce compliance of regulated entities to market conduct laws and regulations.

Haworth said the Working Group is currently assessing the recommendations made by a group of 18 states that volunteered to certify themselves with the original certification program requirements.

Haworth said the second part of the charge is to develop an implementation plan for the certification program. He said this is finished and that on Dec. 9, 2022, the Working Group adopted the Market Regulation Certification Program implementation plan.

Haworth said the third part tasks the Working Group with developing a process for measuring a jurisdiction's compliance to the standards. He said this was completed in 2022, but the scoring matrix is currently being updated as revisions are being recommended by the drafting group that is reviewing the requirements.

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Haworth said the fourth part of the charge is to create a process for future revisions to the certification standards. He said this was included in the implementation plan that was adopted in December.

Haworth said the final part of the charge is the Working Group's ongoing activity once a certification program is approved to assist jurisdictions in achieving certification.

Haworth said his goal is for the Working Group to have the complete package of the requirements, scoring matrix, and implementation plan to the Market Regulation and Consumer Affairs (D) Committee by the Summer National Meeting.

3. Reviewed the Pilot Program Suggested Revisions to the Market Regulation Certification Program

Haworth said the drafting group did not meet in January but met twice in February. He said the drafting group has completed going through the requirements. He said the group has reviewed all the requirements and is now doing one final close look to be sure the wording in the program is consistent, clear, and logical and that the scoring matrix is aligned with the requirements guidelines, measurements, and checklists.

Haworth said the revisions were primarily in line with recommendations received by the jurisdictions that piloted the Market Regulation Certification Program. However, the drafting group also came up with some revisions it felt were important.

Haworth said among the revisions and suggestions are:

- 1) The drafting group added an "Objective" and a "Measurement" section to each requirement. Much of the redline is simply cutting paragraphs from the "Guidelines" section to the new sections.
- 2) On requirements 3 and 4, the drafting group clarified that requirement 3 measures staffing resources and requirement 4 measures staffing qualifications. He said requirement 4 was rewritten to be clearer and to match the formatting of the requirements. He noted that the requirements originally were written by different individuals, so there were many inconsistencies that needed to be cleaned up.
- 3) The drafting group believes the requirement 4 measurements of "unqualified pass" and "provisional pass" create confusion. The drafting group will be asking the Working Group to decide whether those measurements should be replaced with a simple description of what is required to pass.
- 4) Recognizing that employees often have multiple responsibilities, the drafting group changed "full-time employee" to "full-time equivalent employee."
- 5) The drafting group will also be proposing to the Working Group that requirements 6 and 11 should be merged. Requirement 6 concerns collaboration, and requirement 11 concerns the Market Actions (D) Working Group's national analysis process. Because national analysis is a collaborative process, the drafting group believes it should be included with requirement 6. Also, because the national analysis process itself changes frequently, as the Working Group tries to make it more effective, it should not be its own requirement within the Market Regulation Certification Program.
- 6) For requirement 7 regarding the MCAS, the drafting group removed question 7c about requiring companies to file using a format acceptable to the NAIC. There are really no alternatives.

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- 7) Requirement 8 concerns electronic data entry with the NAIC. The drafting group will be asking the Working Group to consider simplifying the requirement to only the actual submission of Complaints Database System (CDS), Regulatory Information Retrieval System (RIRS), and data to the NAIC. The drafting group will be suggesting that the timeliness of the submissions be moved from the requirement itself to the checklist and measurement sections of the requirement.
- 8) For requirement 8, the drafting group will be asking the Working Group to consider building in tolerances (e.g., a jurisdiction could fulfill the requirement if it submits data in a timely manner 75% of the time).
- 9) In requirement 10 regarding Collaborative Action Designees (CADs), the drafting group will be asking that the Working Group alter the language of the requirement slightly to make it clear that the CAD needs to attend only 50% of the Market Actions (D) Working Group meetings they are eligible to attend because there are Working Group meetings that are only open to the Working Group members.

Haworth said the drafting group stopped at requirement 6 and that he is confident it will complete its review by the Spring National Meeting.

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

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Draft: 2/22/23

Market Regulation Certification (D) Working Group
E-Vote
December 9, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee conducted an e-vote that concluded Dec. 9, 2023. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier (AK); Kathleen A. Birrane (MD); Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey (NC); Martin Swanson (NE); Chris Nicolopoulos (NH); Michael Humphreys (PA); Michael Wise (SC); Tanji J. Northrup (UT); Don Beatty (VA); Kevin Gaffney (VT); Allan L. McVey (WV); and Bill Cole (WY).

1. Adopted the Market Regulation Certification Program Implementation Plan

The Working Group considered adoption of the Market Regulation Certification Program Implementation Plan.

A majority of the Working Group members voted in favor of adopting the implementation plan. The motion passed.

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

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