

Market Regulation Handbook

VOLUME I

2019

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Market Regulation Handbook

2019 Edition

Volume I

Overview of Market Regulation Oversight

This guidance is as adopted by the NAIC as of December 2018. Please note that there are modifications to the chapters that are included in this handbook during each calendar year, as such guidance is subject to the maintenance process. To address this, the NAIC has a web page dedicated to providing the holder of this manual with the latest information/interim adoptions which impact the content of this handbook.

State regulators may access updates adopted after December 2018 and *Market Regulation Handbook* Reference Documents via myNAIC on StateNet at the link Market Regulation Handbook, Handbook Updates and Reference Documents.

Non-regulator purchasers of the 2019 *Market Regulation Handbook* may access updates adopted after December 2018 and *Market Regulation Handbook* Reference Documents via their Account Manager login at www.naic.org/account_manager.htm.

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(Pages 1-88)**

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Introduction	Chapter 1	Chapter 1
Continuum of Market Actions	Chapter 2	Chapter 2
Market Regulation Investigation Guidelines	Chapter 7	Chapter 3
Collaborative Actions	Chapter 6	Chapter 4
Core Competencies	Appendix D	Chapter 5

**Volume II-What is Market Analysis
(Pages 89-174)**

Chapter/Section Title	Location in Handbooks Published 2006-2017	Location in 2018 Handbook and Subsequent Years' Handbooks
Basic Analytical Tools	Chapter 3	Chapter 6
Putting it all Together: Market Analysis	Chapter 4	Chapter 7
Enhancing State Market Analysis	Chapter 5	Chapter 8
iSite+ Reports	Appendix A	Chapter 9
Market Analysis Level 1 Questions	Appendix B	Chapter 10
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**Volume III-How to Conduct Market Conduct Examination
(Pages 175-276)**

Chapter/Section Title	Location in Handbooks Published 2006-2017	Location in 2018 Handbook and Subsequent Years' Handbooks
Examination Introduction	Chapter 8	Chapter 12
Types of Examinations	Chapter 10	Chapter 13
Examiner Classifications, Qualifications and Compensation (was previously titled Examiner Qualifications and Compensation)	Chapter 9	Chapter 14
Standardized Data Requests	Chapter 13	Chapter 15
Scheduling, Coordinating and Communicating	Chapter 12	Chapter 16
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**Volume IV-Review/Examination Criteria for Specific Types of Insurance and Regulated Entities
(Pages 277-1117)**

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General Examination Standards	Chapter 16	Chapter 20
Conducting the Property and Casualty Examination	Chapter 17	Chapter 21
Conducting the Title Insurance Company and Title Insurance Agent Examination	Chapter 18	Chapter 22
Conducting the Life and Annuity Examination	Chapter 19	Chapter 23
Conducting the Health Examination	Chapter 20	Chapter 24
Conducting the Affordable Care Act (ACA) Related Examination	Chapter 20A	Chapter 24A
Conducting the Medicare Supplement Examination	Chapter 21	Chapter 25
Conducting the Long-Term Care Examination	Chapter 22	Chapter 26
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Conducting the Surplus Lines Broker Examination	Chapter 24	Chapter 28
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Conducting the Third-Party Administrator Examination	Chapter 26	Chapter 30
Conducting the Examination of a Viatical Settlement Provider	Chapter 27	Chapter 31
Conducting the Premium Finance Company Examination	Chapter 28	Chapter 32

VOLUME I—FORWARD

Overview of Market Regulation Oversight

The original *Market Conduct Examiners Handbook* was developed as a collaborative effort by jurisdictions actively involved in the market conduct examination process. In 2005, the *Market Analysis Handbook* and the *Market Conduct Examiners Handbook* were merged into the *Market Regulation Handbook* (handbook). The NAIC model statutes and regulations have served as the basis for the handbook, because insurance statutes in many jurisdictions have evolved from NAIC model laws. The *Market Conduct Surveillance Model Law* (#693), which was jointly adopted in 2004 by the NAIC and the National Conference of Insurance Legislators (NCOIL), contemplates that state insurance departments will use this handbook as a resource for developing a baseline understanding of the insurance marketplace through market analysis, which will serve as a basis for further market surveillance activities such as additional investigation or market conduct examinations designed to address compliance problems. As outlined in later sections of this handbook, these activities may be initiated by a single state, or may be coordinated among a number of jurisdictions.

Intended Use of the *Market Regulation Handbook*

This handbook is only a guide and should be used by each jurisdiction as a tool for developing jurisdiction-specific procedures and guidelines. To effectively use this handbook, it is recommended that each jurisdiction closely review the handbook to determine those standards that reflect the statutes and regulations of the given jurisdiction and those that do not. This handbook is designed solely to provide assistance to each jurisdiction in developing effective and consistent methodology. It does not reflect policies or procedures that are required to be implemented by any jurisdiction. It is not intended that market regulators apply any requirements to the market regulation process beyond the laws of their respective jurisdictions. To the extent possible, jurisdictions are encouraged to follow the standards established in this handbook. The text of the handbook becomes the procedure or policy of a given jurisdiction only after it has been adopted by that agency. Deviations from this handbook by an agency to accommodate the specific requirements of its own jurisdiction should not be construed as a failure of that agency to implement adequate examination or other market regulation procedures.

It is also important that each jurisdiction communicate to its market regulators the intent and scope of its market regulatory efforts. This includes direction regarding in which areas a jurisdiction's market analysis, market conduct initiatives and regulatory responses are to be concentrated, and what standards and criteria are to be considered within any particular subject area. For example, a jurisdiction may wish to concentrate on market analysis of complaint data and trends in a specific line of business, or a jurisdiction may wish to focus upon a regulated entity's compliance with a limited number of key components of a particular state regulation. Specific direction provided by a jurisdiction to its market regulators will serve to sharpen the jurisdiction's focus on its market regulatory activities and will also conserve jurisdiction and company staff resources.

Structure of the *Market Regulation Handbook*

Beginning with the 2018 edition of the *Market Regulation Handbook*, the subject matter of the handbook is restructured and divided into four volumes:

- Overview of market regulation oversight;
- What is market analysis;
- How to conduct market conduct examinations; and
- Review/Examination criteria for specific lines of insurance and regulated entities.

The *Market Regulation Handbook* table of contents outlines the subject areas contained within each volume. The purpose of the restructuring of the handbook is to combine interrelated chapters into the broad categories outlined above and to provide regulators with functional guidance to support state insurance department market surveillance activities.

Updating the *Market Regulation Handbook*

This handbook is updated and released on an annual basis. Updates to the *Market Regulation Handbook* that are adopted periodically during the year by the Market Regulation and Consumer Affairs (D) Committee will be posted on the NAIC website. Instructions for accessing the updates on the NAIC website are located at the front of the most recently published *Market Regulation Handbook*.

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Chapter 1—Introduction

A. Resources Available to Market Regulation Professionals

The evolving market regulation process necessitates the need for identification of key players, as well as the need for increased communication. There are many new players that have been identified and many tools have been created to help facilitate this communication.

Collaborative Action Designee (CAD)

The Collaborative Action Designee (CAD) is the one contact identified by the director/commissioner of each state/territory to have full responsibility for all communications related to market regulation collaborative efforts. This includes participating, or assigning a designee to participate, in Market Actions (D) Working Group meetings or conference calls. While the Market Analysis Chief (MAC) oversees the internal state process of identifying entities with potential market regulatory issues, the CAD oversees the process of communicating about those entities and collaborating with other CADs, potentially through the Market Actions (D) Working Group. The CAD and MAC are responsible for exchanging information with other state insurance departments via the NAIC Market Regulation and Market Analysis bulletin boards.

Consumer Assistance Bulletin Board

The NAIC Consumer Assistance Bulletin Board is a regulator-only bulletin board designed for state consumer services regulators to communicate global issues, concerns, questions and information about consumer services issues. The bulletin board is available on iSite+ and on StateNet.

Core Competencies

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 Chapter 5 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).

Market Action Tracking System (MATS)

The Market Action Tracking System (MATS) enables market conduct examiners and analysts to communicate schedules and results of examinations and other market actions. MATS allows for the calling of market conduct examinations and non-examination inquiries and market actions, in addition to providing easy access to complete information about the entities involved in the action. Market actions captured in MATS are: comprehensive examinations, targeted examinations, focused inquiries (typically inquiries made of multiple market participants) and other non-examination regulatory interventions.

Market Actions (D) Working Group

The NAIC Market Actions (D) Working Group is the national forum to identify and address issues of multistate concern and for states to coordinate multistate regulatory actions, including market conduct examinations. States can explore, for example, whether they are targeting the same companies, nationally or regionally. The more states that follow this handbook, the better the Market Actions Working Group will be able to function and the more effective the Working Group's market oversight will become.

The Market Actions (D) Working Group consists of a minimum of 16 members and their alternates, and provides policy oversight and direction to the Collaborative Action Designees (CADs), facilitates interstate communication, recommends appropriate corrective actions, coordinates collaborative state regulatory actions and facilitates the use of a broader continuum of market actions. The Working Group focuses its efforts on those nationally significant insurers that exhibit characteristics indicating current or potential market regulatory issues that impact multiple jurisdictions.

Market Analysis Bulletin Board

The NAIC Market Analysis Bulletin Board is a regulator-only bulletin board designed for state market analysts to communicate issues, questions, concerns and information about the market analysis process. The bulletin board is available on iSite+ and on StateNet.

Market Analysis Chief (MAC)

The Market Analysis Chief (MAC) is the principal liaison with the NAIC Market Regulation Department and the Market Analysis Procedures (D) Working Group and is responsible for communication with other work units within the department. The CAD and MAC are responsible for communicating with other state insurance departments via the NAIC Market Regulation and Market Analysis bulletin boards.

Market Analysis Prioritization Tool (MAPT)

The Market Analysis Prioritization Tool (MAPT), released in 2006, expanded upon the Market Analysis Company Listings¹ by creating a scoring system so companies can more easily be prioritized. MAPT is designed to provide regulators with a web-based tool that serves as a starting point in the analysis process by prioritizing companies for further analysis. This prioritization of companies allows states to better focus their resources and to develop more efficient regulatory policies and practices. MAPT utilizes key market and financial components, from state and national sources, to generate weighted ratios on which the prioritization is based. Key market regulation components vary by line of business. They include, but are not limited to: losses, expenses and premiums; enrollments, market components, regulatory actions, complaints, examinations and demographics.

Market Analysis Review System (MARS)

The Market Analysis Review System (MARS) is available to specific state regulator users for the purpose of tracking, recording and reviewing Level 1 Analysis and Level 2 Analysis completed by other state regulators.

Market Conduct Annual Statement (MCAS)

The Market Conduct Annual Statement (MCAS) was developed with the input of state regulators and representatives from the insurance industry. It provides an analysis tool for certain key market data elements that help regulators allocate market analysis resources where they can be most effective. States participating in MCAS intend to review their markets and share the results of their respective analyses and work to coordinate any needed responses or examinations.

Market Information Systems (MIS)

The Market Information Systems (MIS) are regulator-only databases containing information related to the iSite+ market applications, which include the Complaints Database System (CDS), Market Action Tracking System (MATS) and the Regulatory Information Retrieval System (RIRS).

¹ As of December 2009, the Market Analysis Company Listings report is no longer available. The data elements and functionality contained within the Market Analysis Company Listings report were incorporated into the Market Analysis Prioritization Tool as described in Section D of Chapter 7.

Market Regulation Bulletin Board

The Market Regulation Bulletin Board is a regulator-only bulletin board designed for state market conduct regulators to communicate global issues, concerns and information about entities engaged in the business of insurance or the specific rules/laws that help govern the industry. The bulletin board is available on iSite+ and on StateNet.

NAIC Staff/Research Resources

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.

The NAIC Market Regulation Department offers education and training to regulators and non-regulators in various formats: as instructor-led sessions, webinars, online training and web-based "on-demand" training. Some of the areas/topics in which the Market Regulation Department has provided training include: Baseline Analysis, Market Analysis Techniques, Producer Licensing, Consumer Assistance Training, Market Conduct Examinations and Market Conduct Annual Statement data collection and analysis. Other NAIC education and training topics will continue to be added in the future.

The NAIC Financial Regulatory Services Department provides technical expertise in areas of financial regulation, solvency regulation, financial reporting, as well as other financial-related expertise.

The NAIC Research Library supports state insurance department regulators and NAIC staff by providing a free inquiry and reference service and maintaining an extensive archive of NAIC publications. Research librarians answer information requests on a variety of issues, and strive to provide responses to regulators within 24 hours.

The NAIC Help Desk provides technical support and customer service for NAIC applications, products and services to enhance productivity within the insurance regulatory community. Regulators may access NAIC Help Desk services at 816-783-8500 or via email at help@naic.org.

B. Resources Within State Insurance Departments

Many of these resources, such as a state insurance department consumer complaint resolution unit, are discussed in detail in the body of this handbook. Other key resources include:

Market Conduct and Financial Examinations

Market conduct examinations focus on such areas as operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating, and claims. The financial condition examination system focuses on financial and corporate matters. Market conduct compliance issues can have a significant effect on legal and compliance risks, which in turn can create material solvency issues. Coordination with the financial examination function is an important area for market conduct examiners to understand. Guidance on financial condition examinations is provided in the *Financial Condition Examiner's Handbook* and is available through the Insurance Products and Services Division of the NAIC.

Financial Analysis

Financial reporting and analysis information is shared with the NAIC, which assembles a wide range of data compilations on a multistate basis. An insurance department's financial analysis and examination staff can provide valuable assistance in interpreting this information.

Rates and Forms Information

Tools such as the System for Electronic Rate and Form Filing (SERFF) and the insurance department posting of state filing review requirements provide a wide range of new data in formats that are more readily comparable across state and regional lines. As of April 2019, 53 jurisdictions including the District of Columbia, Puerto Rico, Guam and the Virgin Islands – plus more than 4,500 insurance companies, third-party filers, rating organizations and other companies—are using SERFF to efficiently and effectively speed insurance products to the market. The SERFF system provides an indicator of marketplace trends, such as overall increases in premiums or changes in coverages by the submission of filing of amendatory endorsements and exclusions.

Organized Intra-Department Communication

State insurance departments are organized differently, but all perform a range of market regulation functions, from consumer assistance to producer licensing, from rate and form review to market conduct exams, and from investigations to enforcement. All of these functions, as well as financial regulation functions, generate useful information about market problems. An effective market analysis program must include clear procedures for regularly sharing data and other information among the various divisions of an insurance department. Recommended methods of sharing internal information include holding a monthly update meeting or emailing issues that may be of concern or interest to other sections.

C. myNAIC

MyNAIC was created by the NAIC in June 2016 as web page from which publicly available NAIC tools can be accessed, and also as a web page which allows regulators to have a single page from which to access regulator-only NAIC/NIPR/IIPRC tools. Regulators may access myNAIC by clicking on the myNAIC link on www.naic.org; regulators may then login to the regulator-only portion of myNAIC by clicking on “login” in the upper right corner of the myNAIC public applications web page. The applications on the myNAIC regulator-only page are based upon the roles associated with a regulator’s iSite+ password and ID. All of the functionality from the former myNAIC, such as “News and Resources” and “Tools” has been incorporated into myNAIC.

D. Center for Insurance Policy Research (CIPR)

The mission of the NAIC Center for Insurance Policy and Research (CIPR) is to serve federal and state lawmakers, federal and state regulatory agencies, international regulatory agencies and insurance consumers by enhancing intergovernmental cooperation and awareness, improving consumer protection and promoting legitimate marketplace competition.

The CIPR coordinates the collection and dissemination of insurance data and research for the purpose of enhancing:

- Regulatory cooperation between federal, state and international agencies and functional regulators;
- Comprehension of insurance-related topics and issues by federal policymakers and others;
- Insurance information exchange between the states and the federal government; and
- NAIC and state regulator participation in public policy discussions and decisions affecting insurance and the broader financial services sector.

The CIPR website <http://www.naic.org/cipr/home.htm> is organized into four sections, a what’s new section, an events section, a topics and key initiatives section and a CIPR newsletter section. The CIPR what’s new section contains recently released CIPR webinar presentations and information on upcoming events. The CIPR events section provides links to upcoming CIPR and NAIC events, as well as a by year listing of presentations for past CIPR events. The CIPR topics and key initiatives section presents a topical listing of key insurance regulatory issues. Topics on the key issues page are organized in alphabetical order; each key issue contains a brief summary, support documents and relevant testimony, presentations and NAIC actions. The CIPR newsletter section provides access to current and previously issued CIPR newsletters, as well as an index to newsletters.

E. The Interstate Insurance Product Regulation Commission (IIPRC)

The Interstate Insurance Product Regulation Compact (Compact) is an agreement, which is enacted by law, amongst member states (“compacting states”) to participate in a multistate regulatory system for the filing, review and approval of asset-based insurance products, including individual and group life, annuities, long-term care and disability income insurance. The Compact established a multistate public entity, the Interstate Insurance Product Regulation Commission (IIPRC). The IIPRC is a member-driven organization that serves as a central point of filing, review and approval for asset-based insurance products under detailed and comprehensive uniform standards.

The IIPRC website is www.insurancecompact.org and includes the Compact legislation, as well as the IIPRC bylaws, annual reports, budgets, uniform standards, operating procedures and other relevant tools, tutorials and information. In June 2007, the IIPRC became operational and received its first product filings. As of March 2019, more than 320 companies have filed one or more product filings with the IIPRC for approval since June 2007. The uniform standards require that all forms submitted for approval to the IIPRC have a form identification number in the lower left-hand corner where the form number must include a prefix of “ICCxx” (where “xx” represents the appropriate year the form was submitted for filing). Within the NAIC System for Electronic Filing and Form Filing (SERFF), compacting states have read-only access to product filings submitted to the IIPRC for approval and use in their respective state (each compacting state administers the roles and access to the IIPRC information stored within SERFF). Regulators may want to refer to the IIPRC map on the IIPRC website, which shows the compacting states in yellow.

Through enactment of the Compact, compacting states agree that the uniform standards apply as their state law to the content requirements of products filed and approved through the IIPRC. In other words, the uniform standards are the applicable content requirements for Compact-approved products rather than state-specific content requirements and laws. When working with an IIPRC-approved product, market regulators should be familiar with the uniform standards as they are the applicable requirements of the provisions and content of the IIPRC-approved forms.

Compacting states work together to develop strong and detailed uniform standards for the content of asset-based products that protect consumers equally across the compacting states. Companies use these uniform standards to submit a set of standard forms in a product filing to the IIPRC. The IIPRC reviews these product filings, working with the filer toward compliance and approval in an average review time of much less than the required 60-day turnaround time.

The IIPRC’s uniform standards development and rulemaking process has continually demonstrated state insurance regulators work collaboratively with their fellow regulators among the compacting states to address concerns about the uniform standards, which generally results in further strengthening the standards. On its rulemaking docket located on the IIPRC website, the IIPRC publishes draft uniform standards in the rulemaking process that are being considered by the compacting states. When uniform standards are adopted, the IIPRC publishes these uniform standards, along with all relevant rulemaking material, on its rulemaking record on the IIPRC website.

The IIPRC includes one member from each of the compacting states, which is generally the state’s chief insurance regulator. The IIPRC operates in an open and transparent manner, holding public hearings and soliciting public comments as a fundamental part of its decision-making process. The IIPRC, its management committee and its other committees regularly request input from a legislative committee, an industry advisory committee, a consumer advisory committee and interested parties.

As of March 2019, the IIPRC has adopted 100 uniform standards covering a wide range of products and benefit features for the four individual asset-based insurance product lines authorized by the Compact as well as for group life and disability income insurance products, specifically for employer/employee groups. As authorized by the Compact, the IIPRC reviews rate filings for individual long-term care and disability income insurance products, as well as advertising associated with IIPRC-approved individual long-term care insurance products.

F. Other Regulatory Sources

Federal Regulators and Databases

Expanded information sharing with federal regulators assists both state and federal regulators in conducting more efficient and effective oversight. States can enhance information sharing by reporting information to federal databases, such as the National Practitioner Data Bank (NPDB), which contains information on medical malpractice payments and certain adverse actions related to health care practitioners, entities, providers and suppliers. To eliminate NPDB data reporting/querying overlap with the Healthcare Integrity and Protection Data Bank (HIPDB), the U.S. Congress passed Section 6403 of the *Affordable Care Act of 2010* (ACA), Public Law 111-148. As a result of the legislation, effective May 6, 2013, NPDB operations were consolidated with those of the former HIPDB. Information previously collected and disclosed by the HIPDB is collected and disclosed by the NPDB. Regulators may also pursue access to other federal databases (for example, the FBI database for producer licensing purposes). Each state should have ongoing arrangements with the various federal financial services regulators to share consumer complaint information arising out of cross-sector market activities.

The U.S. Securities and Exchange Commission (SEC) oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors and mutual funds. The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing and protecting consumers against fraud. The SEC website www.sec.gov provides information on publicly held companies, as well as on entities licensed to sell securities products. The SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) database provides free public access to disclosure documents that public companies are required to file with the SEC, allowing the user to research a company's financial information and operations by reviewing registration statements, prospectuses and periodic reports.

Other States

Many states require that insurance companies provide specific filings or reports in response to previously identified issues. An inventory of such filings may produce valuable information. It is helpful to state insurance regulators to have ongoing email and phone communications about companies and issues of common concern with state insurance regulators in other insurance departments. Regulators in neighboring states with specialized expertise on particular issues are especially helpful.

Regulatory Meetings

NAIC meetings and training seminars provide valuable opportunities to share information. The same is true for other forums, such as meetings of the National Conference of Insurance Legislators (NCOIL), the Insurance Regulatory Examiners Society (IRES), the Society of Financial Examiners (SOFE) and insurance trade association meetings.

Other Regulatory Agencies within a State Insurance Department

Regulators who oversee market conduct of insurance companies have areas of common concern with various other state agencies, including the agencies that regulate health care, workers' compensation and consumer protection. These agencies can be valuable sources of information and assistance.

G. Industry Sources

Financial Rating Agencies

There are five major financial rating agencies that review insurance companies. Each has its own unique methodology for assigning ratings. More information can be found for each rating agency at the links provided below.

A.M. Best Company: The A.M. Best Company has been rating insurance companies since 1900. The objective of A.M. Best's rating system is to evaluate the factors affecting the overall performance of an insurance company and to provide its opinion as to the company's relative financial strength and ability to meet its contractual obligations. Ratings are available at www.ambest.com.

Fitch Ratings: Fitch Ratings was founded as the Fitch Publishing Company in 1913. Fitch's rating evaluations are qualitative and quantitative and provide two basic types of ratings—insurer financial strength ratings and issuer and fixed income security ratings. Fitch Ratings are available at www.fitchratings.com.

Moody's Investors Service: Moody's Investors Service was founded in 1900. Moody's insurance financial strength ratings reflect its opinion as to an insurer's ability to meet senior policyholder claims and obligations. Ratings are available at www.moody's.com.

Standard & Poor's: Standard & Poor's (S&P) has been rating bonds since 1923 and insurance companies' claims-paying ability since 1983. Standard & Poor's claims-paying ability rating is an assessment of an operating insurance company's financial capacity to meet its policyholder obligations in accordance with its terms. Ratings are available at www.standardandpoors.com.

Weiss Ratings, LLC (formerly TheStreet.com): In 2006, Weiss Group sold Weiss Ratings to TheStreet.com. In 2010, TheStreet.com sold the insurance and bank ratings back to the Weiss Group. Weiss financial strength rating indicates its opinion regarding an insurer's ability to meet its commitments to its policyholders under current economic conditions. Ratings are available at www.weissratings.com.

H. Public Information Sources

Center for Economic Justice (CEJ) Data Guide

In 1999, the Center for Economic Justice, a consumer advocacy group based in Austin, Texas, published *A Consumer Advocate's Guide to Getting, Understanding, and Using Insurance Data*. As explained in the introduction to the guide: "This handbook provides an introduction to the topic of auto and homeowners insurance data and ratemaking. This handbook attempts to serve as a tool kit for consumer advocates working on insurance issues by discussing the sources, uses and misuses of insurance data."

Legal Actions

Monitoring of litigation may alert regulators to issues that the regulatory system has not yet addressed. There are many class action websites available on the Internet, such as Westlaw and Lexis/Nexis.

Consumer and Community Groups

Regular communication with consumer and community groups can help regulators identify and address issues of consumer concern. Educating consumers on insurance matters and where to report concerns can increase complaints among groups, identifying possible trends.

Trade Press/Research Papers

Trade publications and academic research papers inform regulators about emerging issues and other regulatory concerns.

Consumer Advocacy Organizations

Consumer advocacy organizations represent consumer interests and address issues that impact the well-being of consumers. Some consumer advocacy organizations focus their efforts specifically on insurance-related issues and financial security of consumers. Consumer advocacy organizations typically conduct research, develop public education programs, and provide studies and reports to consumers.

I. Company Self-Audits

Self-audits, when made available to regulators, can provide information about how particular market problems have been addressed by insurers on a voluntary basis. The growing use of self-audits and voluntary accreditation programs, such as the National Council on Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC) has the potential of providing regulators important information about companies. Many of these organizations require companies to actively monitor their compliance practices and take appropriate corrective actions when necessary. This information can provide useful insights regarding a company's commitment to establishing and maintaining a culture of compliance designed to continually improve their market conduct and compliance practices.

Chapter 2—Continuum of Market Actions

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

A. Considerations

The substantive nature of regulatory concerns may be clarified by evaluating responses to select questions. Answers to the questions categorized below may help set the stage for prioritizing regulatory projects and for then choosing the most appropriate response.

1. Questions to Evaluate

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?

Regulators

- Do other state, federal or self-regulating organizations also have responsibility over the concern or an interest in it? Is this an issue that should be resolved by the affected jurisdiction independently, with the combined efforts of a few or multiple affected jurisdictions, or should the concern be referred to another jurisdiction?
- Has the concern already been addressed by another jurisdiction? If so, can that resolution be applied to other impacted jurisdictions?

Regulated Entities

- How do company self-audit or best practices organization reviews speak to the concern?
- What is the regulated entity's history for proactive and responsive market conduct compliance?
- What types of market conduct actions have been effective with this or similar entities in the past?

Actions

- What type and volume of information is needed to evaluate the concern and recommend corrective action?
- If an analyst or examiner discovers information or activities that raise suspicions of fraudulent activity, what steps should be taken?
- Should the market action include an enforcement action, restitution, or process and procedure changes?

2. Scale of Response

When deciding which response is most appropriate for the situation, it is also important to determine toward whom the response should be directed. One common target would be a single insurer, although addressing multiple insurers within a holding company group may be more efficient at times. Some groups are comprised of almost completely autonomous operations, while others function within the same operating system or location and under the same management.

Health groups may have a centralized holding company that dictates policies and practices, while connected with numerous small, state-admitted entities. An insurance company or group should be able to indicate how the specific entity is set up. In some cases, the response is best focused on a regulated entity other than an insurer, such as a third-party administrator or producer entity. Some issues may be industry-wide or nearly industry-wide, calling for an appropriate multi-jurisdictional response.

3. Goals of Response

When determining the most appropriate responses, pursue goals similar to the following:

- Stop practices that are harmful to consumers and prevent future harm to consumers;
- Address the issue as widely as possible, with minimal impact to regulated entities that have not contributed to the problem; and
- Remediate harm to impacted consumers. The form of remediation is generally determined through the administrative/legal process. In many cases, the regulated entity will voluntarily propose corrective measures once a noncompliant or incorrect process has been identified. Gathering information to show specific impact can assist the administrative resolution.

4. Measures of Success

When comparing several options that appear to meet the above goals, consider these measures of success to help guide the final decision. Determine if the response is:

- Appropriate: Does the response correspond appropriately to the identified problem?
- Cost-effective: Is the market action cost-effective for both the department and the regulated entity? Does the market action leverage regulatory resources?
- Timing: Does the proposed response accommodate deadlines or time requirements, if any?
- Least intrusive: Is the response the least intrusive way to effectively resolve the matter of regulatory concern?

5. Assigning Regulatory Staff

Who should be assigned to conduct continuum of market actions such as those discussed below? The answer will differ among insurance departments. Individuals with market conduct examination or consumer affairs investigation backgrounds are among those individuals that would be appropriate.

Skills needed, in addition to an understanding of insurance practices to be reviewed, are good letter and report writing skills, good verbal communication skills, and an understanding of insurance department policies and procedures. Additionally, a thorough understanding of issues surrounding treatment of confidential versus publicly available information is important.

B. Market Actions

The continuum of market actions can be roughly divided into three categories: Contact, Examination and Market Actions (ID) 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 12—Examination Introduction of this handbook can also be applied to the continuum of market actions.

1. Contact with the Regulated Entity

Contact with the regulated entity will include the following components:

- Statutory authority for making the request;
- A clear explanation of the concern, along with the specific insurance laws or regulations related to the matter;
- A clear expectation of what action is being requested;

- If requesting information, an explanation of how that information will be used and the statutory protections for confidential information;
- A date by which a reply is expected, along with to whom the response should be sent; and
- A clear explanation of how any billing of investigatory work will be addressed.

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.

This category of continuum actions would be recorded in the appropriate NAIC database to enable regulators to share information about market actions, other than examinations and enforcement actions.

Correspondence

Once a potential or fully identified problem has been detected, regardless of any other continuum options chosen, correspondence will typically be the initial response. For some issues, correspondence may be all that is needed. A letter or email may be used to discuss such issues as a perceived negative trend in complaints or a specific problem that needs immediate attention.

A distinct advantage of using correspondence is that the problem can be quickly reviewed and addressed by the insurer. In addition, having documentation of the discussion will also serve as a record in the event the problem is not corrected and is subsequently escalated to another continuum option. However, correspondence may not be the best response if a regulated entity has resisted regulatory communications in the past.

Practical examples of using correspondence include:

- Reminding the regulated entity of a specific regulatory requirement, such as insurance department consumer affairs staff notes cases of noncompliance; and
- Advising an insurer of increasing complaint ratios noted during the market analysis process.

If correspondence does not satisfactorily address the regulatory concern, further market actions should be considered.

Interrogatories

An interrogatory is simply a set of questions used to evaluate an insurer's handling of compliance or processing issues, and can be tailored to a very specific need for information. Interrogatories are a good option when attempting to determine compliance with a particular rule or law. Surveys, certifications or questionnaires might be included in an interrogatory.

Practical examples of using interrogatories include questionnaires regarding:

- Claim handling practices related to automobile total loss valuation, reimbursement of sales tax and special costs, and branding of salvage titles;
- The company's plan of action to comply with a particular new statute; and
- Compliance with annual suitability requirements.

Interviews with the Regulated Entity

In the form of a face-to-face meeting or conference call, interviews with the entity are useful when there is a need for open dialogue, discussion or clarification. It provides both the regulator and the regulated entity with an opportunity to ask questions, provide clarification and verbalize each point of view about compliance matters. Interviews with company personnel can be useful to obtain information about specific company divisions or functions.

The most formal method of interview would be taking a statement under oath. Before conducting a statement under oath, review the insurance department's policies and procedures or seek advice from insurance department counsel to become familiar with state-specific requirements. General standards may require that persons examined under oath be permitted representation by counsel and be permitted to have access to a transcript of the proceeding.

Interviews may also be advantageous when the state has determined that the insurer is conducting business outside its standard operating policies and procedures. This option may require specific knowledge of the regulated entity's policies and procedures to understand that the analysis results indicate a deviation from those policies and procedures.

Interviews might also be conducted to resolve questionable market analysis findings. That is, should market analysis findings indicate that the regulated entity might be engaged in problematic practices, interviews may be conducted to give a state a better understanding of these activities. As with the option to correspond with an entity, interviews may not be the best response if a regulated entity has resisted regulatory communications in the past.

Practical examples of performing an interview with the regulated entity include:

- Making a phone call to an insurance company compliance officer to discuss concerns relating to the company's change in marketing strategy;
- Requesting a meeting with a company underwriting manager to learn first-hand how the company uses loss history information; and
- Setting up a recorded statement under oath to ask a claims examiner about company instructions and procedures relating to the handling of problematic claims.

Contact with Other Stakeholders

There may be occasions when the state feels that input is necessary beyond what is gained from talking or corresponding with company officers and decides to contact specified members of the public. The state will need to obtain information from the company to contact its current or past policyholders and claimants, while most states will have current contact information for a company's producers. These contacts can be made by mail or by phone and should be intended to uncover very specific information about the company and the potentially harmful behavior under investigation.

Practical examples of contacting other stakeholders include:

- Contacting producers to ask for their perspective about training provided by the company; and
- Contacting consumers who purchased a specific insurance product to ask how the product was presented and sold to them.

Targeted Information Gathering

Targeted information gathering may take the form of a survey or data request. A useful survey should include clear and understandable questions. Where possible, it will be helpful to limit the scope of a survey to one or two insurance company functional areas.

Should the state determine that additional data is required from the regulated entity, the NAIC uniform data requests should be followed. If there is a need to deviate from the uniform data requests to capture specialized information, the need for additional data should be explained and justified to the regulated entity.

Also, if possible, be mindful of time constraints faced by insurance companies. For example, requesting a response date that is near the Market Conduct Annual Statement (MCAS) due date may create an undue workload and unnecessary cost upon an insurer.

Practical examples of targeted information gathering include:

- Requesting a data file from a health insurer to analyze compliance with prompt-pay requirements; and
- Requesting producer mailing lists and mailed materials to assess the company's dissemination of state-required information to its producers.

Policy and Procedure Reviews

For some cases, policy and procedure reviews may be a workable alternative to the traditional market conduct practice of performing sampling and file reviews. A review of written policies and procedures may also be supplemented with a review of a minimal number of files to help ensure that policies and procedures have actually been implemented. Reliance on such a review is dependent upon the company's inclusion of the compliance issue within its written policies and procedures.

Practical examples of the use of policy and procedure reviews include:

- Review of a company's written guidelines relating to protecting privacy of consumer financial and health information; and
- Review of a company's written guidelines that address mandatory training of producers who sell policies under the National Flood Insurance Program (NFIP).

Reviews of Self-Audits and Self-Review Documents

One use of self-audits involves a review of an insurer's existing internal market conduct audit programs. Use of this technique will vary by state; if uncertain, regulators should consult their insurance department legal counsel. Additional discussion may be found in the NAIC white paper *Regulatory Access to Insurer Information: The Issues of Confidentiality and Privilege*. An advantage to reviewing self-audit reports is to prevent duplication in the review of compliance issues already actively managed by the insurer.

A disadvantage to use of these documents is that scrutiny of an insurer's self-audit reports may place a damper on such self-audit practices because of fear that the insurer will be penalized for identifying mistakes and that such mistakes will ultimately subject the insurer to liability. One practice to consider is to learn the scope and structure of a company's self-audit program, rather than conduct a review of the resulting self-audit reports themselves.

Practical examples of the use of self-audits and self-review documents include:

- Requesting that an insurer identify all health claims with a specific medical procedure code to correct a systematic payment error for the preceding 12 months; and
- Determining which functional areas and subject matters have been evaluated by a company's self-audit program during the preceding 12 months to enable a regulator's market conduct review to focus on company-neglected issues and concerns.

Voluntary Compliance Programs Review

The review of reports from a regulated entity's compliance programs or reports produced by best practices organizations such as the National Committee for Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC) may be performed. These types of reviews might be helpful where the scope of the best practice organization's review is substantially similar to the scope of the issue, problem or concern that a state wishes to address. States are encouraged to familiarize themselves with the best practice organization's review processes and, particularly, whether the review process includes verification of compliance with documented policies and procedures.

Such organizations are generally willing to provide a list of participating entities and to share their review standards and methods with regulators. By comparing those review standards with examination review standards, regulators can make better decisions on how to focus the scope of a review. Regulators should also determine how their specific state laws apply to best practice organizations and accreditation services. It is possible that certain accreditation services are required for licensure purposes—for example, managed care utilization review and provider credentialing.

Practical examples of reviewing voluntary compliance program documents include:

- Reviewing the URAC documentation when researching an increase in health insurance-related complaints.

2. Examinations

The examinations category is possibly the most familiar of the continuum categories, and the bulk of the chapters in this handbook are devoted to addressing examination practices in great detail. Unless an examination is required by law in a state, there are often more efficient and cost-effective methods to respond to marketplace issues. However, at times an examination will be the best choice among the continuum options. As stated previously, states should enter any continuum actions into the appropriate NAIC database.

Even within examinations there are many levels and choices available. Decisions need to be made as to:

- Timing of examination;
- Penetration level of examination;
- Location of examination; and
- Participation level of examination.

Timing of Examination

Once the need for an examination has been decided, timing of the examination and notification of the entity will need to be determined. There are three general approaches to timing, and each fits a specific need.

- Statutory examination: Regularly scheduled examination based on state statute;
- Scheduled examination: An examination for cause, providing the entity with prior notice, typically 60-90 days, of when the examination will begin and all pertinent details about what will be reviewed; and
- No-knock examinations: An examination without prior notice being sent to the examined entity. This choice is used when a regulator feels that providing an entity with advance notice of an examination would result in the entity destroying evidence of violations, or creating false information to give the impression of compliance.

Examination Type

It will also need to be determined exactly what will be reviewed. Should the focus be narrow to only the issue that prompted the examination, or wide to encompass all entity functions? There are two recognized divisions:

- Targeted examinations: An examination of one or two areas of business (e.g., an examination of a company's marketing and sales practices); and
- Comprehensive examinations: A review of most, if not all, market conduct areas within an entity (e.g., a five-year statutorily required examination of a domestic insurer).

Location of Examination

Once the scope of the examination has been determined, the location of the examination will logically follow based on the examination's needs:

- Desk examinations: A review of specimen copies or electronic documents at a location other than the regulated entity's offices, e.g., a regulator uses the Internet and electronically provided samples to conduct a review of an entity's advertising materials; and
- On-site reviews: A review conducted in the regulated entity's offices, necessary for review of original documents and actual transactions, e.g., a review of mail processing practices or complaints logs.

Often examiners will utilize a combination of desk and on-site reviews to conduct an effective review while reducing the travel time and costs associated with having a regulatory team on-site for prolonged stays.

Participation Level of Examination

When analyzing the scope of an issue, the breadth of the concern across the company and the likelihood of the issue being found in other jurisdictions should also be evaluated. Collaboration with other jurisdictions is discussed in detail in its own chapter later in this handbook; however, it is worth mentioning here:

- **Single State:** A review of a regulated entity's actions limited to the jurisdiction conducting the review (e.g., a review of an entity's compliance with a statute enacted in the preceding year;
- **Joint Effort:** A review conducted by two or more jurisdictions of a single entity or issue (e.g., an examination of a small regional insurer by two bordering states into claims adjustments involving both states; and
- **Multi-jurisdictional:** An examination of one or more regulated entities by multiple jurisdictions (e.g., an investigation led by a few states for the benefit of all 56 jurisdictions into a large national insurer's practices related to sales of life insurance targeting specific ethnic groups).

Multi-jurisdictional examinations can be conducted in all of the different variations mentioned above. For example, a multistate examination might be conducted as a targeted desk examination or might be an on-site investigation. They are increasing in popularity with both regulated entities and regulators because of the resources saved. Due consideration should always be given to referring multijurisdictional endeavors to the Market Actions (D) Working Group. The Working Group is discussed later in this chapter and also in the chapter titled Collaborative Actions.

As mentioned earlier, this handbook has several chapters devoted to the details of how to conduct investigations and examinations. Please see the applicable chapters relating to investigations and examinations for an in-depth discussion of those types of reviews.

3. Market Actions (D) Working Group

The Market Actions (D) Working Group was created to give regulators a forum for issues found that should be addressed on a national level. The Working Group meets at each NAIC meeting, as well as holds periodic conference calls and communicates as needed on issues. Membership is made up of a select number of regulators from across the country selected based on their skills, experience and ability to participate in national level activity.

Information Sharing

Each state commissioner appoints a Collaborative Action Designee (CAD) to handle or coordinate the communication to and from the Market Actions (D) Working Group and with other CADs about multistate issues. Most member jurisdictions of the NAIC have signed the Information Sharing and Confidentiality Agreement; the list of signatory jurisdictions may be found in StateNet. Generally, that agreement can be referenced in any exchange of information rather than requiring states to sign individual confidentiality agreements with each other.

Additionally, regulators should be familiar with their state insurance code provisions to determine the extent of materials that may be shared with other state insurance regulators, other state agencies and federal agencies, as some compliance issues may involve multiple jurisdictions or multiple agencies.

Practical applications of information sharing include:

- Entering into a confidentiality agreement and sharing information with banking regulators to evaluate a licensed agency that has sold unregistered investments to insurance clients; and
- Sharing information under the NAIC confidentiality agreement with another state when both states' market analysis processes have identified similar concerns about a licensed insurer.

Referral to the Market Actions (D) Working Group

Issues of concern that have been developed through market analysis or by other channels may be referred to the Market Actions (D) Working Group. When there is a likelihood that the issue affects multiple jurisdictions and cannot be readily or simply resolved to answer the concerns of all affected jurisdictions, a Request for Review (RFR) can be submitted to the Market Actions (D) Working Group. The RFR may be initiated by one or more states, by a commissioner or deputy commissioner, by a Collaborative Action Designee (CAD), by NAIC staff or self-reported by an entity. The RFR asks the referring state(s) not only for the particulars of the issue and the entity (ies), but also for recommendations for continuum-based market actions.

Practical applications of submitting an RFR to the Market Actions (D) Working Group include:

- Several states identify a company with the same issue, and they believe a united request for voluntary compliance will resolve the issue for all impacted states; and
- One state has completed a continuum action with a company for an issue that potentially impacts many states and believes the same resolution can be applied to those states with an action initiated through the Market Actions (D) Working Group.

National Analysis

In addition to responding to issues brought before the group, the Market Actions (D) Working Group annually coordinates a national analysis project using Market Conduct Annual Statement Data that proactively looks at the country's insurers for signs of developing issues. When issues are found, a volunteer jurisdiction will investigate the concern and report back to the group, completing an official referral if necessary.

C. Closure

No matter which continuum of market action option is used to address a situation, regulators will be faced with the decision of how to bring closure to an issue. Each jurisdiction has different considerations and methods for bringing closure to an issue. In some instances, taking enforcement or disciplinary action or even initiating civil litigation, may be necessary to achieve compliance or resolve the issue. On other occasions, the following listed methods of closure may be appropriate:

- Determining that no further action is necessary;
- Communicating the insurance department's position;
- Providing information to producers;
- Referral to other agencies, fraud prevention divisions or law enforcement;
- Initiating consumer outreach or education initiatives;
- Ongoing, nonstructured monitoring; and
- Requesting legislative or regulatory rule changes.

Regulators should be aware of and abide by protocols established by their insurance department, commissioner and general counsel relating to the use of various closure outcomes. Insurance departments may have established procedures for communications with media or other governmental agencies and for the distribution of public information. Public information officers, governor liaisons, legislative liaisons, general counsels, deputies and commissioners are all possible sources of information regarding any such protocols within a state insurance department.

When deciding upon a method of closure or outcome, it is helpful to consider not only the nature of the issue and how it has affected consumers, but also the manner in which the issue was discovered and how it was addressed by the regulated entity. It would seldom be prudent to penalize a regulated entity that voluntarily communicated about a problem discovered by way of self-audit, if the regulated entity also took steps to rectify the problem and provided remediation as needed.

1. Closure Without Initiating Action or Litigation

Determining That No Further Action Is Necessary

Justification for taking no further action might include such reasons as: (1) determination that company actions were handled in accordance with insurance laws or statutes; (2) there was no violation of insurance law; or (3) that a single problematic issue resulting from a miscommunication was acknowledged and addressed. Additionally, a market action could produce findings that ease concerns raised by market analysis. If an initiative was recorded in the appropriate NAIC database at the beginning of the issue, notes would be added to the entry, and it would then be closed.

Communicating the Insurance Department's Position

A written communication expressing the insurance department's position on a matter can serve not only as clarification, but also as a potential warning or admonishment. It can place the regulated entity on notice that future occurrences may be dealt with in a stricter fashion. This outcome would be finalized in the appropriate NAIC database, and the entry closed. Any such communication should be clear and specific to the issue at hand. For examinations, this generally takes place in the form of a report of examination. For other types of market actions, a closing letter to management may be appropriate.

Alternatively, the issue may be of wider concern than a specific company, and the insurance department will want to convey its position more broadly. The use of targeted mailings, newsletter articles, bulletins, and website notices may allow regulators to widely address a concern or provide information relative to new issues, interpretations, relevant case law, implementation policies for new laws, or discussion of new industry practices or technologies. Education is an effective regulatory tool that can be used to provide information to the insurance industry. Two primary forms of education are insurance department communication and proactive outreach.

Practical examples of insurance department communications include:

- Issuing a formal bulletin to clarify the insurance department's interpretation of a specific law;
- Posting an advisory letter to respond to multiple requests for information about a specific compliance issue;
- Providing access to insurance laws and regulations through the insurance department's website;
- Listing helpful suggestions for responding to insurance department inquiries on the insurance department's website; and
- Discussing specific regulatory concerns in an insurance department's quarterly newsletter.

Providing Information to Producers

The insurance department may also wish to convey information to producers, agencies and brokers. In addition to the possible use of mailings and notices, the department may choose a more proactive type of outreach. Outreach mediums include speaking engagements, insurance department-sponsored seminars and training events, press releases, interviews with the media, articles for publication, billboards and advertisements, brochures, and radio spots. Identifying the target audience and tailoring the delivery to that audience are keys to a successful outreach campaign.

Practical examples of producer outreach include:

- Sponsoring a seminar aimed at insurance compliance professionals to discuss changes to variable life insurance law;
- Participating in an industry or regulator-sponsored trade organization seminar to share information about a new rule affecting market regulation; and
- Requesting trade organizations place periodic reminders in their publications about the importance of flood insurance.

Referral to Other Agencies, Fraud Prevention Divisions or Law Enforcement

Occasionally, regulatory issues or concerns may cross agency boundaries within the state. Common examples include securities, banking, motor vehicle registration and financial responsibility, health and human services, consumer protection functions of attorneys general, and senior protection agencies. It is helpful to know who

within the state insurance department may have established channels of communication with other applicable agencies. It is also helpful to have a general understanding of the functions within those agencies and how they might apply to insurance.

Any indication of insurance fraud, whether directed against an insurer by an outside person or implemented from within the insurance organization, should immediately be reported to the applicable fraud prevention division. Referrals to law enforcement may be warranted when infractions such as theft by deception or forgery are noted.

Initiating Consumer Outreach or Education

Insurance departments have a unique opportunity for determining which insurance-related issues are confusing or unclear to consumers. It is important to use the insurance department's established guidelines for media contact and generally best to coordinate any media outreach with the department's public information officer. Newspaper and magazine articles, press releases, outreach at public events, and speaking engagements can help provide consumers with tips on how to be more "savvy" about insurance. Publishing a brochure explaining a certain confusing insurance product and requiring its distribution at point of sale can help prevent abusive sales techniques and unsuitable sales.

Practical examples of consumer outreach or education initiatives include:

- Initiating a "Fight Fake Insurance" campaign to inform consumers about the danger of fraudulent and unauthorized health insurers;
- Developing media news releases to teach consumers how to best file insurance claims after a natural disaster; and
- Use of billboards to remind the public that insurance fraud is a crime.

Ongoing, Nonstructured Monitoring

Ongoing, nonstructured monitoring is often appropriate for issues with a high-dollar or high-volume impact. This is especially true if the regulator is not assured that the initial corrective action will be applied continuously and consistently. For example, a claims payment problem that was corrected by programming the correct reimbursement rate for a single medical procedure code into the computer system will probably not need further monitoring. A similar claims payment practice that involves numerous codes or repeated instances might warrant the planning of ongoing monitoring. Deliberate monitoring may also be appropriate when the market action is not conclusive about the extent or nature of an identified problem.

Requesting Legislative or Regulatory Rule Changes

A market conduct issue may be discovered for which no regulatory authority exists to address the concern or when the law has not kept pace with changing market conditions. Sometimes a practice is identified that is perfectly legal, but is causing harm to consumers or disrupting the marketplace. If the issue is approached correctly, insurers are willing to change the practice in question as long as they can be assured of a level playing field. At other times, these situations are identified when new types of insurance, new marketing mechanisms or industry use of emerging technology and tools are introduced and problems need to be addressed on a broader basis through rulemaking, legislative changes and the development of NAIC model laws.

Most insurance departments will have an established protocol for discussion and proposal of new statutes and regulations, generally requiring that all such proposals be channeled directly to the insurance department commissioner. When evaluating the need for change, it is helpful to review existing NAIC model laws and regulations and to request feedback from other states to see if anyone has already addressed the concern. The NAIC, consumer advocacy groups and insurance trade organizations can also be valuable sources of information.

Practical examples of requesting legislative or regulatory rule changes include:

- Addressing the need for advertising regulations in Internet sales; and
- Addressing the need to amend existing insurance statutes to address new types of insurance or marketing arrangements.

2. Closure Through Enforcement Methods, Disciplinary Action or Litigation

On occasion, an enforcement action will clearly be the most practical solution for addressing cases of noncompliance. The types and combinations of enforcement actions are virtually unlimited, although a few general types are captured in this list. Any action of this type should be recorded in the appropriate NAIC database:

- Informal agreements;
- Voluntary compliance plans;
- Administrative complaints;
- Cease and desist orders;
- Ongoing monitoring/self-audits;
- Remediation plans;
- Negotiated settlement agreements and consent orders;
- Restitution;
- Administrative fines/penalties;
- Post-investigation or follow-up examinations; and
- Probations/suspensions/revocations of license.

Informal Agreements

An informal agreement to change practices or implement procedures can be either written or verbal. Such an agreement would be most appropriate for situations involving noncompliance with technical regulatory issues and where no significant harm has occurred to consumers or other stakeholders. Such an agreement could include such things as amendment of business practices, forms or rating plans.

Voluntary Compliance Plans

An agreement with the regulated entity to establish a voluntary compliance plan would go beyond implementation of a single change in procedures or practices. Such an agreement may include self-monitoring, self-audits and possibly reporting back to the state insurance regulator after an agreed-upon period of time.

Administrative Complaints

An administrative complaint is filed when the insurance department has reason to believe that a regulated entity is engaging in noncompliant behavior. The document will allege that a violation of insurance law has occurred or may occur and provide for an administrative hearing where both parties are allowed to present evidence and testimony about the allegations.

Cease and Desist Orders

An order can be issued by the insurance department to a company to prohibit a person or business from continuing all operations or certain targeted operations or violations of law. Such an order would be issued when harm to consumers is considered imminent, and quick action is perceived to be necessary. The insurance department then may bring the company in for an administrative hearing to determine future action.

Ongoing Monitoring/Self-Audit

After identification of a systematic compliance issue being made by an insurer, state insurance regulators may request that the insurer conduct a targeted market conduct self-audit. This permits an insurer to take corrective action and to report its findings to the state insurance regulator. Additionally, as part of settlement agreements or after final examination reports, a company may be required to submit regular audits covering the areas of concern. The audits would be submitted to the state insurance regulator over a period of one or more years to help ensure continued compliance in the area of concern.

Remediation Plans

In cases where harm can be measured and corrected, remediation may take the form of such actions as premium refunds, supplemental claim payments, removal of unapproved or incorrectly administered restrictive endorsements, or policy change options. Obtaining remediation for policyholders, claimants and parties affected by an adverse situation should generally be a primary goal. Where possible, remediation should be undertaken for all affected jurisdictions. This will reduce or eliminate the need for duplicate market actions.

Negotiated Settlement Agreements and Consent Orders

A negotiated settlement may be used to arrive at a mutually agreeable conclusion to a matter of concern. Such an agreement is typically negotiated and placed into a written consent order by the insurance department's legal counsel. The agreed-upon settlement may include such components as remediation, voluntary forfeitures (fines), agreements to cease and desist, agreements to implement action plans, self-reviews, and possibly reporting back to the state insurance regulator after an agreed-upon period of time. The settlement agreement may or may not lack an administrative determination that a specific violation has occurred and may or may not also indicate that the regulated entity neither affirms nor denies the specific allegations. The agreement is made as a means to resolve the conflict. Multiple states may also be involved in negotiated settlements, in which case those state insurance regulators involved may wish to consult the Market Actions (D) Working Group-created document *Best Practices for Multistate Settlement Agreements*.

Restitution

When a company's actions or omissions have done harm to policyholders, claimants or the department of insurance, the state may require that compensation is made for that harm. The scope and extent of the harm may be determined through self-reporting, any of the continuum actions, or through single or multistate examinations. Compensation is made for actual loss or damage that was sustained.

Administrative Fines and Penalties

An administrative adjudication should follow insurance department or state guidelines. A typical action would follow the filing of a petition or formal complaint against the regulated entity, setting a time and place for an administrative hearing. The regulated entity would be provided an opportunity to offer testimony and evidence before a hearing officer, who would decide the outcome of the action. Likewise, the regulatory representative would present evidence and request a finding or determination along with a request for resolution. Occasionally, a voluntary consent agreement may be reached prior to an administrative hearing. A regulated entity could be required to pay both restitution and a penalty so that actual financial harm is repaired and the entity is also punished for the violations that caused the financial harm.

Post-Investigation or Follow-Up Examinations

There may be instances when a regulated entity modifies procedures in order to respond to a state's determination of a violation through an investigation or examination. However, the state may not be assured that the change will stay in effect over a long period of time and is not comfortable with the company self-monitoring. In such cases, the state may elect to schedule a series of targeted examinations to monitor the issue over an extended period of time until a comfort level is reached.

Probations/Suspensions/Revocations of License

Depending on the severity and frequency of specific violations, or the variety of violations, a state may take action against a regulated entity's authority to operate in the state. Probation is often ordered for entities guilty of more minor violations or first offenses, which allows them to continue the business of insurance under supervision. For a more serious charge, the license may be suspended to prohibit any performance of the business of insurance, usually for a specified period of time. If the violations are severe or pervasive in nature, or if probation or suspension has not resulted in a remedy to the issues, the license or authority to conduct the business of insurance may be revoked.

Chapter 3—Market Regulation Investigation Guidelines

A. Background and Introduction

The NAIC Resources (D) Working Group was charged with developing an inventory of resources and guidelines for market regulators in the following areas: consumer services, rates and forms, producer licensing, market conduct examinations, residual markets, antifraud, senior issues, investigations, enforcement, market analysis, consumer education and special issues. An extensive inventory of resources was developed in all of the aforementioned areas with the exception of investigations and enforcement. The Working Group was unable to locate resources in those two areas. The Market Regulation and Consumer Affairs (D) Committee at the NAIC 2002 Spring National Meeting appointed the Investigation Standards Subgroup of the Uniformity (D) Working Group. The goal of the Subgroup was to develop market regulation investigation standards. This chapter contains the standards compiled by the Subgroup.

The market regulation function of an insurance department serves as an early indicator of market problems that may lead to large-scale problems and may eventually affect solvency. These investigative standards were developed to provide an additional resource in the area of market regulation. These investigations are not an examination. Based on an analysis of the problem, a determination has to be made after reviewing the number of indicators—such as frequency of violation, whether it was intentional, number of consumers involved, severity of the violation, amount of money involved, etc.—as to whether an investigation is the most efficient means to address that problem. The investigative method decided upon should provide a concise and cost-effective means with which to deal with the problem(s).

The purpose of this chapter is to provide market regulators with guidelines for the use of various market regulation tools. These tools are not intended to replace effective procedures or hinder or limit the processes currently in place, but are suggested for use when appropriate. This guide provides an explanation, descriptions, suggestions, options and samples regarding an investigative process when it has been determined that this is a viable way to deal with a problem.

As a means of improving this sharing of information among the states, at the conclusion of an investigation, all states are encouraged to contact the state's market analysis coordinator in an affected state and inform them of the results of the investigation. States are also reminded to share with the Market Systems (D) Working Group, as well as the other states, any investigation procedures that they found to be particularly useful and/or productive, and any other significant issue(s) that arose during the process of the investigation.

State insurance regulators have many different tools at their disposal to deal with potential violations of state insurance statutes and regulations, as well as potential market conduct violations alleged of any licensee, whether they are a producer, a company or other regulated entity. There are occasions where state regulators find it necessary to conduct specific and/or targeted examinations of companies and/or producers due to specific allegations of misconduct or noncompliance with statutes and regulations. The following information contains procedures for those instances where a market regulation investigation is warranted.

These guidelines have been created to assist states with development of their own market regulation investigation procedures. These procedures are not intended to be an all-inclusive document with regard to investigation procedures; and states may wish to utilize other procedures than those incorporated.

B. Guidelines for Conducting Market Regulation Investigations

Suggested Statutory Authority

Individual states may have broader and/or more comprehensive authority. The following, which is excerpted from (Alabama Code §27-2-26) is an example of statutory authority.

- As to the subject of any examination, investigation, or hearing being conducted by him, the commissioner may subpoena witnesses and administer oaths or affirmations and examine any individual under oath or take depositions and, by subpoena duces tecum, may require and compel the production of records, books, files, documents, and other evidence;
- Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if in the proceedings in which such witness is called such person is found to have been in violation of the law or by the person, if other than the commissioner, at whose request the hearing is held;
- Subpoenas of witnesses shall be served in the same manner and at the same cost as if issued by a circuit court. If any individual fails to obey a subpoena issued and served under this section with respect to any matter concerning which he may be lawfully interrogated or required to produce for examination, on application of the commissioner, the circuit court of the county in which is pending the proceeding in which such individual was so required to appear or the circuit court of the county in which such individual resides may issue an order requiring such individual to comply with the subpoena and to testify or produce the evidence subpoenaed. Any failure to obey such order of the court may be punished by the court as a contempt thereof; and
- Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing shall, upon conviction thereof, be guilty of perjury and punished accordingly.

Conducting an Investigation

An investigation may be conducted by an insurance department's examiners or investigators either at the offices of the insurance commissioner or wherever the person being investigated is located, as well as at such other places as may be required for determination of matters under investigation.

Every person being investigated, its officers, attorneys, employees, agents and representatives shall make freely available to the commissioner or his/her representatives the accounts, records, documents, files, information and matters in his/her possession or control relating to the subject of the investigation.

Neither an insurance department nor any examiner or investigator shall remove, destroy or deface any record, account, document, file or other property of the person being examined from the offices of such person except with written consent given in advance of such removal or pursuant to a court order.

Some states may have specific statutory authority that addresses the issues of electronic/computer records and may want to add those provisions to these procedures.

Pre-Investigation Planning

Internal planning should be conducted by an insurance department's examiners and/or investigators with regard to the company or individual selected for investigation. Information that should be gathered includes, but is not limited to, the following:

- Information from internal databases regarding the subject of the investigation. This includes filings such as annual reports, policy and form filings, etc. All information maintained in internal databases should be reviewed and analyzed as soon as possible during the investigation;

- Information concerning the subject of the investigation from applicable NAIC databases. The NAIC maintains several databases which contain information, which may be of assistance to the investigator. Those databases consist of the following:
 - Regulatory Information Retrieval System (RIRS);
RIRS contains regulatory actions taken by participating state insurance departments against producers, companies and other entities engaged in the business of insurance. Note that the absence of information on a particular entity should not be taken as conclusive, that no disciplinary action has been taken. Not every state participates actively and fully in RIRS.
 - Other NAIC Databases; and
There are other NAIC databases which also may be of assistance to the investigator. These are the Complaints Database System (CDS), the Market Action Tracking System (MATS) and the State Producer Licensing Database (SPLD). Information found in these databases includes regulatory actions, closed complaints, financial and market conduct examinations, relationships between entities, and suspicious or fraudulent activity. Information contained in the SPLD also contains licensing and appointment information on insurance producers.
 - IIPRC product filings (via SERFF).
The uniform standards, rather than state-specific content requirements/laws, are applicable to products approved by the Interstate Insurance Product Regulation Commission (IIPRC). Compacting states have access through the NAIC System for Electronic Rate and Form Filing (SERFF) to product filings submitted to the IIPRC for approval and use in their respective jurisdiction and may wish to view the approved forms, filing correspondence, notes from reviewers, checklists and supporting documentation. The IIPRC office should be contacted when a compacting state(s) is concerned that an IIPRC-approved product or advertisement constitutes a violation of the provisions, standards or requirements of the compact (including the uniform standards).
- Discussions with other insurance department personnel;
- Any departmental records, such as financial examinations and/or producer licensing and investigation files;
- Information received from other states;
- Any information received from law enforcement and/or other state or federal regulatory agencies. Other federal and state regulatory agencies have databases that may assist the investigator, for example, the Federal Trade Commission (FTC) and Financial Industry Regulatory Authority (FINRA); and
- If possible, any information that can be requested from the entity being investigated should be gathered before a field investigation is commenced. The information requested may be broad or very specific depending on the type of investigation being conducted. Reviewing and analyzing all available information concerning the subject of the investigation prior to the start of a field investigation will allow the investigation to be conducted in a more comprehensive and expedited manner.

The pre-investigation planning stage should address the following issues:

- The justification for the investigation;
- The scope of the investigation;
- A time and cost estimate; and
- What costs, if any, can be billed to other sources.

Investigative Reports

The insurance department's examiners and/or investigators should prepare a written report at the conclusion of each investigation. This report should combine the appropriate features of an examination report and possibly include some of the data and format of a more traditional law enforcement report, specifically if criminal violations are uncovered during the investigation. The report is considered confidential until such time as the insurance department has reviewed it and its distribution may either be permitted by the commissioner or required by law.

The investigator should document all tasks and facts discovered, both inculpatory and exculpatory in the investigative file. This documentation should include:

- Written notes of calls/interviews;
- Written statements;
- Summary and organization of relevant documents;
- Preservation of original evidence; and
- Written findings and recommendations.

Investigative Options

There are several options available to an insurance department once a market conduct investigation has been concluded. These options include, but are not limited to, the following:

- Prepare and finalize an investigative report and determine whether or not sufficient evidence exists to proceed, or if additional information is needed to complete;
- Filing of an investigative report, which may be an internal confidential document or provided to the subject of the investigation;
- Call a market conduct examination if warranted; and
- Filing an examination report. This option gives the subject of the examination an opportunity to respond and/or object to the examination report and to have a hearing concerning those objections. Once the examination report becomes final, it may be a public document.

Enforcement Options

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.

The investigative and enforcement options are merely a list of options. No order or priority was given to any option. Regulators must choose whichever option or options best address the circumstances.

Monetary Penalty or Fine

A state's insurance code may provide limited fining authority for specific instances of violations of the insurance code. Consistent with the insurance department's authority stated above to enter into settlement agreements and consent orders, the insurance department does have the authority to enter into agreements which provide reimbursement to the insurance department for its administrative costs in settling matters related to a market regulation investigation.

The enforcement options listed above are not mutually exclusive and it may be appropriate in many cases to pursue more than one option and/or restitution, if warranted.

C. Standards for Conducting a Field Investigation

The following are general guidelines to be used by market regulation examiners and investigators in conducting market conduct field investigations on behalf of an insurance department:

Investigation Activities

Activities such as interviews, record reviews and report preparation—for the investigation should be planned in advance in order to efficiently utilize departmental resources.

Disposition of Investigation

Investigators are responsible for conducting investigations which identify and document their findings. Investigators should only make a recommendation on disposition after the investigation has been concluded. Appropriate disposition of the case will be determined by the supervisor of the investigator, in consultation with the insurance department's legal division, after the investigation activities have been completed. The commissioner of insurance ultimately decides the disposition of all cases investigated by an insurance department.

Scope of Investigation

The investigator conducting the investigation should conduct activities and tasks directly related to the alleged violations which were originally referred. If the investigator believes there are additional alleged violations or that the investigation should broaden its scope, the investigator should discuss this matter with his/her supervisor before proceeding further.

Authorization and Entry into NAIC Databases

Investigators should only investigate cases that have been properly assigned to them and have a file number. All investigative cases must be authorized and approved by the supervisor who oversees the investigator's department/division. If possible, all investigations should be entered into the appropriate NAIC databases.

Timeliness of Investigation Activities

Investigators are responsible for planning their schedule of activities on assigned investigative cases to ensure that activities and tasks are completed in a timely manner. Written updates to files should be made on at least a monthly basis.

Documentation of Investigation Activities

All activities, tasks and discussions occurring on an investigative case should be properly recorded in the investigative reports within five working days from their occurrence. It is important this rule be adhered to in all cases.

Investigative Files

All materials and documents gathered as a part of an investigation shall remain part of the investigative file, regardless of whether they are used as evidence. A copy of the complete investigative file should be forwarded to the insurance department's legal division when and if a request is made for administrative action to be taken against an entity or individual.

Confidentiality of Investigative Files

No information in an investigative file should be provided to anyone outside the insurance department without the express permission of the investigation supervisor, legal division or the agency records officer. Investigators should become familiar with the confidentiality provisions of the insurance code, as well as the insurance department's rules for sharing confidential information with law enforcement and other regulatory agencies. It should be the policy of any insurance department to cooperate fully, to the extent allowed by law, with all federal and state law enforcement and regulatory agencies. Many states have signed the Master Information Sharing and Confidentiality Agreement (commonly referred to as the Global Confidentiality Agreement) drafted by the NAIC. The provisions of this agreement should allow for the sharing of information between various state insurance departments.

D. Guidelines for Conducting an Interview

Prior to conducting interviews during an investigation, it should be determined beforehand whether the person being interviewed is a witness, victim or the subject of the investigation. A written record should be made of every interview that is conducted. In most cases, notes will be taken during an interview and will later be transcribed or dictated by the investigator at a later date. It is very important that the preparation of a final report of an interview be completed as soon as possible after the interview has taken place. Most law enforcement agencies require this to be completed within five days of the date of the interview. The insurance department should have established guidelines as to whether an investigator's original notes should be maintained after the interview has been formally transcribed. Once a specific policy has been adopted regarding this issue, it should not be deviated from under any circumstances. It is recommended that the investigator preserve the original notes from each and every interview and that the investigator strives to make sure those notes are as accurate as possible.

Investigators should check insurance department rules and regulations, as well as applicable state law, concerning the use of informants. Some state laws may allow for the protection of an informant's identity. The investigator should always tell an informant that, although the department will attempt to keep their information confidential to the full extent allowed by law, there are no guarantees that the information could not be discovered at a later date. Investigators should make sure that they have a full and complete understanding of their department's policy concerning confidentiality of informants, as well as any state or federal laws which may apply to the matter they are investigating.

Individuals who are considered to be possible subjects and/or targets of the investigation should normally be interviewed toward the end or at the conclusion of the investigative process. More often than not, individuals who are the subject or target of an investigation may in fact, contact the investigator and/or the insurance department during the course of the investigation once they learn of its existence. Interviews conducted of individuals who are subjects/targets of an investigation should be among the most thorough interviews conducted during the investigation. If at all possible, every statement and detail provided by a subject/target of an investigation should be recorded. The primary reason for this is often a subject/target will be deceptive and/or provide misleading information to the investigator. The more detail that is gathered, the more useful it may be in proving a deception has occurred. Furthermore, the subject/target is obviously in the best position to provide information to the investigator concerning the alleged offense.

The issue may arise as to whether or not investigators for a state insurance department are required to advise subject/target of their Miranda rights under the criminal law. Each state should formulate a policy that reflects their specific laws in conformity with the protections provided by the U.S. Constitution. Some state investigators have police powers and may be required to advise subjects/targets of their rights under certain circumstances. Many states' investigators do not have such police powers and, thus, may not be under any obligation to do so.

Interviews of witnesses are normally conducted differently than those of a subject/target. A witness is normally cooperative and usually possesses less than complete knowledge of the matter being investigated. Witnesses should obviously be questioned extensively concerning their specific knowledge of the matter under investigation. It is important, however, for the investigator—when making a written record of the interview—to try and summarize as much as possible the information provided by the cooperative witness. By summarizing the information provided by a witness, the investigator does not put the witness into the position of possibly having their credibility attacked over confusion or a mistake over a minor detail in their statement. The investigator should always keep in mind that any and all statements obtained during an interview may, in fact, be used in an administrative and/or court proceeding and, thus, be available for review by a subject/target of an investigation and their attorney.

Investigators should make it a standard practice and procedure to record interviews conducted with custodians of records and/or anyone from whom they receive documentary evidence. For example, when contacting a custodian of records at a bank to serve a subpoena for financial records, a properly written record should be created documenting the identity of the person contacted, the purpose and the results of the interview—even if all that was carried out was the delivery of a request for information and the information was provided. This procedure not only helps document all steps taken during the investigation, but also may help with establishing the chain of custody for documentary evidence to be used during the investigation.

Investigators should always use caution when interviewing either a hostile subject, witness, victim or anyone of the opposite sex. It is advisable to have another investigator present any time a hostile witness or the subject/target of the investigation is interviewed. If another person is unable to be present, do not conduct the interview behind closed doors. It is preferred that male investigators always have another person present when they interview female subjects/targets.

An investigator should at all times be courteous and professional during an interview, no matter who is the subject of the interview, be it a subject/target or a witness. Furthermore, investigators should never provide information nor make statements to a subject/target or a witness that cannot be substantiated by the evidence the investigator already has. An investigator should never make promises to an individual and should always remember that he or

she does not have the authority to resolve or settle the matter being investigated, and that it is up to the department head or other higher legal authority to determine when and how the matter will be resolved. This does not mean that an investigator cannot tell a subject/target that they may make a favorable recommendation to the department head and/or higher legal authority should cooperation be granted, but the investigator should clearly point out at all times that this is merely a recommendation and does not have to be followed. It is more advisable, when asked by a subject/target or even a witness, if favorable treatment can be provided, for the investigator to merely state that he or she will report all of the facts gathered during the investigation, including cooperation, to his or her superiors to take into consideration.

There may be occasions where it is desirable to record an interview either electronically or by a stenographer or court reporter. A state's insurance code may allow for the taking of statements under oath. This is best accomplished with a court reporter or stenographer present who can also administer the oath to the person being examined. It may be preferable to electronically record an interview. If electronic recordings are used, the investigator should be aware that voice tone and inflection, as well as individual comments, could be misconstrued and interpreted differently by different individuals. More importantly, individuals interviewed under oath or being recorded electronically may be inhibited as to what they tell the investigator. Insurance departments should review federal, state and even local laws with regard to the possible restriction of the use of electronic recordings. Investigators should be instructed to conduct themselves at all times as if their conversations with witnesses and/or subjects/targets of an investigation are being recorded. This is especially true if interviews are conducted over the telephone.

The investigator must always remember that they control the interview, and not the person being interviewed. Investigators should always be polite and courteous when conducting interviews and should be respectful of the interviewee's time. While it is necessary and often preferable to engage in small talk to establish rapport with the witness, investigators should keep such talk to a minimum. Furthermore, investigators should always remember their job in conducting an interview is to gather information, and not provide information. Inadvertent or purposeful disclosure of information gathered during an investigation which is not necessary to be disclosed can result in complications for the investigator and the insurance department. In fact, there may be legal prohibitions against the disclosure of such information; frequently, subjects/targets of investigations will make allegations regarding impropriety on the part of the investigator by accusing the investigator of spreading lies or slandering the reputation of the subject/target or entity being investigated. To avoid these types of situations, the investigator should always focus on gathering information and disclosing only that information which is necessary to conduct the investigation. This type of conduct will withstand any allegations of impropriety raised by subjects/targets.

Persons professing to have information regarding a fraudulent act may contact insurance department personnel or become known to investigators. Many times these individuals will request that their identities be concealed. These types of individuals, sometimes referred to as informants, often provide valuable information that may lead, and often do lead, to the establishment of an act of fraud or an attempt to commit a fraudulent act. Informants provide information for many different reasons, and it often takes a professional to be able to determine an informant's motive and the true value of information provided. Investigators should consider the following when using informants:

- Never insist that an informant identify him or herself;
- Do not agree to compensate an informant, unless previously approved by a supervisor; and
- Always corroborate information provided by the informant to the fullest extent possible.

E. Preparation of the Interview Form

Each insurance department should consider adopting a standard form to record the results of any interviews conducted during an investigation. The purpose of using a standard form is to provide an accurate and complete record of all evidence developed during an investigation. The form should be filled in using paragraph form, adhering to the rules of basic English and limited to one investigative act (one search, one interview, etc.). It should consist of the following sections:

Preamble

The preamble informs the reader of the background and nature of the investigation.

Body

The body sets forth the results of the investigation while adhering to the following:

- The date;
- Using all capital letters when writing names of persons and businesses;
- Using third person, past tense and complete sentences (concise ones are best);
- Avoid phrases such as, “he stated” and “he advised.” The preamble should preclude the need for these types of phrases;
- Do not use slang, jargon or abbreviations; avoid using “subject” or “target”;
- Make sure terms used in the report are easily understood by laymen and clearly defined;
- Stick to the relevant facts. Record what was heard, seen, done, or what the interviewee heard, saw or did. Omit opinions;
- Arrange in a logical (usually chronological) order; and
- For second and subsequent interview pages, use an additional white sheet of paper, which should be clearly marked as an attachment to the original interview form.

Descriptive Data of Relevant Individuals

The investigator should obtain from each person being interviewed their full name, place of employment and phone number(s). Physical descriptive data is usually not necessary with regard to witnesses. The investigator, however, should not overlook the fact that often, physical descriptive data of a subject/target of an investigation is necessary. This is best accomplished by providing a photograph of the subject/target to the witness if physical identification is necessary. If a photograph is not available, the investigator should be careful to not pin the witness down to an exact physical description, as the physical appearance of the subject/target may, in fact, be different or may have changed since their contact with the witness. Any discrepancies in the physical description may be exploited later by the subject/target and/or their attorney.

Blanks

The blanks at the bottom of the interview form should be completed by the investigator. A series of sample subject interview forms are included at the end of this chapter.

F. Procedures for Closing a Market Regulation Investigation

At the conclusion of an investigation, after evaluation and submission of all case-related documentation, evidence, etc., a case may be closed for any of the following reasons:

- The allegations are unfounded or the investigator is unable to make a determination due to lack of information, etc.;
- All investigative efforts have been pursued to their logical conclusion without proving or disproving the allegations;
- All investigative efforts have been completed, subjects have been administratively, civilly or criminally charged and all aspects of the case have been resolved;
- All investigative activity has been completed, a complaint and/or warrant has been issued and all efforts to locate the subject(s) have been expended;
- The case is exceptionally cleared (i.e., subject dies, subject is arrested in another jurisdiction, entity goes out of business, etc.);
- Assistance is no longer required;
- Inactive status; and
- An entry should be made in the appropriate NAIC database(s).

G. Procedures for the Completion of Case Summary Reports

The case summary report is designed to provide a brief overview of the specific information and documentation obtained during an investigation. These reports assist supervisors and insurance departmental counsel in expeditiously identifying the pertinent facts of a case so that an informed decision can be made regarding the final disposition of the case. The case summary report should contain the following information:

- The identity of the person or entity to be cited in the report. This section contains the name, business address and phone, residence address and home phone for the individual or entity to be cited and prior regulatory history, if any, of the entity;
- The investigator should indicate all current licenses of the person or entity to be cited;
- The investigator should provide a brief narrative description of the allegations, including the number of violations;
- The investigator should provide a brief and concise representation of the information obtained during the investigation, including what the respondent did, how the violation occurred, how often the violation occurred, what further action needs to be taken, an identification of consumers who are due restitution and a description of any special circumstances or mitigating or aggravating factors;
- Witness list; and
- Source of the complaint.

H. Guidelines for Conducting a Photographic Lineup

Although it is not the standard practice and procedure of many regulatory agencies to maintain photographs of their licensees, there are occasions where it is possible to obtain such a photograph. Investigators should always attempt to obtain a photograph of an individual when that individual is the subject/target of their investigation. Even though a regulatory licensing agency may not have or require photographs of its licensees, there are other regulatory agencies, which may possess photographs and may be able to share them with the investigator. The first and most obvious is the Motor Vehicle Licensing Unit of the state in which the subject/target resides. Also, there may be other regulatory agencies that use photographs, such as a State Securities Licensing Agency.

If a photographic lineup is necessary and photographs can be obtained, the following guidelines should be closely adhered to before using this technique. If at all possible, use an original photograph. Good copies are adequate.

If at all possible, obtain at least five additional photos of the same size and, most importantly, the individuals in the additional photos must somewhat resemble the subject, with all photos being black and white, or in color. Different jurisdictions may have different requirements for the number of photos to be used in a lineup.

Under no circumstances should color photos be mixed with black and white photos. All photos must be original; they all must be copies.

Once the photos needed for the lineup are available, they should be identified on the back with a letter. They should not be identified in any other manner that would cause the person viewing the lineup to select the subject's photo because of some special mark or characteristic.

The investigator must never show any facial or body movements that would indicate to the individual viewing the photographic lineup did or did not select the subject/target of the investigation. In the event that the witness did not identify the subject/target in the photo lineup, the investigator must never permit or identify in any manner whatsoever that the witness failed to select the correct photo.

The photograph lineup should be preserved as evidence and the witness should sign the photograph identified in the lineup. A separate copy of the lineup should be used for each witness.

I. Forensic Examinations—Expert Witnesses

Investigators should keep in mind that during an investigation it may be helpful and, in fact, necessary to use outside experts in the field of forensic examination. For example, accident reconstruction, medical examiners and physicians, computer experts and forensic accountants may provide needed assistance to the investigator during an investigation.

Handwriting Investigation

Every person develops his or her own handwriting, which is a habitual act or subconscious habit. While signatures may recognizably belong to us, no two of our signatures are exactly alike. It is impossible to exactly and free-handedly replicate a previous specimen of our signature, and neither can anyone else.

The identification of the writer of the signature, or any other body of writing, is a comparative study based on the use of known or authenticated writings, which are commonly referred to as standards or exemplars. The standards form the basis of any comparison. There are two classes of known writings, collected standards and requested standards:

- Writings, which are produced in the normal course of business, such as cancelled checks, correspondence, loan applications, etc. (collected standards); and
- Writings which are produced for the purposes of investigation (requested standards).

Either type of standard must be comparable to the writing in the questioned material (i.e., cursive to cursive, printing to printing, similar words, letters and letter combinations).

Given that the act of handwriting is one of free will, a person can try to alter and disguise their writing. Therefore, when obtaining requested writings, it must be done in a manner which makes success at such attempts to disguise handwriting very difficult.

Some important general guidelines are as follows:

- The subject should never be allowed to see the questioned material;
- If possible, use a format similar to that of the questioned material (i.e., same amount of writing space horizontally and vertically, lined paper/unlined paper, similar type of writing instrument, etc.);
- Dictate, verbatim, the questioned material;
- After each repetition, remove it from view prior to execution of the next specimen;
- Obtain a sufficient sample of known source writing (i.e., 15 to 25 repetitions, full text);
- If there are multiple-question items, sporadically interchange them to further frustrate disguise;
- Ensure that the writer provides comparable writing (i.e., cursive or printing); and
- If available, submit collected specimens along with requested writing so as to demonstrate normal writing. Collected writings may be all that are available. In such instances, as many writings as possible should be obtained to maximize comparability.

With regard to questioned writings, it is imperative that the original copy of the questioned document be made available for examination. Copies tend to hinder the investigation to varied degrees. The following list is a descending order of preference of desirability for use in questioned documents, and also applies to collected specimens:

- The original document;
- Photograph of the document;
- Photocopy of the document;
- Microfiche/microfilm; and
- Facsimile/carbon copy.

As a final note, it is vitally important to protect and preserve evidence which contains a forged signature or may in fact, be a questionable document itself in the same manner as other physical evidence is preserved. Any questioned documents should not be folded or handled in such a way as to possibly distort or alter their contents or the ability of a document examiner to properly examine them, or a latent fingerprint examiner to detect fingerprints. Contact the document laboratory whenever there is any question or any uncertainty.

J. Form of Investigative Report

General

- **Objectivity**
An investigative report should reflect, in its wording, the same objectivity that was used in the fact-finding and information-gathering process of the investigation. The report must be a factual recording of the findings. Use of words such as “some,” “many,” “several” and “few” must be minimized. The use of superlatives should be avoided in writing the report. The most important questions that must be answered in an investigative report are: who, what, when, where, why and how.
- **Privacy**
The investigator should be aware that although investigative reports are privileged and confidential, they may, in fact, be used in administrative, civil and possibly criminal proceedings. Accordingly, steps should be taken, when possible, to protect the confidentiality of individual policyholders or consumers. For example, when listing Social Security numbers, the investigator may want to list only the last four digits of the number.
- **Use of Jargon**
The needs of various individuals who will review and utilize the investigative report should be kept in mind during the preparation of the report. Whenever possible, the use of insurance industry jargon within the report should either be avoided or explained.
- **Writing Style**
The writing style of an investigative report should tell the story of the investigation. The story is simple, direct and factual and should always be told in chronological sequence.
- **Main Objectives of an Investigative Report**
An investigative report should inform the reader of the investigator’s findings, including information and the source of information. The report should facilitate the understanding of the investigation and foreshadow the uncompleted portion of the investigation. The report should also fulfill the duties of the assignment.

Content of the Report

- **Title Page**
 - Type of investigation;
 - Subject and address of investigation. If the investigation location is different, include that address also;
 - Identifying numbers (e.g., agent number, Social Security number, etc.);
 - Dates of investigation;
 - Period covered by the investigation; and
 - List of jurisdictions and agencies participating.
- **Table of Contents**

- **Case Summary Page** (see Exhibit B in this chapter)
The case summary report is designed to provide a brief overview of the specific information and documentation obtained during the investigation. These reports assist insurance department supervisors and legal counsel in expeditiously identifying the pertinent facts of a case so that an informative decision can be made regarding the final disposition of the case. The case summary page should contain the following:
 - Identity of person or entity—including any available addresses or phone numbers;
 - Current licenses—all license powers of the person or entity to be cited;
 - Allegations—brief description of the allegations, including number of violations; and
 - Summary of the case—brief, concise information obtained during investigation including:
 - What the respondent did;
 - How the violation occurred;
 - How often violations occurred;
 - What further action needs to be taken; and
 - Identifications of consumers due restitution.
- **Detail of Report**
 - **Scope of the Investigation**
 - Cite specific statutory authority for the investigation; and
 - Briefly outline the investigation purpose.
 - **Body of the Report**
 - Detail of the investigation;
 - Summary of interviews; and
 - Summary of documentary evidence.
 - **Appendices**
 - Copies of interviews;
 - Copies of documentary evidence;
 - Copies of sworn statements and affidavits;
 - Copies of all licensing records; and
 - Flow chart.

K. Indicators of Fraud

Listed below are certain activities which, if discovered, are indicators of fraud and should be reported in any investigative report and should be forwarded to appropriate insurance department personnel for further action:

- Any misuse of a consumer's premium money for a purpose other than providing the insurance or benefit the consumer wanted to purchase;
- False claims against insurance coverage;
- Doing the business of insurance without a license;
- Making a false statement in a document that is required to be filed with the insurance department;
- Paying money or giving any benefit of value to a non-licensed person in return for that person's influence in placing insurance business;
- Making key alterations in written documents, forging signatures and creating false records;
- Any conduct in the business of insurance that has the effect of deceiving, fooling or tricking another person or any entity;
- Reluctance or willful delay in providing information during an investigation; and
- Suppression of information.

L. Investigative Priorities

It may be beneficial after reviewing the marketplace and insurance department resources to discuss establishing priorities for investigations to more efficiently address problems in a regulator's state insurance marketplace. Prioritizing these identified problems should maximize an insurance department's investigative resources.

Some considerations in establishing priorities for enforcement investigations are low, medium and high. Each level has a time frame during which the investigator should attempt to complete the investigation. These priority levels are as follows:

- High priority (complete in 60 days or as supervisor designates): Multiple victims, elderly victims, high-dollar losses, felony convictions and high risk of continuing harm, publicity or media attention;
- Medium priority (complete in 120 days): Single or few victims, relatively lower dollar amounts involved, low risk of continuing harm; and
- Low priority (complete in 270 days): Little or no harm to consumers (e.g., advertising, rebating).

Develop a list of factors that could be used in evaluating complaints involving producers:

- A producer who has had three or more complaints filed against them in the previous two years;
- Three or more complaints involving marketing and sales or policyholder service in the previous five years; and
- Complaints where there are serious allegations of consumer harm, particularly harm to the elderly.

M. Exhibits

All of the following exhibits are samples provided by various states. These examples are neither recommendations nor conclusions of any state regulatory office.

Exhibit A Sample Interviews

SAMPLE SUBJECT INTERVIEW

John T. Crook, born October 15, 1937, Social Security Number XXX-XX-XXXX, was interviewed at his place of business, The Crook Insurance Agency, 1111 North Main Street, Anytown, USA. Crook resides at 1234 City Main Street, Anytown, USA. His telephone number is 555-555-5555. After being advised of the identity of the investigator and the nature of the interview, Crook provided the following information:

Crook has been in the insurance business for almost 20 years. He worked for a national insurer as an adjuster for many years before becoming an agent. He has been an independent agent in Montgomery, Alabama for almost 10 years. He has two employees and some summer part-time help. He is aware that there have been some complaints by customers. The complaints allege that he has charged fees for placing insurance and/or he has placed insurance with a different insurer than where he told the policyholder he was going to place the insurance.

Crook was asked to produce the files of John Doe, Mary Doe and Fred Doe. When questioned, Crook stated affirmatively that he had in fact taken money from these three individuals and had done his best to secure insurance for them. To the best of his knowledge, insurance coverage was secured through Unlimited Risk Insurance Company. Crook has had a relationship with Unlimited Risk Insurance Company for many years.

John Doe, Mary Doe and Fred Doe each paid by check and those checks were deposited into Crook's business account. Crook then wrote checks to Unlimited Risk Insurance Company to pay for their premium. Crook does not know that some of his checks have been returned for insufficient funds at his bank but was not aware that his check for insurance on John Doe, Mary Doe and Fred Doe had in fact been returned for insufficient funds. Crook was not aware that Unlimited Risk Insurance Company had no record of policies being issued for John Doe, Mary Doe and Fred Doe. Nor did the company have any record of any application being submitted on their behalf.

Crook was asked about the power being cut off in his building last week and he stated it was a mistake by the power company, that he had paid his bill on time, and that he was not undergoing any financial difficulty. Crook blamed the insufficient checks on a bank error and said he was doing his best to maintain his business and service his customers. Crook agreed to provide the insurance department investigators with all of his policyholder records and copies of his bank statements. Crook asked the investigator if he could surrender his property and casualty insurance license but maintain a life insurance license. He stated he believed that as a life agent, he would not be in receipt of policyholder funds. Crook was advised this decision was not up to the investigator and Crook would be notified of the insurance department's decision.

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Investigation on John T. Crook at Anytown, USA

File Number P-2003-12345JD Date of Interview August 5, 2003

By Investigator George Goo-guy and Investigator Fred Fearless

SAMPLE CUSTODIAN OF RECORDS INTERVIEW

Paul Papershuffler was interviewed at his place of employment, the National Bank of Anytown, 22222 Northwest New Street, Anytown, USA. His telephone number is 555-555-5555. After being advised of the identity of the investigator and the nature of the interview, he was served with an administrative subpoena requiring production of any and all bank records pertaining to the Crook Insurance Agency and John T. Crook, Inc. for the period of June 1, 1999 to the present.

Papershuffler, after reviewing the subpoena, indicated he would have no problem obtaining the records and would produce them at the offices of the insurance commissioner as ordered at the time and date indicated.

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Investigation on John T. Crook at Anytown, USA

File Number P-2003-12345JD Date of Interview August 7, 2003

By Investigator George Goodguy

SAMPLE INTERVIEW OF COOPERATIVE WITNESS

Mati Hari, who resides at 333 Long Way Drive, Anytown, USA, 12345, telephone number 555-555-5555 was interviewed at her place of employment, The Rightway Insurance Agency, 100 Tree Street, Anytown, USA 55555. After being advised of the identity of the investigator and the nature of the interview, she provided the following information:

Hari was employed by John T. Crook for 18 months from 2000 to 2001. She worked as a receptionist and dealt with customers both in person and over the telephone. She also attempted to maintain Crook's financial and business records for him. Crook was not a good record keeper and did not come into the office until late in the morning and left early in the afternoon. She had great difficulty in getting him to pay attention to his work. Crook received many telephone calls from individuals who appeared to be bill collectors and Hari noticed numerous envelopes from the bank in the daily mail, which appeared to be insufficient funds notices.

Hari brought to Crook's attention six months into her employment that many customers were complaining that although they had documents indicating that they had insurance, they had been told they did not have coverage with Unlimited Risk Insurance Company as represented by Crook. Crook told Hari basically to mind her own business and that he would take care of the matter.

Crook got a divorce in 1998 and Hari suspected that he actually lived at the office, sleeping on a couch during the night. She did not think Crook was intentionally a dishonest person but that he had great difficulty in his personal life and this may have affected his ability to run the insurance agency. Hari stated that Crook fired her because she questioned the status of clients' payments and accounts and whether or not insureds had insurance coverage. Hari has worked at the Rightway Insurance Company since leaving Mr. Crook's employment.

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Investigation on John T. Crook at Anytown, USA

File Number P-2003-12345JD Date of Interview August 15, 2013

By Investigator Fred Fearless

SAMPLE VICTIM INTERVIEW

John Doe, born June 24, 1940, Social Security Number XXX-XX-XXXX, was interviewed at his place of employment, Cheese & Such Company, 333 Old Wooden Bridge Road, Anytown, USA. Doe resides at 5555 Royalty Lane, Anytown, USA and his telephone number is 555-555-5555. After being advised of the identity of the investigator and the nature of the interview, Doe provided the following information:

In August of 2000, Doe began looking for a new insurance company after his rates were increased by Big Guy Insurance Company. His secretary recommended Mr. John Crook and the Crook Insurance Agency as he had once been her neighbor and she had insurance with him in the past. Doe visited Crook sometime in August of 2000 at his office and got quotes from him on both of his vehicles and his residence. Crook called him a few days later and informed him he could provide Doe with insurance on the vehicles and his residence with Unlimited Risk Insurance Company for around \$150.00 per month. This was much less than Doe was currently paying to Big Guy Insurance Company and the very next day Doe delivered a check to Crook and signed some forms.

Doe never received a copy of a policy and contacted Crook's office sometime around Christmas of 2000 inquiring about the same. He spoke briefly with Crook who advised him that he did have insurance with Unlimited Risk. A few days later he received what appeared to be a computer printout and a policy table in the mail from Crook Insurance Agency.

In June of 2001, Doe's son, John, ran into the back of a van on Interstate 85. The next day, Doe notified Crook Insurance Agency who instructed him to contact Unlimited Risk Insurance Company directly. Doe contacted Unlimited Risk Insurance Company and was informed they had no record of Doe having any insurance with them for either his vehicle or his residence. Doe contacted Crook the next afternoon. Crook said he had sent in the funds for the insurance premium, he had received proof of receipt of the same and that Unlimited Risk had once again made another mistake with regard to a policyholder. Crook said he would straighten the matter out.

Doe contacted Unlimited Risk Insurance Company, who has repeatedly denied his claim as he had no insurance in effect. Doe has turned this matter over to a local attorney, as Doe has paid for the damage caused by his son's wreck out of his pocket. Doe has not had any contact with Crook for the last year and understands that he has gone through some serious difficulties and may have in fact been evicted from his office and/or had the power cut off at various times. Doe provided this investigator with a copy of his cancelled check as well as correspondence that he has sent and received in this matter.

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Investigation on John T. Crook at Anytown, USA

File Number P-2003-12345JD Date of Interview August 27, 2003

By Investigator George Goodguy

SAMPLE ARREST INTERVIEW

Pursuant to an authorized arrest warrant signed by the Honorable Lynn Clardy Bright, District Judge for the County of Montgomery, Alabama, Investigator George Goodguy of the Anytown Department of Insurance accompanied Investigators Gary Gungho and Tom Tough of the Anytown Bureau of Investigation to the offices of the Crook Insurance Agency in Anytown, Alabama. After identifying themselves, the investigators took John T. Crook into custody without incident. He was transported to the Anytown County Detention Facility where he was fingerprinted and photographed.

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Investigation on John T. Crook at Anytown, USA

File Number P-2003-12345JD Date Interviewed September 1, 2003

By Investigator George Goodguy

Exhibit B Case Summary Page

CASE SUMMARY PAGE

Identity

Current Licenses

Allegations

Summary

Not for Distribution

Not for Distribution

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, continuing 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 state 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 production rules 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 of 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 member 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 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 or 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.

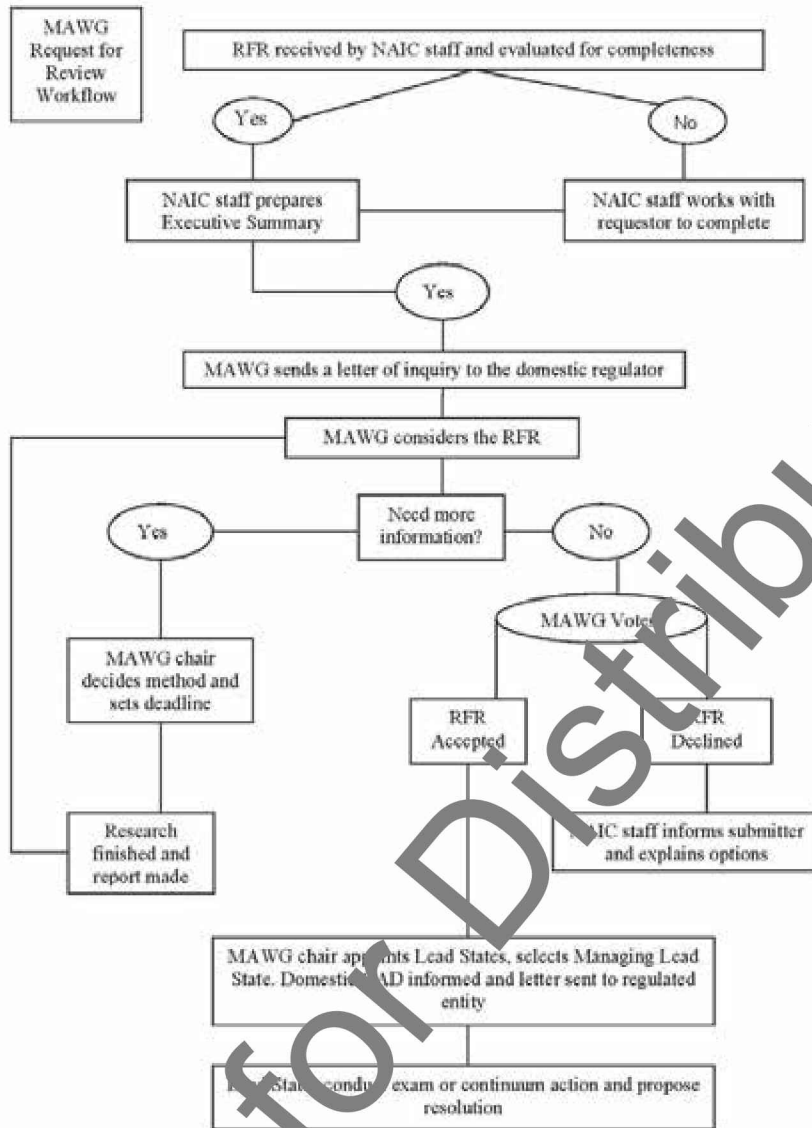
The Market Actions (D) Working Group will consider each RFR and determine whether to pursue the matter as a Working Group collaborative action. Among other criteria, Working Group members consider whether a material issue or pattern of conduct exists that demonstrates a systemic failure of the internal 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 action 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.

Not for Distribution



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 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 from the 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 (MATTS), noting that it is a multistate action.

*The domiciliary state has authority to look at all records of the 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 NAC 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. 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.

Chapter 5—Core Competencies

<i>General Topic/Area</i>	<i>Standards/Comments</i>
1. Resources Core Competencies	
<i>Regulatory Authority</i>	<p>The Department of Insurance should have authority to analyze, examine, or investigate entities that transact the business of insurance whenever it is deemed necessary. Such authority should include complete access to the regulated entity's books and records and, if necessary, the records of any affiliated regulated entity, insurance producer, or other entity contracted with to perform any additional services. Such authority should extend not only to inspect books and records but also to examine officers, employees and insurance producers of the regulated entity under oath when deemed necessary with respect to transactions directly or indirectly related to the regulated entity under examination or review.</p> <p>Measures should include:</p> <ul style="list-style-type: none"> • Statutory authority to perform the continuum of market actions; • Ability to access records; • Ability to keep records confidential; and • An unfair trade practices act and unfair claims settlement act substantially similar to the NAIC model.
<i>Staff & Training</i>	<p>The Department of Insurance should have staff sufficient to perform the continuum of market actions including market analysis, market conduct examinations and market conduct investigations. On an ongoing basis, appropriate market analysis should be performed to identify regulated entities of concern. Appropriate prioritization of further investigation and continuum options should be pursued effectively and timely to protect the interests of consumers.</p> <p>Departments of Insurance should ensure the staff are sufficiently qualified to conduct examinations, other continuum options or analysis as needed. The Department of Insurance shall appoint a Market Analysis Chief (MAC) and Collaborative Action Designee (CAD) and ensure their participation at NAIC national meetings.</p>

1. Resources Core Competencies, cont'd***Contract Examiner***

There are three general types of contract examiners. Individual contractors are individual examiners that contract directly with insurance departments. Individual contractors frequently contract exclusively with one insurance department. Regulatory contractors are firms that contract exclusively with insurance departments. These firms may work for one or more insurance departments in the same or varying capacities. For instance, a firm may do examination work for Insurance Department A, analysis work for Insurance Department B, or baseline analysis and examination work for Insurance Department C. These firms choose not to accept engagements with regulated entities. Corporate contractors are firms that contract with insurance departments and accept engagements with regulated entities. Although specific staff may be dedicated to work for regulators, they work under the same corporate management as staff performing engagements with regulated entities. In addition, staff may change their roles within the firm at any time. The following competency standards apply to all three types of contract examiners.

When using contractors for market conduct examinations, the Department of Insurance should ensure that the contractors have the education and professional experience comparable to qualified department staff and that processes and procedures are in place to oversee and monitor the work performance and related activities of the contractors.

2. Market Analysis Core Competencies	
<i>Data Collection</i>	Ability to gather and evaluate data as demonstrated by: 1) utilization of the Market Analysis Review System; 2) collection of data as required by the Commissioner, Director or Superintendent; and 3) for participating Departments of Insurance, collection of data for the Market Conduct Annual Statement; 4) use of the standardized data requests when there is a need for the collection of relevant data prior to the initiation of an investigation of market regulatory action.
<i>Analysis</i>	Departments of Insurance shall gather information from data currently available to the Department of Insurance, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry. The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review regulated entities or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
<i>Market Analysis Chief</i>	The Market Analysis Chief (MAC) is the principal liaison with the NAIC Market Analysis Division, the Market Analysis Procedures (D) Working Group and the Market Information Systems (D) Task Force. The MAC is responsible for all market analysis-related communications with other work units within the Department of Insurance. The MAC and CAD may be two individuals or the same person. The Department of Insurance should have the appropriate staff member assigned as the MAC to ensure an effective market analysis program.
<i>Market Analyst</i>	Market analysis is a process where data and information is collected and analyzed for an insurance market and particular companies to determine both what are standard practices and when companies or general market trends are outside of those standards. The purpose is to provide both general understanding and specific company identification for further analysis, audit, investigation or examination. The market analyst works under the supervision of the MAC to assure a systematic approach to market analysis. The market analysis process typically includes baseline analysis on the various lines of insurance utilizing a variety of standardized and state-based tools and data, as well as the Market Conduct Annual Statement (MCAS) submissions by companies. The market analyst combines the findings of baseline analysis and MCAS to identify outliers for Level 1 and Level 2 reviews. The market analysis process should include working closely with various program areas in their respective insurance department as well as other state insurance departments and the NAIC. Working closely may also include providing regular or even formal reports to a variety of internal and external stakeholders, at the direction and supervision of the MAC or CAD.

3. Continuum Core Competencies	
<p>The Continuum of Market Actions is a means of moving from market analysis to regulatory response. The continuum is a spectrum of regulatory tools to address actions necessary as a result of analysis of specific regulatory concerns regarding the conduct of a regulated entity. Specific examples of the continuum and recommended goals to consider when determining the nature of the regulatory response are discussed in the Continuum of Market Actions chapter of the <i>Market Regulation Handbook</i>. Each Department of Insurance should evaluate and document market problems using the continuum of market actions.</p>	
<i>Market Conduct Examinations</i>	A Department of Insurance should have standards in place to determine when a market conduct exam is called. Departments of Insurance should adhere to the standards in the <i>Market Regulation Handbook</i> .
<i>Investigations</i>	Investigations should be conducted in accordance with investigation standards. When appropriate, investigations should be posted in the Market Action Tracking System (MATS) and upon completion, if regulatory action is taken, in RIRS.
<i>Consumer Complaints</i>	The Department of Insurance shall have standards in place to receive and handle complaints and inquiries in accordance with the guidelines developed by the Market Analysis Procedures (D) Working Group. The Department of Insurance records complaints in a database and submits closed complaint data to the NAIC CDS on a regular basis. The Department of Insurance shall have standards for investigating complaints, responding to the complainant, and referring law violations for administrative action and reporting complaint patterns and trends to the Market Analysis Chief.
4. Interstate Collaboration Core Competencies	
<i>Interstate Collaboration</i>	<p>Interstate collaboration may be accomplished by the following:</p> <ul style="list-style-type: none"> • Participation with the Market Actions (D) Working Group to include, but not be limited to, participation in calls and surveys; • Timely entry and participation in the NAIC databases; • Notifying the Collaborative Action Designee or Market Analysis Chief of the domestic Department of Insurance when considering one of the continuum of market actions; • Verifying the Department of Insurance can ensure the confidentiality of materials and data, necessary for • Following the collaborative actions guidelines for recommendations to the Market Actions (D) Working Group.
<i>Collaborative Action Designee</i>	The Collaborative Action Designee (CAD) is the one contact identified by the Director/Commissioner of each state/district/territory to have the responsibility for all communications related to interstate collaboration. The Department of Insurance should have an appropriate staff member assigned as the CAD to assure support and participation in multistate collaborative actions.

Competency: **Resources**
SubSection: **Regulatory Authority**

The Department of Insurance should have authority to analyze, examine or investigate entities that transact the business of insurance whenever it is deemed necessary. Such authority should include complete access to the regulated entity's books and records and, if necessary, the records of any affiliated regulated entity, insurance producer, or other entity contracted with to perform any additional services. Such authority should extend not only to inspect books and records but also to examine officers, employees, and insurance producers of the regulated entity under oath when deemed necessary with respect to transactions directly or indirectly related to the regulated entity under examination or review.

The following standards apply to this competency:

Standard One. The Department of Insurance has the necessary authority to implement the continuum of market actions.

The Department of Insurance should have authority to examine regulated entities whenever it is deemed necessary. Such authority should include complete access to the regulated entity's books and records and, if necessary, the records of an affiliated regulated entity, agent and managing general agent. Such authority should extend not only to inspect books and records but also to examine officers, employees and agents of the regulated entity under oath when deemed necessary with respect to transactions directly or indirectly related to the regulated entity under examination. The NAIC Model Law on Examinations or substantially similar provisions shall be part of state law.

Standard Two. The Department of Insurance has the necessary authority to take corrective action when necessary.

The Department of Insurance should have the authority to take corrective action or issue cease and desist orders for practices that are determined to be in violation of state law.

Standard Three. The Department of Insurance has the ability to keep records confidential, when appropriate.

The Department of Insurance should allow for the sharing of otherwise confidential information, administrative or judicial orders, or other action with other Department of Insurance regulatory officials provided that those officials are required, under their state law, to maintain its confidentiality. The Department of Insurance should have a documented policy to cooperate and share information with other regulators directly and also indirectly through committees established by the NAIC which may be reviewing and coordinating regulatory oversight and activities. A Master Confidentiality and Information Sharing Agreement shall be executed and available for review in StateNet.

Standard Four. The Department of Insurance has statutory provisions to protect insurance consumers.

The Department of Insurance should have a regulatory framework designed for the protection of insurance consumers. An unfair trade practices act or unfair claims settlement act substantially similar to the NAIC model shall be part of state law.

Competency: **Resources**
SubSection: **Staff and Training**

The Department of Insurance should have staff sufficient to perform the continuum of market actions including market analysis, market conduct examinations and market conduct investigations. On an ongoing basis, appropriate market analysis should be performed to identify companies of concern. Appropriate prioritization of further investigation and continuum options should be pursued effectively and timely to protect the interests of consumers. Departments of Insurance should ensure that staff are sufficiently qualified to conduct examinations, other continuum options or analysis as needed. The Department of Insurance should ensure it has appointed a Market Analysis Chief (MAC) and Collaborative Action Designee (CAD).

The following standards apply to this competency:

Standard One. **The Department of Insurance has a policy that encourages the professional development of market regulation staff through job-related college courses, professional programs, and/or other training programs.**

Standard Two. **The Department of Insurance has minimum educational and experience requirements for all professional employees and contractual staff positions in the market regulation and market analysis area that are commensurate with the duties and responsibilities of the position.**

The Department of Insurance should have examiners with appropriate experience to perform necessary tasks. Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE) professional designations and a Market Conduct Management (MCM) professional designation from Insurance Regulatory Examiners Society (IRES) are presumed to meet the minimum standard of acceptable qualifications as the combination of designations not only indicate a depth of knowledge in a major line of authority, but an advanced level of technical proficiency in market regulation.

Individuals who hold an advanced professional designation from a nationally recognized credentialing organization are presumed to have a broad knowledge of insurance concepts in a particular major line of authority. Examples of this type of designation include Chartered Property Casualty Underwriter (CPCU), Chartered Life Underwriter (CLU), Certified Insurance Counselor (CIC), Fellow Life Management Institute (FLMI), and Registered Health Underwriter (RHU); while individuals who have obtained the NAIC designations Associate Professional in Insurance Regulation (APIR), Professional in Insurance Regulation (PIR), Senior Professional in Insurance Regulation (SPIR) as well as the Associate in Regulation and Compliance (ARC) and the Associate, Insurance Regulatory Compliance (AIRC) designations from the Institutes and LOMA respectively, have demonstrated an appropriate level of competence in regulatory matters.

Other designations (usually characterized as at the associate level) may indicate proficiency in certain aspects of insurance operations: these include, but are not limited to Associate in Claims (AIC) for property and casualty claims, Associate in Insurance Accounting and Finance (AIAF) for insurance financial operations and Associate, Annuity Products and Administration (AAPA) for annuity operations.

The professional designations listed are not intended to be exhaustive nor is it intended that designations be requirements for qualification. Appropriate experience both within and without departments of insurance is highly desirable.

Standard Three. **The Department of Insurance should have the ability to attract and retain qualified market regulation personnel.**

Standard Four. **If a Department of Insurance elects to utilize contracts with individuals or firms to conduct market regulatory activities, the Department of Insurance should ensure the individuals meet the minimum educational and experience requirements as outlined above and that the activity is conducted in accordance with the Department of Insurance's established policies and procedures and applicable state law.**

Competency: **Resources**
SubSection: **Contract Examiner**

There are three general types of contract examiners. Individual contractors are individual examiners that contract directly with insurance departments. Individual contractors frequently contract exclusively with one insurance department. Regulatory contractors are firms that contract exclusively with insurance departments. These firms may work for one or more insurance departments in the same or varying capacities. For instance, a firm may do examination work for Insurance Department A, analysis work for Insurance Department B, or baseline analysis and examination work for Insurance Department C. These firms choose not to accept engagements with regulated entities. Corporate contractors are firms that contract with insurance departments and accept engagements with regulated entities. Although specific staff may be dedicated to work for regulators, they work under the same corporate management as staff performing engagements with regulated entities. In addition, staff may change their roles within the firm at any time. The following competency standards apply to all three types of contract examiners.

When using contractors for market conduct examinations, the Department of Insurance should ensure that the contractors have the education and professional experience comparable to qualified department staff and that processes and procedures are in place to oversee and monitor the work performance and related activities of the contractors.

The following standards apply to this competency:

Standard One. **The Department of Insurance shall have established procedures to select contractors in accordance with applicable state laws and policies.**

The Department of Insurance shall utilize the approved state method of selection of contractors, such as Requests for Proposal (RFP) and when possible, maintain or select from a national pool of contractors to ensure selection of examiners with market regulation expertise and knowledge of the relevant lines of insurance.

The Department of Insurance shall utilize documented standards to determine whether a conflict of interest exists, either directly or indirectly, that would preclude the contractor's involvement with the proposed market analysis, regulatory investigation or market conduct activity.

Strict observance to conflict of interest standards must be observed. Examiners should not be affiliated with the management of the regulated entity nor own a pecuniary interest in any company. Generally, contractors that conduct examinations should not also engage to do work for the regulated entity. Neither should they be engaged to provide evidence as an "expert witness" against or on behalf of the regulated entity unless such testimony is on behalf of the engaging regulator and in relationship to the applicable work plan. Regulators should identify potential conflict of interest matters during the selection process and also be mindful of potential issues during and after the examination. States may have specific conflict of interest provisions that apply.

The Department of Insurance shall utilize a written contract or Memorandum of Understanding (MOU) when using the services of a contract examiner. The contract or MOU shall include specific information regarding scope of work, fees, timelines, deliverables and deadlines, confidentiality and security.

Standard Two. The Department of Insurance shall have established minimum educational and experience requirements for all contractual positions within the market regulation areas that are commensurate with the duties and responsibilities of the positions.

The Department of Insurance shall have contract analysts and examiners with appropriate experience perform necessary tasks. Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE) professional designations and a Market Conduct Management (MCM) professional designation from Insurance Regulatory Examiners Society (IRES) are presumed to meet the minimum standard of acceptable qualifications as the combination of designations only indicate a depth of knowledge in a major line of authority, but an advanced level of technical proficiency in market regulation.

Individuals who hold an advanced professional designation from a nationally recognized credentialing organization are presumed to have a broad knowledge of insurance concepts in a particular major line of authority. Examples of this type of designation include: Chartered Property Casualty Underwriter (CPCU), Chartered Life Underwriter (CLU), Certified Insurance Counselor (CIC), Fellow Life Management Institute (FLMI) and Registered Health Underwriter (RHU); while individuals who have obtained the NAIC designations Associate Professional in Insurance Regulation (APIR), Professional in Insurance Regulation (PIR), Senior Professional in Insurance Regulation (SPIR) as well as the Associate in Regulation and Compliance (ARC), the Associate, Insurance Regulatory Compliance (AIRC) designations from the Institutes and LOMA respectively, have demonstrated an appropriate level of competence in regulatory matters.

Other designations (usually characterized as at the associate level) may indicate proficiency in certain aspects of insurance operations: these include, but are not limited to Associate in Claims (AIC) for property and casualty claims, Associate in Insurance Accounting and Finance (AIAF) for insurance financial operations and Associate, Annuity Products and Administration (AAPA) for annuity operations.

The professional designations listed are not intended to be exhaustive nor is it intended that designations be requirements for qualification. Appropriate experience both within and without departments of insurance is highly desirable.

The Department of Insurance shall ascertain if the contractors have expertise in state-specific laws and regulations and, if such expertise is lacking, develop procedures to ensure that contract examiners obtain such knowledge.

Standard Three. The Department of Insurance shall conduct pre-examination conferences with the contract examiners and develop written documentation of goals and expectations.

The nature and scope of services, time frames, budget and hourly rates, hours of work, confidentiality provisions, contractor responsibilities and reporting mechanisms shall be documented prior to commencement of the examination. Emphasis should also be placed on expectations regarding examiner conduct, adherence to the work plan and conflict of interest guidelines.

Standard Four. The Department of Insurance shall establish procedures to ensure that the contract examiners comply with the standards of the *Market Regulation Handbook*, including uniformity guidelines, as well as the Market Analysis, Continuum and Market Conduct Examinations Core Competencies, as appropriate.

Standard Five. The Department of Insurance shall assign Department staff the responsibility to oversee the performance of the contract examiners.

Department of Insurance authorized staff shall monitor or oversee the pre-examination and exit conferences and appropriate department staff shall meet regularly with the contract examiners to ensure that the examination is being conducted in accordance with pre-exam agreements. Department staff shall review the contractors' preliminary findings and draft report before it is submitted to the insurer.

Monitoring the work performance and related activities of contractors is necessary. It can be accomplished through a number of ways. Communication with the contract examiners and regulated entity, use of periodic reporting or an interim review of examination work papers are useful. The Department of Insurance shall require contractors to provide status reports to state insurance regulators. Such a report shall include, at a minimum, the following:

- a. A clear explanation of the examination's progress, broken down by phase/key activity;
- b. A summary of time incurred by contract examiners, including budget, actual and time remaining to complete;
- c. A summary of unusual problems, any significant issues identified throughout the examination and the examiner-in-charge's proposed resolution; and
- d. Proposed changes to the approved budget.

The responsibility for requiring contract examiners to act on unusual problems or significant issues identified throughout the examination by broadening the scope of an examination or requiring additional data not germane to the original scope of an examination rests with the state insurance regulator. The issues disclosed in the status reports are preliminary in nature, and no action should be taken based solely on preliminary findings.

An on-site visit to the examination site may be appropriate in certain instances. When considering whether an on-site visit should be used, consider such factors as the known performance of the contractors, cost of travel to the job site, length of examination and feedback regarding progress of the examination.

The Department of Insurance shall also require that the activities performed by contract examiners on behalf of the Department are conducted in accordance with Department of Insurance established policies and procedures and applicable state law.

Department of Insurance staff shall review contractor billings for cost and reasonability and respond to any questions from insurers regarding contractor performance or billing.

Standard Six. The Department of Insurance shall establish procedures to ensure confidentiality of work papers and other data, electronic security, and requirements for returning market conduct examination work papers to the Department of Insurance.

To further enhance security, Departments of Insurance should provide or require the contractors to utilize dedicated computers, email and URL addresses with approved virus software and approved encryption. When possible, email and needed URL may be routed through the DOIs and password protected.

Contracts or other written agreements between a Department of Insurance and contract examiners shall contain language that the contract examiner shall safeguard confidential information. These contracts shall also specify that contractors shall not share confidential information with other contractors within their organization unless they were specifically authorized by the state to work on its behalf. Contracts should also ensure that confidential information should not be shared with any contractors within their organization who have a conflict of interest. This includes protection of proprietary information received from the regulated entity under examination, information received from other state Departments of Insurance and data residing in NAIC databases.

Assuming that the contract between the insurance department and the contractor contains appropriate language regarding confidentiality of information, the NAIC will allow the contractor access to information residing at the NAIC as directed by the insurance department. The Department shall have authorized staff verify that the contract examiner has signed a confidentiality agreement that includes access to iSite+; determine whether and to what extent the contractor may access NAIC databases on iSite+ and shall be responsible for notifying the NAIC of any changes regarding the contract examiners and discontinuing such access upon completion of the examination.

The Department of Insurance shall establish policies and procedures in writing with the contract examiners regarding the confidentiality of work papers and other related data as well as the point at which all data and work papers are returned to the Department of Insurance upon completion of the examination. Laptop computers should be sanitized after each examination and at the beginning of each examination, only loaded with software for that specific examination.

Competency: Market Analysis
SubSection: Data Collection

Ability to gather and evaluate data as demonstrated by: 1) utilization of the Market Analysis Review System; 2) collection of data as required by the Commissioner, Director or Superintendent; and, 3) for participating Departments of Insurance, collection of data for the Market Conduct Annual Statement; 4) use of the standardized data requests when there is a need for the collection of relevant data prior to the initiation of an investigation of market regulatory action.

The following standards apply to this competency:

- Standard One.** **The Department of Insurance fully participates in CDS, MATS, and RIRS.**
 “Full” participation means that CDS, MATS, and RIRS data in the Department of Insurance is submitted electronically to the appropriate NAIC databases in a frequent, current, accurate, and complete manner.
- Each Department of Insurance will be asked to certify annually that it has made timely and complete submissions of all relevant information to the CDS, MATS and RIRS databases for the preceding calendar year.
- Standard Two.** **The Department of Insurance should reference and utilize information available through the various databases and resources in iSite+.**
- Standard Three.** **The Department of Insurance should actively utilize the Market Analysis Review System.**
- Standard Four.** **The Department of Insurance should make reasonable attempts to avoid duplicative and overlapping data collection whenever possible. The Department of Insurance should use the standardized data requests for data collection purposes. If the Department of Insurance deviates from standardized data requests, it will notify the regulated entity of the deviation and may allow for additional time for the regulated entity to provide the information.**
- Standard Five.** **The Department of Insurance collecting data, including data collected through the Market Conduct Annual Statement, should ensure the data is shared and considered in the market analysis process.**

Competency: Market Analysis
SubSection: Analysis

Departments of Insurance shall gather information from data currently available to the Department of Insurance, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry. The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review regulated entities or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

The following standards apply to this competency:

- Standard One. The Department of Insurance has completed Level 1 Analysis and meets any recommended standards established by the Market Analysis Procedures (D) Working Group on an on-going basis.**
- Standard Two. The Department of Insurance has appointed a Market Analysis Chief and promptly notifies the NAIC if the Market Analysis Chief changes.**
 Each Department of Insurance needs a clearly identified person with whom all other Department of Insurance staff should share indicators of potential market regulation problems and who will also coordinate information sharing with other Departments of Insurance through the Market Analysis Procedures (D) Working Group and oversee the Department of Insurance's market analysis.
- Standard Three. The Department of Insurance has established a systematic procedure for interdivisional communication.**
 It is essential for information to be shared and discussed between the Market Analysis Chief and other Department of Insurance staff. This should be done on a systematic basis, including at a minimum a quarterly questionnaire requesting other work areas within the Department of Insurance to share unusual activity that may be of interest to the Market Analysis Chief, such as patterns of adverse financial data, consumer complaints, policy termination activity, insurance producer misconduct, or use of new complaint forms or rates.
- Standard Four. The Department of Insurance has identified core information that all staff should share with the Market Analysis Chief.**
 In particular, all Department of Insurance staff should share any of these indicators with the Market Analysis Chief in accordance with established procedures.
- Participation with the Market Actions (D) Working Group to include, but not be limited to participation in calls and surveys;
 - Significant changes in the ratio of consumer complaints against the regulated entity or significant numbers of complaints in a relatively short period of time;
 - Dramatic growth (> +33%) or decline (< -10%) in one or more lines of business;
 - Significant changes in the regulated entity's book of business;
 - Rapid expansion into new states and significant premium volume in new states;

- Significant concentrations of risk—geographically, by line of business or exposure—or significant changes in the concentrations of risk;
- Significant changes in expense levels (such as defense costs or commissions);
- Recent change of the state of domicile of a major writer in a group of regulated entities;
- Recent changes in ownership or senior management;
- A high degree of reliance on third parties, such as MGAs or TPAs, to perform regulated entity functions; or
- Significant problems with electronic data processing systems such that the integrity of data underlying claims, underwriting and financial systems is questionable.

Standard Five. The Department of Insurance has developed and instructed complaint analysts in key indicators in complaint data.

Complaint analysts in the Department of Insurance should share the following types of information with the Market Analysis Chief at the time the Department of Insurance receives this information:

- Specific complaints so critical that one complaint merits reporting (e.g., antitrust);
- Spikes in complaints against the same regulated entity on the same product/practice during a specific time interval (e.g., 10 new complaints in a week); and
- Any of the other indicators listed in Standard Four.

Standard Six. The Department of Insurance identifies potential problems from complaints.

As a minimum, complaint ratios should be calculated annually at a regular time and the Market Analysis Chief should use information generated on regulated entities with ratios outside of the norms, along with other information about those companies available in the Department of Insurance, to determine whether any further review is necessary.

Standard Seven. Annual statement State Pages and other financial indicators are routinely shared with the Market Analysis Chief in accordance with established procedures.

Every regulated entity—foreign as well as domestic—is required to file a State Page with each state in which it is licensed, to show changes in the regulated entity's business in the state. In most Departments of Insurance, a significant amount of staff resources at that time are devoted to review and analysis of the financial statements. While such financial analysis should be primary, at some point after the Blanks are available, the Market Analysis Chief should be aware of:

- Significant increases or decreases in premium volume;
- Significant increases in reserves without corresponding changes in direct losses paid;
- Significant changes in loss ratio or significant deviations from market norms; and
- Significant increases in defense costs without corresponding changes in direct losses (for liability insurers).

- Standard Eight.** **There is an established baseline market analysis program on a coordinated schedule.**
All Departments of Insurance should analyze the various data elements and indicators within the same general time frame, so that if one or more of the Departments of Insurance have issues with a particular regulated entity, then they can discuss it first within the framework of the Market Actions (D) Working Group. Results should be compiled and reviewed on no less than a quarterly schedule.
- Standard Nine.** **The Department of Insurance coordinates results with the NAIC Market Actions (D) Working Group.**
In addition to reporting plans for examinations and investigations, all noteworthy market analysis results should be recorded in NAIC systems. Concerns with nationally significant companies should be specifically noted when reporting to the Market Actions (D) Working Group and issues that appear to focus on a small number of other states should be brought to the attention of those states' Departments of Insurance.
- Standard Ten.** **The Department of Insurance's procedures require that all material adverse indications be promptly presented to the commissioner or an appropriate designee for determination and implementation of appropriate regulatory action.**
Upon the reporting of any material adverse findings from the market analysis staff, the Department of Insurance should take timely action in response to such findings or adequately demonstrate the determination that no action was required. Action should include but not be limited to the NAIC's Continuum of Market Actions. Departments of Insurance should be mindful that findings that suggest potential solvency concerns should be promptly reported to the appropriate financial regulation staff.
- Standard Eleven.** **The Department of Insurance provides for appropriate supervisory review and comment.**
- Standard Twelve.** **The Department of Insurance has documented procedures.**
The Department of Insurance should have documented market analysis procedures and/or guidelines to provide for consistency and continuity in the process and to ensure that appropriate analysis procedures are being performed on each regulated entity.

Competency: Market Analysis
SubSection: Market Analysis Chief

The Market Analysis Chief (MAC) is the principal liaison with the NAIC Market Analysis Division, and the Market Analysis Procedures (D) Working Group. The MAC is responsible for all market analysis-related communications with other work units within the Department of Insurance. The MAC and CAD may be two individuals or the same person. The Department of Insurance should have the appropriate staff member assigned as the MAC to ensure an effective market analysis program.

The following standards apply to this competency:

Standard One. The Department of Insurance has appointed a Market Analysis Chief and promptly notifies the NAIC if the Market Analysis Chief changes.

The MAC or the MAC's designee shall have the authority to represent the Department of Insurance in matters related to discussions regarding market analysis.

Standard Two. The MAC or his or her designee is actively involved with the NAIC market analysis areas and working groups.

The MAC will work with the NAIC to accomplish the goal that each state should "adopt uniform market analysis standards and procedures" and use its market analysis in other market regulatory functions, including market conduct and interstate collaboration. The MAC or, when unavailable, a designee assigned by the MAC, shall participate in all Market Analysis Procedures (D) Working Group meetings or conference calls.

If the MAC does not attend the NAIC national meetings, the MAC or designee shall participate in each Market Analysis Procedures (D) Working Group conference call.

Standard Three. The Department of Insurance has procedures for the MAC to communicate with appropriate Department of Insurance staff.

The MAC shall work with the appropriate staff in areas including consumer services, enforcement, legal, forms and filing, financial, market analysis and market conduct to ensure that there are documented procedures to notify the MAC of unusual activity that may be of interest for market analysis.

The MAC shall establish means of regular communication with the unit heads of these areas. Such communication shall include, at a minimum, a quarterly questionnaire in accordance with the Market Analysis Core Competencies.

Standard Four. The MAC participates in communication with other Departments of Insurance regarding market analysis.

The MAC, in coordination with the Department of Insurance's CAD, shall be responsible for posting and responding to communications via the NAIC Market Regulation and Market Analysis Electronic Bulletin Boards. Information related to the role of the Market Analysis Chief (MAC) shall be handled by the MAC or their designee.

- Standard Five.** The MAC shall be responsible for implementation of the NAIC's recommended tasks for an effective market analysis program.
The MAC will coordinate with Department of Insurance staff to ensure that at least the NAIC's minimum recommended tasks for an effective market analysis program as outlined in the *Market Regulation Handbook* are accomplished.
- Standard Six.** The Department of Insurance shall provide the MAC with the necessary authority to communicate with responsible staff to ensure that CDS, MATS and RIRS data is submitted electronically in a frequent, current, accurate and complete manner.
- Standard Seven.** The MAC shall ensure that market analysis staff utilizes appropriate information such as the Market Analysis Company Prioritization Tool for baseline analysis of lines of business and that Level 1 Analysis is recorded in the Market Analysis Review System (MARS).
The MAC shall also assure that Level 1 recommendations are acted upon and where appropriate, the MATS system is updated with the action taken.
- Competency:** Market Analysis
SubSection: Market Analyst

Market analysis is a process where data and information is collected and analyzed for an insurance market and particular companies to determine both what are standard practices and where companies or general market trends are outside of those standards. The purpose is to provide both general understanding and specific company identification for further analysis, audit, investigation or examination. The market analyst works under the supervision of the MAC to assure a systematic approach to market analysis. The market analysis process typically includes baseline analysis on the various lines of insurance utilizing a variety of standardized and state-based tools and data, as well as the Market Conduct Annual Statement (MCAS) submissions by companies. The market analyst combines the findings of baseline analysis and MCAS to identify outliers for Level 1 and Level 2 reviews. The market analysis process should include working closely with various program areas in their respective insurance department as well as other states' insurance departments and the NAIC. Working closely may also include providing regular or even formal reports to a variety of internal and external stakeholders, at the direction and supervision of the MAC or CAD.

The following standards apply to this competency:

- Standard One.** Analysts should possess skills and abilities necessary to access and navigate a variety of databases utilizing several formats (e.g., online, Access, CSV, Excel, etc.).
- Standard Two.** Analysts should have or be able to gain an understanding of insurance markets, products and coverages in at least one line of insurance, but preferably multiple lines.
- Standard Three.** Analysts must be capable of interpreting applicable laws, regulations and standards to ensure analyses are appropriately conducted.
- Standard Four.** Analysts should have the skill and aptitude to discuss complex compliance and regulatory issues with other regulators and company representatives.

- Standard Five.** Analysts should have the experience, training or aptitude to adequately review and understand financial statements with specific focus and understanding on how the information in those statements may impact company operations or result from company operations (e.g. claims, underwriting, rating, reinsurance, sales, marketing, etc.).
- Standard Six.** Analysts should have the skills and abilities necessary for the analysis of abstract data from a variety of resources (MAPT, MCAS, iSite+, state systems, Internet databases, etc.) in order to identify issues and companies for further analysis (baseline analysis) and then utilize that data, and additional data, in completion of appropriate company analyses (MARS Level 1 and Level 2 Analyses).
- Standard Seven.** Analysts should be competent in the writing of management reports (for inside the agency) and formal finding reports (to companies or for enforcement actions).
- Standard Eight.** Analysts should be skilled in working independently and with other regulators within their state, regionally and nationally.
- Standard Nine.** Analysts are encouraged to attend seminars or attain education that regularly supports and updates their knowledge of insurance and insurance regulatory and compliance areas (the NAIC/NIPR Insurance Summit, the IRES Career Development Seminar, the Association of Insurance Compliance Professionals National Conference, NAIC meetings, etc.) as well as encouraged to attain advanced education or certification in areas related to insurance and insurance compliance or regulations (CIS, SPIR, CPCU, FLMI, CFE, and other designations by major insurance organizations, etc.), as allowed or supported by the rules and regulations of each state.

Competency: The Continuum

The Continuum of Market Actions is a means of moving from market analysis to regulatory response. The continuum is a spectrum of regulatory tools to address actions necessary as a result of analysis of specific regulatory concerns regarding the conduct of a regulated entity. Specific examples of the continuum and recommended goals to consider when determining the nature of the regulatory response are discussed in the Continuum of Market Actions chapter of the *Market Regulation Handbook*. Each Department of Insurance should evaluate and document market problems using the continuum of market actions.

The following standards apply to this competency:

- Standard One.** The Department of Insurance designates, authorizes and maintains staff responsible for reviewing market analysis findings and determining the necessary regulatory response.

- Standard Two.** The Department of Insurance considers factors including but not limited to consumer harm; scope and nature of the concern; jurisdictional boundaries of the issue; cost effectiveness for regulator and regulated entity; the regulated entity's history regarding cooperation and regulatory compliance; whether another state has addressed a similar concern with the entity and whether enforcement action is contemplated when considering the nature of regulatory response.
- Standard Three.** The Department of Insurance has procedures for staff responsible for continuum actions to communicate with the Market Analysis Chief (MAC) to obtain analysis information and recommendations for continuum actions when warranted.
- Standard Four.** The Department of Insurance has procedures for staff responsible for continuum actions to communicate and coordinate with the Collaborative Action Designee (CAD) in instances of multistate concern.
- Standard Five.** Where appropriate, the Department of Insurance inputs and updates continuum actions into the applicable NAIC regulatory databases.
- Competency:** The Continuum
SubSection: Market Conduct Examinations

A Department of Insurance should have standards in place to determine when a market conduct exam is called. Departments of Insurance should adhere to the standards in the *Market Regulation Handbook*.

The following standards apply to this competency:

- Standard One.** **Each Department of Insurance shall prioritize examinations.**
 Each Department of Insurance shall establish criteria for calling a market conduct examination. Each Department of Insurance shall prepare a schedule of examinations and select a person responsible for developing and maintaining the schedule. Exceptions may be made when an examination is called as a “no-knock” examination.
- The trigger or reason for the examination shall be maintained in the examination documents, preferably the work papers, and where appropriate shared with the regulated entity.
- Standard Two.** **The Department of Insurance shall utilize the Market Action Tracking System (MATS).**
 As soon as scheduled, each Department of Insurance shall enter the examination into the MATS, which is administered by the NAIC.
- Each Department of Insurance shall adopt a system for ensuring proper implementation and maintenance of the MATS system. The NAIC will develop aids such as a data entry checklist that will assist in maintaining the MATS program.

Standard Three. Exams shall be entered into the MATS no later than 60 days before the expected date of the on-site examination.
 Exceptions to this rule are examinations that are called to respond to more immediate conditions, or to accommodate the schedule of the regulated entity.

Standard Four. Each Department of Insurance shall, wherever possible and permissible by law, comply with the guidance provided in the *Market Regulation Handbook* when scheduling, planning, calling and performing an examination.

Standard Five. Each Department of Insurance shall develop a standard planning process. Many of the items reviewed may have been used in the examination priority process and may become the basis for the pre-examination planning.

- At the end of the planning process, the Department of Insurance shall determine the phases and/or standards of the examination that require more attention, the phases or standard that require average examination scrutiny or attention and those that require a reduced emphasis or may be waived.
- Each Department of Insurance shall prepare an examination work plan prior to the examination. The work plan or planning memorandum shall include:
 - a. The scope of the examination;
 - b. The justification for the examination;
 - c. A time and cost estimate; and
 - d. An identification of factors that will be included in the billing;

Standard Six. Each Department of Insurance shall develop a system to announce the examination to the selected regulated entity.
 The announcement of the examination should be sent to the regulated entity as soon as possible but in no case any later than 60 days before the estimated commencement of the on-site examination. Exceptions to this rule are made for examinations that are called to respond to more immediate concerns, or to accommodate the schedule of the regulated entity. The announcement notice should contain:

- The name and address of the regulated entity(ies) being examined;
- The name and contact information of the Examiner-in-Charge;
- The date the on-site examination is expected to begin;
- The statutory authority for the examination;
- The identification of items that will be billed to the regulated entity, if any;
- A request for the regulated entity to name its examination coordinator; and
- Additional information may be requested at a later date.

If the examination is to be led by a contract firm, the regulated entity shall be notified.

Standard Seven. Each Department of Insurance shall develop a preliminary examination packet or handbook that should be sent to the examination coordinator as soon as possible but in no case any later than 30 days before the estimated commencement of the on-site examination.

The preliminary information shall contain the following information:

- General instructions;
- The scope of the examination;
- The materials requested to perform the examination;
- Data requests;
- Requirements for accommodations and supplies including modem requirements;
- Time and cost estimates;
- Travel information;
- Specific instructions regarding sampling, communications with the regulated entity and other pertinent information;
- Location of on-site examination;
- Security arrangements;
- Billing procedures; and
- An outline of state insurance department policies and procedures for maintaining the confidentiality of documentation reviewed during an examination.

Standard Eight. The Department of Insurance shall adopt the standardized data requests contained in the reference documents section of the *Market Regulation Handbook*.

If a Department of Insurance deviates from the standardized data request, it will notify the regulated entity of the deviation and may want to allow additional time for the regulated entity to provide the information.

Standard Nine. The Department of Insurance shall provide an opportunity for a pre-examination conference with the regulated entity coordinator and key personnel to clarify expectations prior to the commencement of the examination.

Standard Ten. The Department of Insurance shall develop a system for exchanging information with the regulated entity that advises them of the errors and other problems developed during the examination. The state should be mindful of time frames contained in the *Market Conduct Record Retention and Production Model Regulation*.

The system could consist of “crit” sheets, summaries, or both. Any form of communication concerning errors should include the following information:

- Record numbers or other identifying factors;
- The examiner’s statement of the problem or error and, if relevant, the applicable law and/or standard; and
- A request for signature and comment from the regulated entity.

- Standard Eleven.** Each Department of Insurance shall develop a procedure for document handling, including the removal of original documents, where that is necessary, to a location other than the Department of Insurance. To address the issue of confidentiality, original work paper documents shall remain at the Department of Insurance, especially if the examiner is a contracted employee of the state Department of Insurance.
- Standard Twelve.** The Department of Insurance shall use documented sampling guidelines or develop their own scientifically-based sampling programs.
- All sampling methods should be random;
 - If using a method other than the NAIC sampling guidelines, the method shall indicate the confidence levels, tolerable error rates and include extrapolation;
 - All sampling methods shall avoid pre-selection; however, stratified sampling is allowed; and
 - The nature of the sampling method chosen should be disclosed to the regulated entity that is the subject of the examination.
- Standard Thirteen.** The Department of Insurance shall offer to conduct an exit conference at the end of an examination. The exit conference should offer the following:
- The examination status and proposed findings;
 - The report process; and
 - An explanation of any post-examination billing.
- Standard Fourteen.** The Department of Insurance shall utilize the standard report format found in the *Market Regulation Handbook*. Each report shall at a minimum include the following:
- Title page;
 - Table of contents;
 - Salutation;
 - Foreword;
 - Scope;
 - Executive summary;
 - Results of previous examinations;
 - Pertinent facts of the current examination;
 - Summarization; and
 - Appendices.
- Standard Fifteen.** The Department of Insurance shall utilize a standardized timeline as required by the state's statute or the NAIC Model Law on Examinations.
- The draft report is delivered to the regulated entity within 60 days of completion of the examination;
 - The regulated entity must respond with comments to the Department of Insurance within 30 days;
 - The Department of Insurance has 30 days to informally resolve issues and prepare a final report (unless there is a mutual agreement to extend the deadline); and

- The regulated entity has 30 days to accept the final report or request a hearing.

Standard Sixteen. The Department of Insurance shall include the regulated entity's response in the final examination report where allowed by law.

The response may be included as an appendix or in the text of the examination report. If it is not in the final report, the report should indicate that a response is available. The regulated entity is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.

Standard Seventeen. The Department of Insurance shall publish final reports as public documents where allowed by law.

- Departments of Insurance should publish the final examination report on the Department of Insurance's website; and
- Department of Insurance shall develop a process for releasing final examination results to the public. A press release may be used.

Standard Eighteen. The Department of Insurance should be able to demonstrate an enforcement strategy, and specifically the role of market conduct activities in that effort.

An effective enforcement strategy includes having a system in place to differentiate between willful actions and inadvertent ones and consider appropriate administrative resolutions whether it is financial or non-financial. Departments of Insurance should also want to consider methodology for determining the amounts of fines, based on a host of criteria including the size of the regulated entity, the market share, whether the problems have been corrected, and any host of mitigating or aggravating circumstances.

Standard Nineteen. Each Department of Insurance shall establish a process to follow-up on examination and/or investigative findings.

Competency: The Continuum
SubSection: Investigations

Investigations should be conducted in accordance with the Market Regulation Investigation Guidelines chapter in the *Market Regulation Handbook*. If applicable, investigations should be posted in MATS. If regulatory action is taken upon completion of the investigation, the regulatory action should be posted in RIRS. Note: These competency standards may also be applicable in agent misconduct cases.

The following standards apply to this competency:

Standard One. The Department of Insurance has the necessary authority to conduct an investigation into entities.

If the Department of Insurance has reason to believe an entity has violated or is violating any provision of the insurance code or upon complaint by any resident of its state, the Department of Insurance should have the necessary statutory authority to investigate. Such authority should include complete access to the accounting records, documents and transactions of anyone engaging in the business of insurance.

Investigations may be conducted by the Department of Insurance's examiners or investigators. The examiners or investigators should not remove, destroy or deface any account, record, document or property of the entity under investigation. The examiner or investigator may remove such documentation upon written consent of the entity, upon administrative subpoena or other statutory authority granted the Department of Insurance, or pursuant to a court order.

Standard Two. The Department of Insurance has the ability to keep records confidential, when appropriate.

The Department of Insurance should have the statutory authority to keep an investigation and its results confidential if no regulatory action is taken. The Department of Insurance should allow for the sharing of otherwise confidential information, administrative or judicial orders, or other action with other Department of Insurance regulatory officials or with law enforcement officials of any state or agency of the federal government. The Department of Insurance should have a documented policy to cooperate and share information with other regulators, with state law enforcement officials or agency of the federal government, and/or with NAIC, which may be reviewing and coordinating regulatory oversight and activities.

Standard Three. The Department of Insurance may develop a pre-investigation planning process.

Each Department of Insurance may prepare an investigation work plan prior to the investigation. The work plan or planning memorandum shall include:

- a. The justification for the investigation;
- b. The scope of the investigation;
- c. A time and cost estimate; and
- d. Costs, which may be billed to other sources.

Where applicable, information should be gathered from internal sources, including:

- a. Annual reports;
- b. Policy and form filings;
- c. Examination reports (financial, market); and
- d. Producer licensing files and applications.

Information should also be obtained from various NAIC databases including:

- a. RIRS (Regulatory Information Retrieval System);
- b. CDS (Complaint Database System);
- c. MATS (Market Action Tracking System); and
- d. SPLD (State Producer Licensing Database);

Standard Four. As soon as possible, each Department of Insurance shall enter the investigation into the appropriate NAIC database(s).

Initially, if the entity is one with a valid NAIC company code and the subject of a civil and administrative investigation, the matter should be entered into the MATS database. Should the investigation lead to an examination of a regulated entity, the status of the original MATS record should be changed to reflect this fact.

Standard Five. The Department of Insurance may require a written report of investigation at the conclusion of each investigation.

The report of investigation should adequately summarize the underlying documentation contained in the investigative file. The investigative file documentation should include but may not be limited to:

- a. Written notes of calls/interviews;
- b. Written statements;
- c. Summary and organization of relevant documents;
- d. Preservation of original evidence (when feasible); and
- e. Written findings and recommendations.

Standard Six. Upon conclusion of an investigation, the Department of Insurance should determine the appropriate investigative response or action, if appropriate.

At the conclusion of an investigation, the Department of Insurance may choose, but is not limited to, one of the following investigative actions:

- a. Contact the entity for response—If applicable, the examiner or investigator may request a written response from the entity as to his or her findings. Note: Sometimes, the entity does not know it is the subject of an investigation;
- b. Closing letter—The Department of Insurance may notify the entity that no violation was found. Note: Sometimes, the entity does not know it is the subject of an investigation;
- c. Warning letter—If a violation was found, but mitigating circumstances indicate an isolated incident or technical violation, the Department of Insurance should notify the entity of its findings to place the entity on notice that further violations may lead to the appropriate administrative, civil and/or criminal actions; and
- d. Choose an option from the continuum of market actions.

Standard Seven. If the investigation and/or the option chosen from the continuum of market actions determines that further action is necessary to correct the deficiency and/or statutory violation, the Department of Insurance may choose from, but is not limited to, the following enforcement options.

- a. Administrative complaint—An administrative complaint may be filed against the entity or individual who is the subject of the investigation. The examiner or investigator should review the results of the investigation with legal counsel for further advice;
- b. Cease and desist order—If the conduct uncovered is causing or is about to cause substantial harm, the Department of Insurance may issue a cease and desist order;
- c. Settlement agreement and/or consent order—The Department of Insurance should have the authority to enter into settlement agreements and/or consent orders at any time during the investigation phase. In this settlement agreement and/or consent order, corrective action may be agreed upon by the parties;
- d. Administrative fines or penalties and/or suspension or revocation of license(s); and/or
- e. Post-investigation audits, corrective action plans, and/or self-audits by the entity.

Standard Eight. **At the conclusion of any regulatory action, each Department of Insurance shall enter the appropriate information into the RIRS system.**
 Each Department of Insurance shall enter the appropriate information into the RIRS database as well as update any previous information provided to MATS or other NAIC databases.

Competency: **The Continuum**
SubSection: **Consumer Complaints**

The Department of Insurance shall have standards in place to receive and handle complaints and inquiries in accordance with the guidelines developed by the Market Analysis Procedures (D) Working Group. The Department of Insurance records complaints in a database and submits closed complaint data to the NAIC CDS on a regular basis. The Department of Insurance shall have standards for investigating complaints, responding to the complainant, and referring law violations for administrative action and reporting complaint patterns and trends to the Market Analysis Chief.

The following standards apply to this competency:

Standard One. **Each Department of Insurance shall have a unit or staff responsible for receiving consumer complaints and inquiries.**
 The Department of Insurance shall have a separate unit or individuals whose duties are to receive consumer complaints and inquiries.
 The unit or individuals have sufficient training and expertise to identify the elements of a complaint.

The unit or individuals have sufficient training and expertise to handle the complaints or to assign them to the appropriate Department of Insurance employee to handle.

Standard Two. **Each Department of Insurance shall establish criteria defining complaints and inquiries, the method of receipt and the content required in order to accept the complaint.**
 The Department of Insurance shall have, at a minimum, the definition of a complaint developed by the Market Analysis Procedures (D) Working Group.

The Department of Insurance shall have a process to accept complaint referrals from the NAIC Consumer Information Source (CIS).

The Department of Insurance shall, at a minimum, accept written complaints and have procedures for obtaining additional information from the consumer.

Standard Three. **The Department of Insurance shall have a process for acknowledging receipt of complaint, investigating the allegations and reporting the results of the investigation to the consumer.**
 The Department of Insurance shall establish criteria for determining if the Department of Insurance has jurisdiction over a complaint and communicating that information to the consumer.

Complaints requiring investigation are referred to the appropriate staff in the Department of Insurance for processing.

The Department of Insurance has procedures in place to make the regulated entity aware that a complaint has been filed and to provide an opportunity to respond to the allegations in the complaint.

The Department of Insurance reviews the response of the regulated entity and provides the consumer with a written response when the complaint file is closed.

Standard Four. The Department of Insurance shall have a process for identifying complaints involving violations and referring these complaints for administrative action.
The Department of Insurance has procedures to identify complaints that require administrative action.

Standard Five. Each Department of Insurance shall have a system for recording and tracking complaints in a database using a coding system to facilitate analysis and trending.
The Department of Insurance shall record complaints on receipt using uniform definitions and standard coding protocols.

The Department of Insurance's complaint tracking system contains sufficient data to compile and measure complaints by type, reason and company or licensee entity.

The database allows the Department of Insurance to track key elements of the complaint process including date received, date resolved and the current status of the complaint.

The Department of Insurance submits all, accurate closed complaints to the NAIC CDS in accordance with URTT criteria.

The Department of Insurance has a procedure in place to monitor the accuracy of complaint data.

Standard Six. Complaint analysts provide periodic reports to the Market Analysis Chief regarding complaint ratios, trends and significant individual complaints.
The Department of Insurance has procedures in place and provides regular reports on complaint patterns, trends, unusual activity and significant individual complaints.

The Department of Insurance calculates complaint ratios and provides information on outliers to the Market Analysis Chief.

Competency: Interstate Collaboration

Interstate collaboration may be accomplished by the following:

- Participation with the Market Actions (D) Working Group to include, but not be limited to, participation in calls and surveys;
- Timely entry and participation in the NAIC databases;
- Notifying the Collaborative Action Designee or Market Analysis Chief of the domestic Department of Insurance when you realize you are considering one of the continuum of market actions;

- Verifying the Department of Insurance can ensure the confidentiality of materials and data as necessary; or
- Following the collaborative actions guidelines for recommendations to the Market Actions (D) Working Group.

The following standards apply to this competency:

- Standard One.** The Market Analysis Chief or their designee is actively involved with the Market Analysis Procedures (D) Working Group and participates in the Working Group meetings.
- Standard Two.** The Market Analysis Chief or their designee must participate on the quarterly Market Analysis Procedures (D) Working Group/MAC conference calls.
- Standard Three.** The Collaborative Action Designee or their designee is actively involved with the Market Actions (D) Working Group.
- Standard Four.** The Department of Insurance participates fully in the NAIC databases and its submissions are timely, accurate and complete.
- Standard Five.** The referring Department of Insurance has taken recommended action on all companies it has referred to the Market Actions (D) Working Group. If a Department of Insurance refers a regulated entity to the Market Actions (D) Working Group agenda that results in a collaborative action, a lead Department of Insurance(s) will be identified and the lead Department of Insurance(s) will identify additional participating Departments of Insurance as identified in the *Collaborative Actions Guide*. The referring Department of Insurance should continue to participate and support the Market Actions (D) Working Group initiative.
- Standard Six.** The Department of Insurance follows the procedures in the Collaborative Actions chapter of the *Market Regulation Handbook*.
- Standard Seven.** Referrals to the Market Actions (D) Working Group are made when appropriate and when material issues may impact other jurisdictions. Referrals should be made by the Collaborative Action Designee, Deputy Insurance Commissioner, Insurance Commissioner or other individual designated by the Commissioner.
- Standard Eight.** Department of Insurance referrals and accompanying materials to the Market Actions (D) Working Group are provided in the format developed and approved by the Working Group or the NAIC Market Regulation and Consumer Affairs (M) Committee, as appropriate.
- Standard Nine.** In instances where the Market Actions (D) Working Group refers an issue to the Department of Insurance, and the Department of Insurance accepts responsibility for following through with the recommendation, the Department of Insurance reviews the issue in a timely manner and responds timely and appropriately to the Market Actions (D) Working Group.

- Standard Ten.** In lieu of any such examination or investigation, the Department of Insurance may accept the report of a similar examination or investigation made by the insurance supervisory official of another state.
- Standard Eleven.** The Department of Insurance participates in collaborative activities or communicates with other affected Departments of Insurance when there are common areas of concern between Departments of Insurance, but the issue is not appropriate for referral to the Market Actions (D) Working Group.
- Standard Twelve.** The Department of Insurance notifies the Market Actions (D) Working Group when a material issue has been detected and the regulated entity has offered to take corrective action in all impacted jurisdictions.
- Standard Thirteen.** When appropriate, the Department of Insurance participates in collaborative actions and settlements.
- Standard Fourteen.** Upon the reporting of any material adverse findings from the market analysis staff, the Department of Insurance should take timely action in response to such findings or adequately demonstrate the determination that no action was required.
- Standard Fifteen.** The Department of Insurance should make reasonable efforts to respond to inquiries from the Market Actions (D) Working Group, the NAIC Market Regulation and Consumer Affairs (D) Committee and other working groups formed by the NAIC to aid in the market analysis process.

Competency: Interstate Collaboration
SubSection: Collaborative Action Designee

The Collaborative Action Designee (CAD) is the one contact identified by the Director/Commissioner of each state/district/territory to have the responsibility for all communications related to interstate collaboration. The Department of Insurance should have an appropriate staff member assigned as the CAD to assure support and participation in multistate collaborative actions.

The following standards apply to this competency:

- Standard One.** The Department of Insurance has appointed a Collaborative Action Designee and promptly notifies the NAIC if the Collaborative Action Designee changes.
 The CAD or the CAD's designee shall have the authority to represent the Department in discussions regarding collaborative actions among states.
- Standard Two.** The CAD or his or her designee is actively involved with the Market Actions (D) Working Group.
 The CAD or when unavailable, a designee assigned by the CAD, shall participate in all Market Actions Working (D) Group meetings or conference calls that are opened to non-working group member regulators. If the state does not have a designee attending national meetings, the CAD or designee shall participate in each quarterly Market Actions (D) Working Group/CAD conference call.

- Standard Three.** **The Department of Insurance has procedures for the CAD to communicate with appropriate Department of Insurance staff regarding potential collaborative action issues and ongoing collaborative actions.**
 The CAD shall advise the appropriate staff in areas including, but not limited to consumer services, enforcement, market analysis and market conduct of the role of the CAD and procedures to notify the CAD of compliance issues that may affect multiple jurisdictions.
- The CAD shall establish a method of at least quarterly communication with the unit heads of these areas to follow-up on ongoing and potential collaborative actions.
- Standard Four.** **The CAD participates in communication with other Departments of Insurance regarding interstate collaborative actions.**
 The CAD, in coordination with the Department of Insurance's Market Analysis Chief, shall be responsible for posting and responding to communications on the NAIC Market Regulation and Market Analysis Electronic Bulletin Board. Information related to the role of the Market Analysis Chief (MAC) shall be handled by the MAC, and those related to potential or active collaborative actions shall be the responsibility of the CAD.
- The CAD shall coordinate responses and information obtained via the Bulletin Boards with the appropriate Department of Insurance staff.
- The CAD shall maintain communication with appropriate staff of the domestic regulator on issues and status related to potential collaborative actions.
- Standard Five.** **When authorized by the Department of Insurance Commissioner or Director, the CAD prepares referrals to the Market Actions (D) Working Group for potential collaborative actions affecting multiple jurisdictions.**
 The CAD shall follow the procedures of the Collaborative Actions Guide in the *Market Regulation Handbook* or the Market Actions (D) Working Group Procedures/Participation Guidelines, as appropriate, to determine if the matter should be referred to the Market Actions (D) Working Group.
- The CAD shall use the appropriate Market Actions (D) Working Group referral form and identify the issue(s), specific companies affiliated with the issue(s) and all requested information contained on the form.
- Standard Six.** **The CAD shall follow-up on Market Actions (D) Working Group referrals and if requested, report to the Market Actions (D) Working Group.**
 If the Market Actions (D) Working Group referral results in the Department of Insurance becoming a lead state in the collaborative action, the CAD shall coordinate the Department's handling of the matter and report as requested to the Market Actions (D) Working Group and other CADs.
- Standard Seven.** **In regard to privileged and confidential information they may receive from other participating states and the NAIC, the CAD and the Department of Insurance shall maintain said privileged and confidential information at least as confidential as required by the NAIC's Master Information Sharing and Confidentiality Agreement.**

Standard Eight. If the Market Actions (D) Working Group refers a matter to the Department of Insurance, the CAD shall relay the referral to the appropriate Department staff in a timely manner and respond appropriately and timely to the Market Actions (D) Working Group regarding the referral.

Standard Nine. The Department of Insurance has appropriate procedures in place for the CAD to communicate and where authorized by the Commissioner, provide recommendations on collaborative action settlements to the Commissioner or his/her designee.

Transmittal of collaborative action settlement documents and the Department's participation shall be made within the time frames established in the communication from the lead state(s) or the NAIC.