

September 18, 2009

Director Mike McRaith, Chair
Commissioner Kim Holland, Chair
Joint Property and Casualty Insurance (C) Committee and
Market Regulation and Consumer Affairs (D) Committee
National Association of Insurance Commissioners

Re: “advisory organizations” / credit-based insurance score

Dear Chairman McRaith and Holland:

I am writing to you on behalf of LexisNexis to provide comment regarding the concept of regulating entities that provide credit-based insurance scores as “advisory organizations,” as referenced in NAIC Model, Property & Casualty Model Rating Law (File and Use Version), Model 775, and related Oklahoma and Illinois state statutes.

Since 1997, LexisNexis has been a leading provider of decision-making technology and information that helps reduce fraud and mitigate risk. LexisNexis provides information, identification, verification, and fraud prevention tools to business, government, and law enforcement customers. Specifically, LexisNexis is a market leading provider of credit-based insurance scoring services to the property and casualty insurance market.

LexisNexis appreciates the opportunity to provide the below information, and welcomes the continued opportunity to work with NAIC on this issue.

“Advisory Organization” status

LexisNexis does not operate or market products or services as an “advisory organization” as such term is recognized and utilized in the marketplace today. LexisNexis is regulated and operates as a consumer reporting agency (CRA) as defined by the federal Fair Credit Reporting Act (FCRA) and comparative state FCRA statutes.

There is a clear and fundamental difference in the advisory rating and pricing services offered and provided to insurers by those entities recognized and operating as an “advisory organization,” and a credit-based insurance score provided to an insurer on an individual consumer by a third-party CRA like LexisNexis.

A credit-based insurance score is not an advisory rate. An insurance score is but one variable of multiple variables that an insurer considers to make underwriting and/or rating decisions about a particular consumer – based on the insurer’s overall approved rating plan.

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LexisNexis, as a third-party information provider, does not advise insurers how to use the data it provides. LexisNexis is not involved in insurer rate setting determinations or rate decisions on the individual consumer. LexisNexis does not research and develop insurer rate or rating plans, it does not offer rate setting forms or services, and does not develop consumer or market rates or rating plans whatsoever.

Further, unlike advisory organizations that pool insurer data to develop advisory rates, credit-based insurance scoring utilizes credit and other public record data not received from insurance companies.

Lastly, LexisNexis itself is not created, funded, or owned by an insurer or its subsidiaries.

The insurance scoring process is wholly dissimilar in application and function to the products and services provided by an “advisory organization” as that term is recognized and utilized in the marketplace today. There is no business model or marketplace relationship similarity that necessitates or warrants similar classification.

Current Regulatory Protections

The credit-based insurance scoring process is currently regulated at multiple levels and steps. The insurance scoring process and the entities that provide it are regulated by the federal FCRA and comparative state FCRA statutes. Furthermore, pursuant to existing statute or regulation in virtually every state, a third-party vendor like LexisNexis must file its model for review and approval with each state Insurance Commissioner either directly or through individual carriers before it can be used by an insurer as a component of the insurer’s overall filing. Finally, the insurer itself must gain approval of its rate filing that may include an insurance scoring component.

The statutory and regulatory checks and balances for information services like insurance scoring are legion at the state and federal level. If regulators expand the definition of an “advisory organization” to include third-party information providers that do not provide advisory rating services, it will mandate regulation far beyond any logical purpose or market benefit.

As an example, to extend the “advisory organization” licensing mandate to a third-party information provider would mandate that state Department of Motor Vehicles be licensed as an “advisory organization” before any driver data can be used by an insurer as part of its overall underwriting and rating decisions

The role that insurance scoring, as well as other third-party information, serves in the insurance marketplace is regulated by a wealth of federal and state oversight appropriate for its content and use in the marketplace. The insurance scoring process is wholly dissimilar in application and function to the products and services provided by an “advisory organization” as regulated in the marketplace today. There is no absence of regulation, or similarity whatsoever, to necessitate or warrant duplicate regulation.

Jon Burton, Senior Director
State Government Affairs



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Thank you for this opportunity to provide our comments. Please do not hesitate to contact me if I can be of further assistance. I can be reached at 678-694-3383 during the day, and by email at Jon.Burton@LexisNexis.com.

Sincerely,

Jon Burton, Senior Director
State Government Relations