



Further Regulatory Oversight

...of Insurance Holding Company Systems

by Fred E. Karlinsky, Esq., Rich J. Fidei, Esq., and Elizabeth M. Fohl, Esq.

Whether national or operating in only one state, most insurance companies are part of insurance holding company systems. Insurance holding company systems are typically designed to streamline insurer and affiliate operations and limit risk for owners and investors. These systems act as economies of scale by providing effective cost reduction measures among the insurer and its affiliates (which ultimately can result in a reasonable investment return) while mitigating some of the risks involved. These structures may present a challenge for regulators when trying to evaluate the nature of financial transactions, costs incurred in such transactions, and the overall solvency of the insurer they are required to oversee.

As a result of these challenges—among others—and an increasing focus on systematic risk surrounding insurance companies and their affiliates, regulators have engaged in an effort to broaden and clarify their reach over U.S. insurance holding company groups. All fifty states currently require strict compliance with laws related to holding company operations and transactions. Recently, the NAIC amended its Insurance Holding Company System Model Act and Regulation to expand regulators’ reach over insurance holding company systems. There has been ongoing discussion as to whether the amendments



will be required for state accreditation by the NAIC. The following highlights some key amendments to the Model Act and Regulation.

Divestiture

Typically, acquiring parties that will have “control” of the insurer after the consummation of a proposed transaction are required to file a Form A application with the applicable regulator prior to closing the acquisition. “Control” means the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. “Control” is presumed if a person owns, controls, holds the power to vote, or holds proxies representing 10% or more of the voting securities of another person. In some circumstances, a disclaimer of control may be filed to rebut a presumption of control.

One element of existing law not addressed relates to dispositions of smaller ownership interests that do not meet the Form A threshold filing requirements. In response to a parent company donating its ownership interest in an insurer to several charities in percentage amounts under the Form A threshold and without notice to, or approval of, the regulator, the NAIC

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Past President's Remarks

by Leslie Krier, AIE, FLMI

Filling in for Tom Ballard, Leslie Krier, immediate past president of IRES, wanted to take this opportunity to provide IRES members with some farewell thoughts.

What a year it was! When I took over as president of IRES in August 2010, I warned you that it would be year of change—and change we did! I hope you find that these changes were for the good of IRES and helped us move forward in our mission.

Here are a few changes that I can list off the top of my head:

- A new management company
- A new designation program
- A new look to our brochures
- A new way to recognize those who work tirelessly for IRES (Chartrand Award)
- Online renewals
- Online registration for CDS
- A new look to *The Regulator* along with a new editor
- Webinars

I hope that these changes are just the beginning of many good things that we can do to move IRES into the future and help us keep IRES as a leader in insurance regulatory education and networking.

I couldn't do all of this alone. There are many great people who volunteer time and effort to make IRES successful and, as president, they made me successful, as well. I would like to say thank you to the myriad of people who helped me through this last year.

To the staff at Nonprofit Solutions: Thank you for putting up with me and for keeping me on the straight and narrow. You have no idea how grateful I am to you for listening, guiding, and fixing my screw-ups. You're the best and I look forward to continuing the work we started!

To the board of directors: Everything that we accomplished this past year is due to your hard work. We made difficult

decisions and moved in new directions that I'm not sure any of you signed on for when you ran for the board. Thank you from the bottom of my heart for hanging in there with me.

To my executive committee: You should be so proud of the work you did for IRES! You are an amazing group of people and I've told you already how much I appreciate everything you do for IRES. I could not have been successful in anything—much less in what accomplished this year—without you. I feel privileged to call you my colleagues and my friends.

To all IRES members: If you hadn't elected me to the board, I wouldn't have had this amazing journey. Thank you for having enough faith in me to serve IRES in this capacity. I enjoyed getting to know many of you, and I enjoyed my year as president immensely.

And lastly, thank you to my staff in the great State of Washington. You were the ones that ended up on the back burner or with extra assignments when IRES called. There is no way that I can be successful without all of you and the support you give me every day—not only when I'm working with IRES but each and every day when you're serving the people of our great state.

In closing, I just want to say thanks for the ride. It's been great and, although I'm happy to hand off the reins of IRES, I'd do it all again in a heartbeat. I've loved every minute. ■

Leslie Krier, AIE, FLMI, is the immediate past president of IRES and is currently the market conduct oversight manager for the State of Washington, Office of Insurance Commissioner. Leslie may be reached at lesliek@oic.wa.gov.



amended the Model Act and Regulation to require prior notice of the proposed divestiture. The amendments require any controlling person of an insurer seeking to divest its controlling interest to file with the commissioner confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. After submission of the notice, the commissioner will determine whether the transaction requires a formal filing and approval.

Consolidated Form A hearing

To mitigate the challenges involved when approvals are required in multiple states, the amended Model Act provides that the acquiring person may request a single, consolidated public hearing if approval of more than one commissioner is required for the proposed acquisition of control. In such case, the Form A applicant may file a copy of its Form A statement with the NAIC and request the consolidated hearing. A commissioner may opt out of the consolidated hearing, but the commissioner must provide notice to the Form A applicant of the opt-out within ten days of receipt of the statement.

Pre-Acquisition Notice

A Pre-acquisition Notice or Form E is required whenever there is a change in control of the insurer subject to certain limited exceptions. Previously, a Form E filing was not required in connection with a Form A filing, but the Model amendments now require this notice to be filed. Also, Form E now requires that the acquiring party provide a determination of whether the acquisition or merger violates state competitive standards as stated in Section 3.1D of the Model Act. If the transaction violates state competitive standards, the acquiring party must provide justification as to why the transaction would not lessen competition or create a monopoly.

Transactions subject to prior notice

The amendments to the Model Act expand the scope of agreements involving a domestic insurer and its affiliates that require prior notice to the commissioner and a period for review and possible disap-

proval. The amendments to the Model Act and Regulation clarify that amendments and modifications to transactions that are subject to prior notice are required to be filed. In addition, with respect to terminations of previously approved affiliate agreements, “[i]nformal notice shall be reported... to the commissioner for a determination of the type of filing required, if any” within 30 days after such termination.

Concerning affiliate reinsurance agreements, the prior Model Act required filing of only agreements in which the reinsurance premium or a change in the insurer’s liabilities equaled or exceeded five percent of the insurer’s surplus as regards policyholders. The amendments now also require filing of reinsurance agreements, or modifications thereto, in which the “projected reinsurance premium or a change in the insurer’s liabilities in any of the next three years” equals or exceeds five percent of the insurer’s surplus as regards policyholders. Additionally, filings will also be required for all affiliate reinsurance pooling agreements and all tax allocation agreements.

The amended Model Regulation requires a statement that the transaction is “fair and reasonable.” Also, a brief summary of the effect upon the insurer’s surplus should be included for management, service, and cost-sharing agreements. Other statements to be provided include whether the cost allocation methods used are based on “cost or market” and one regarding compliance with the NAIC Accounting Practices and Procedures Manual.

The NAIC amendments include new requirements for agreements for cost sharing services and management services. At a minimum and as applicable, agreements for cost sharing services and management services are required to:

- Identify the person providing services and the nature of such services;
- Set forth the methods to allocate costs;
- Provide for timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
- Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

- State that the insurer will maintain oversight over functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
- Define books and records of the insurer to include those developed or maintained under or related to the agreement;
- Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
- State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer;
- Include standards for termination of the agreement with and without cause;
- Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
- Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under the State Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered; and
- Specify that, if the insurer is placed in receivership or seized by the commissioner under the State Receivership Act:
 - all of the rights of the insurer under the agreement extend to the receiver or commissioner; and,
 - all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner’s request; and
- Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the State Receivership Act.

The amendments have significantly expanded the powers of the commissioner to examine any insurer *and its affiliates* to ascertain the financial condition of the insurer

Enterprise Risk Report

The most dramatic change to the Model Act and Regulation is the new requirement to file an Enterprise Risk Report, or Form F. It requires the ultimate controlling person(s) to provide information identifying potential enterprise risk to the insurer or the holding company system as a whole. “Enterprise risk’ is any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer’s RBC to fall into company action level or would cause the insurer to be in hazardous financial condition.”

Form F is required to be filed annually or upon request. In connection with a Form A filing, the acquiring party must agree to file information within Form F. Alternatively, companies may submit their most recent parent corporation reports that have been filed with Securities and Exchange Commission (SEC), but only as long as it includes specific references to the areas required in the Form F. The information required to be included in Form F includes the following:

- Any material developments regarding strategy, internal audit findings, compliance, or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system

exceeding ten percent (10%) or more of voting securities;

- Developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;
- Business plan of the insurance holding company system and summarized strategies for the next 12 months;
- Identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in the last year;
- Identification of insurance holding company system capital resources and material distribution patterns;
- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon;
- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and the individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook); and
- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

Financial statements

The amendments specify that, if the commissioner so requests, the insurer is required to provide financial statements of or within the insurance holding company system, including affiliates. This may include annual audited financial statements filed with the SEC. An insurer may satisfy these requirements by filing its recently filed parent corporation financial statements that have been filed with the SEC.

Role of the board of directors

In response to earlier drafts circulated by the NAIC, the proposed amendments were criticized regarding the role of the insurer's board of directors and certain statements pertaining to corporate governance required by the board of directors in the holding company system registration statement. Several industry trade associations urged the NAIC to not require certain representations and warranties by the board of directors. This was in part based on the industry's position that longstanding corporate governance laws established by the states were satisfactory in this respect. The NAIC responded that this enhancement in the registration statement was to bring the registration statement in line with the NAIC Model Audit Rule and that such statements were not intended to modify applicable state insurance and/or corporate law requirements.

Ultimately, the NAIC proposed two alternate provisions for adoption by the states. The first alternative would require a statement that the insurer's board of directors "oversees" corporate governance and internal controls. The second alternative would require a statement that the insurer's board of directors is "responsible for" and oversees corporate governance and controls. The latter statement provides for a heightened level of control and responsibility in the board of directors. Each state will need to choose the appropriate alternative under its laws. Much debate can be expected as the states consider these alternatives and the potential legal obligation and implications for board members.

Examinations

Under existing standards, the commissioner has authority to order any insurer to produce books, records, and other information in the possession of an insurer or its affiliates. The amendments have significantly expanded the powers of the commissioner to examine any insurer *and its affiliates* to ascertain the financial condition of the insurer, "including the risk of financial contagion to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a

consolidated basis." The effect of this provision is not definite as it is unclear how state insurance regulators will use the information obtained from these various reports and examinations.

Furthermore, to determine compliance with the insurance holding company systems laws, the amendments authorize the commissioner to order an insurer to produce information not in possession of the insurer if the insurer can obtain access to the information pursuant to any contractual relationships, statutory obligations, or another method. If the insurer is unable to produce the information, it may provide a detailed explanation as to why it was unable to produce the information. However, if the explanation is without merit, the commission may require the insurer to pay a penalty of a certain amount or suspend or revoke the insurer's license after notice and hearing.

The amendments further provide that the commissioner is authorized to issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with the insurance holding company system laws. All persons are obliged to appear as a witness no matter where located in the state and may be compensated for expenses. Failure to comply may result in a court order compelling appearance or production of documents and, if the person fails to obey the court order, may result in punishment of contempt of court.

Supervisory colleges

Under the amended Model Act and Regulations, the commissioner may participate in supervisory colleges. Supervisory colleges are working groups comprised of U.S. and non-U.S. regulators of an affiliated group of insurers. The purpose of this authority is to assess business strategy, financial condition, legal and regulatory position, risk exposure, risk management, and governance processes as a part of the examination of the insurer. The insurer is generally liable for expenses of the commissioner's participation in a supervisory college. It appears that this new authorization is based on similar concepts in Europe's existing banking and insurance

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Market Conduct of Title Insurance

Part Two of a Two-Part Report on Title Insurance

by Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS

In the first article, *Demystifying Title Insurance* (*The Regulator*, Summer 2011), similarities and differences between title insurance and property and casualty (“P&C”) insurance were presented. The same will be done here as we explore market conduct examinations of title companies and agencies.

Some state laws will apply to both title and P&C, such as those dealing with producer licensing and unfair trade practices (rebating and illegal inducements); there are others that will only apply to title, such as those related to escrow accounts, mono-line requirements, closing protections letters (CPL), and releasing reserves, to name just a few. In addition to differences between title and P&C lines, there are also many differences in state laws, which can result in multi-state companies and agencies struggling to maintain compliance in foreign jurisdictions.

Market analysis

Regulators typically will begin the examination process by conducting market analysis to determine what is occurring in the marketplace, which company or agency they should examine, and what the scope of an examination should be. An examination may include applying a continuum action, conducting a risk assessment, or performing either a narrowly focused or “comprehensive” examination of the targeted company or agency. Examinations can be done on-site or remotely by an outside vendor, a state’s market conduct section, or by several states working together (known as a multi-state examination). Market analysis, along with other elements, will help regulators to determine the best approach for the examination.

Unfortunately, the basic tools for conducting market analysis (which are available for other insurance lines, including the collection of certain data) have not been available in a useful form for title insurance. The United States Government Accountability Office’s (GAO) 2007

Report on Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers (GAO-07-401) also pointed out the need for regulators to learn more about the marketplace.

State regulators and the NAIC have recently taken several steps together to provide regulators with additional information to help with market analysis of title insurance. Beginning in 2011, companies’ annual statement filings will now include a “state page” for title insurance, which helps regulators look at annual statement elements that pertain specifically to title insurance. The last article mentioned that a “Title Agent Statistical Data Plan Implementation Guideline” was in the process of being approved by the NAIC’s Title Insurance Task Force. This guideline was approved during the 2011 Summer National Meeting; hopefully, most (if not all) states will adopt the guideline and its statistical plan. The statistical plan will give information that is more useful to state regulators about the business of title insurance in the marketplace and at the agency level.

The previous article (*Demystifying Title Insurance; The Regulator*, Summer 2011) mentioned five benefits to consumers when purchasing title insurance and obtaining a CPL. These included:

1. Providing peace of mind knowing there is clear title and, if the title is not clear, there is insurance to protect the owner against losses incurred;
2. Ensuring all payments were made to prior lienholders (CPL);
3. Providing coverage to the owners for an unlimited amount of time;
4. Paying a premium for title insurance only once (single premium); and
5. Knowing that escrow funds were set up and held in a fiduciary capacity.

Using these five elements as an example, regulators will be able to verify that a company or agency is managed and performs in a manner that ensures that



it is safe, sound, and entitled to the trust of the public. Some of these elements are reviewed by market conduct examiners and others by both market conduct and financial examiners, such as in item one listed above.

As stated earlier, conducting a market conduct examination of a title company may include looking at all of the elements (comprehensive) or may only look at one or a few of the business areas (narrowly focused or targeted examination). Regardless of the scope of the examination, the process will likely follow the suggested examination procedures as outlined by the Market Regulation Handbook.

The Market Regulation Handbook

The NAIC Market Regulation Handbook (MRH) is the primary guide for market conduct regulators doing market conduct examinations. I learned the value of the MRH when I was still at Allstate. The MRH should be used by insurance companies to develop their own compliance self-audit programs. The MRH guides the regulator in performing market analysis and in conducting a market conduct examination. I encourage all regulators and industry compliance professionals to use the MRH.

The main guts of any examination are found in Chapter 16: General Examination Standards. Chapter 16 outlines the standards to be used in conducting an examination of any type of insurance company. The general standards include seven broad business area categories and 57 collective



standards (Business Area/Number of Standards):

1. Operations/Management (18)
2. Complaint Handling (4)
3. Marketing and Sales (3)
4. Producer Licensing (6)
5. Policyholder Service (7)
6. Underwriting and Rating (9)
7. Claims (11)

Regulators will be able to verify that a company or agency is managed and performs in a manner that ensures that it is safe, sound, and entitled to the trust of the public

Each standard under the seven standard categories follows a similar format and includes the stated standard, who it applies to, what the priority is (recommended or optional), what documents are suggested for review, what NAIC Model (law) the standard emanates from (references), and more detailed review procedures and criteria (how to look at the information and what to look for). Before a state can proceed with an examination, it must first reconcile the standards with its respective laws and regulations (statutes, rules, bulletins, etc.). Because the standards were developed to encompass all states and territories, they were derived primarily from the model laws. Since the model laws have not been adopted by every state and only partially by others, the process of reconciling the standards to state regulations is a very important step in the examination process.

In addition to the seven business area categories and their respective standards, there are an additional six title insurance business area categories with multiple subsequent standards found for each in Chapter 18: Conducting the Title Insurance Company and Title Insurance Agent Examination. Chapter 18, which focuses on conducting title insurance company and agency market conduct examinations, builds on Chapter 16. For instance, regarding the Operations/Management portion of an exam, the MRH in essence

says to use the 17 standards included in Chapter 16 for Operations/Management plus an additional five title insurance related standards. The Marketing and Sales portion says to use the three standards in Chapter 16 plus three additional standards. In the case of Producer Licensing, however, Chapter 18's guidance indicates that the six general standards from Chapter 16 are not applicable to a title insurance examination but provides others that may be more appropriate to the title line.

Two of the additional six business area categories for title insurance in Chapter 18 are Escrow, Settlement, Closing or Security Deposit Funds (which has three standards) and Title Insurance Producer (Agent) Licensing and Relations (which has five standards). The other four business area categories in Chapter 18 do not have specifically identified standards. The categories are Special Considerations for Title Insurance Companies and Title Insurance Agents, Example Title Letter, Example Title Interrogatory, and Sample Checklist. These additional standards are pretty intuitive to the title insurance business but it is important to reiterate that each state's title and insurance laws differ enough that the applicability of any one standard is subject to each state's respective regulations.

In total, there are 50 standards for title insurance.

A walk-through



Before we look at the general and specific standards categories, I will explain a little more about how a state might use this information.

Essentially, a typical market conduct examination seeks to verify three things regarding the practices and procedures (or conduct) for a given company. First, an examination will verify that a company's conduct complies with state statutes. Second, it will verify that the company's conduct complies with the company's own standards (established procedures and manuals). And third, an examination will verify that the company's conduct is "in the best interest of the consumer." Now let's take a look at the general standards that

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regimes (Basel II and Solvency II). However, it is unclear how supervisory colleges will be implemented in this context.

Conclusion

Currently, Texas, Rhode Island, and West Virginia have been reported to have enacted in some form the NAIC's amendments to the Model Act and Regulation. Many more states are expected to follow, especially if certain amendments are required for state accreditation by the NAIC. As states adopt and implement the amendments, regulators as well as stakeholders in the industry will be required to implement and address practices to ensure compliance with all applicable standards. ■

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2012 IRES Career Development Seminar

HOLLYWOOD, FL • WESTIN DIPLOMAT RESORT • AUGUST 26–28

Let the Planning Begin!

by Barry Wells, CCLA, MCM

I don't know about you, but to me it seems like it was only yesterday that we were enjoying the company of friends and colleagues at the Career Development Seminar (CDS) 2011 in Minneapolis as we came together in pursuit of "Finding the True North of Insurance Compliance and Regulation." We hope you'll agree that this CDS *did* help to increase and enhance the understanding and skills associated with insurance regulation for our members and guests. In fact, based on the formal and informal feedback we received from many of our members, we know that this CDS was one of our more successful conferences and that this annual event continues to serve as a relevant and important aspect in helping to achieve our organization's goals and objectives, which are summarized as follows:

The Insurance Regulatory Examiners Society (IRES) is an association of professional insurance regulators dedicated to consumer protection. IRES helps to promote fair, cost effective, and efficient insurance regulation by ensuring professionalism and integrity among the individuals who serve state and federal insurance regulatory bodies.

Speaking of feedback... As you might suspect, it's *your* feedback that we start with as we begin the CDS planning process for 2012. Your feedback is extremely important and helpful as we evaluate what worked well for the 2011 CDS and what we may need to "tweak" for 2012 as we work to develop a robust and interesting agenda, which will help to make the next event even more successful. As a bit of

a teaser, we believe our members will be pleased with the theme chosen for next year's CDS, which is "Brighten your Regulatory Skills in the Sunshine State."

So now you know the theme. What about the agenda? Well, it's still too early to share many of the details, but let's just say that, based on your feedback, there will be "more of this and less of that." Seriously, though, we are discussing many topics, areas of interests, and approaches to presenting the information in a substantive and efficient manner to keep attendees engaged and interested during the meetings. We want to create an agenda that not only recognizes your feedback in a meaningful way but will also stimulate some real "I gotta be there" interest in attending CDS. For example, one idea we're discussing is to offer a focused Regulatory Skills Workshop during the CDS that is focused on helping our members enhance their skill sets. We believe enhancing skill sets is becoming an ever-increasing priority as we witness so many new regulatory challenges. We hope you'll agree!

Another idea being considered involves extending the conference schedule to have interested participants stay through Wednesday to afford members an opportunity to increase their CDS learning experience. Again, please stay tuned for more details as the agenda comes together and we have the opportunity to share ongoing information with our membership. With that said, we want to also let you know that it's never too late to share your thoughts and suggestions for the

upcoming CDS. We encourage you to contact any of the following members of our CDS Leadership Team to share your ideas and suggestions:

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Finally, as we look towards the end of another year, we want to extend our very best wishes to you and your family with the hope that you'll enjoy a happy, safe, and joyous holiday season. We look forward to seeing everyone at next year's CDS in the Sunshine State! ■

Barry Wells, CCLA, MCM is a director in the Regulatory Insurance Consulting Practice for RSM McGladrey, Inc. Prior to joining RSM McGladrey, Barry was a consultant with Arthur Andersen and previously spent 17 years in industry with the Chubb Group of Insurance Companies.



2012 IRES Career Development Seminar

HOLLYWOOD, FL • WESTIN DIPLOMAT RESORT • AUGUST 26–28

We're Going to Hollywood!

(Hollywood, Florida, That Is!)

by Tom McIntyre, CIE, MCM, CCP, CPCU, FLMI, AIRC, APA, ARA, ACS, CWCP, CICS

The 2012 IRES Career Development School (CDS) will take place in beautiful Hollywood, Florida, from August 26–28, 2012, at the Westin Diplomat Resort.

Did you know that Hollywood is located between Fort Lauderdale and Miami? Why not plan your family vacation around IRES' CDS? In this first part of our series, here are some exciting things to do in the Fort Lauderdale (the Venice of America) area:

Mai-Kai Polynesian Dinner Show –

Spend an evening experiencing one of the Fort Lauderdale area's most heralded dining and entertainment experiences.

Jungle Queen Riverboat Fort Lauderdale

– Take a journey through the “Venice of America” with the Jungle Queen Riverboat three-hour sightseeing cruise or the four-hour “all you wish to eat” barbeque dinner cruise (offering a choice of ribs, chicken, or shrimp, and all the trimmings and topped off with a hilarious Vaudeville-style variety comedy show).

Sawgrass Recreation Park Everglades

Airboat Tour – Your trip to sunny south Florida would not be complete without spending some time exploring the vibrant, subtropical ecosystem of the Everglades.



Cultural Fort Lauderdale Shopping Tour

– Enjoy the history and charm of old Fort Lauderdale with the Cultural Fort Lauderdale package.

Fort Lauderdale Duck Tours – Climb aboard the 39-foot amphibious Hydra Terra for a magnificent scenic tour of the inter-coastal waterways of Fort Lauderdale Florida and the city itself with the Fort Lauderdale Duck Tours.

Swamp Safari Day Package – Take a day to explore the natural side of South Florida at Billie Swamp Safari on the Big Cypress Seminole Indian Reservation.

The Galleria at Fort Lauderdale Shopping Tours

– The Galleria at Fort Lauderdale is conveniently located near Interstate 95 and Sunrise Boulevard and has all your favorite brand names, such

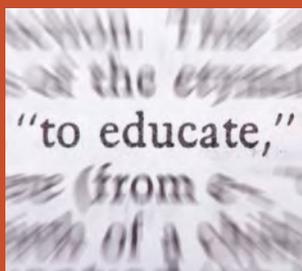
as Journeys, Nine West, Abercrombie & Fitch, Ann Taylor, Banana Republic, Bebe, Charlotte Russe... to name a few!

Twilight Guided Buggy Expedition – Enjoy a one-hour swamp buggy ride and interesting campfire stories, including a night swamp buggy eco-Tour, and guided stargazing.

For additional information, please visit the City of Fort Lauderdale's website at <http://ci.ftlaud.fl.us/>.

In our next issue, look for Part Two, which will list various things to do in Miami—the Magic City! ■

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will apply to all types (lines) of insurance companies, including title, as well as the additional standards dedicated to examining a title company or agency.

Operations and Management: This general category encompasses verifying how the company implements self-governance for compliance (self-audits and third-party relationships) and looks at the written policies and procedures for management oversight of systems and information. It includes looking at computer systems (access and disaster recovery); transaction and business records retention; the protection, use, and disclosure of consumer non-public information; privacy notices; anti-fraud (detection, prosecution, and prevention); and cooperation during an examination. Standards associated with title insurance include ensuring that the company acts only within the statutorily allowed scope of title insurance laws and is compliant with respect to board member affiliations, errors and omissions, business diversification requirements, and title plan management. Again, it is worth reiterating that all standards are subject to applicability within a specific jurisdiction (state or territory).

Complaint Handling: This category includes verifying that the company/agency is logging and maintaining proper complaint registers, maintains and advertises to policyholders about complaint handling procedures, and processes complaints as required by law (e.g., timely, accurate, and complete). There are no additional title standards.

Marketing and Sales: In this examination standard, the state seeks to ensure that sales and advertising materials and producer training manuals and procedures are in compliance with applicable laws. It also looks at the communications from the company that is ultimately responsible for sales and advertising material to its producers who will be using the material. The additional title-related standards include looking at Affiliated Business Arrangements (AfBA) and other controlled business and making sure that there are not any illegal inducements associated with the referral of business that is unique to the title insurance industry.

Producer Licensing: Because of the unique marketing of title insurance relative to other types of insurance (where it is uncommon for individual producers to act as individual producers outside of the employment of an agency), Chapter 18 has adopted its own producer licensing standards.

Policyholder Services: Contrary to producer licensing standards, policyholder services actually involve areas that may not be applicable to title companies. Chapter 18 indicates that the examiner should use the general standards. According to the MRH, the policyholder standards are “designed to test a regulated entity’s compliance with statutes regarding notice/billing, delays/no response, and premium refund and coverage questions.” The regulator may find some guidance from these standards but will likely adopt portions when developing state specific programs for examination.

There is not a week that goes by that I do not see some sort of impropriety whereby a title agent has misguided funds from his fiduciary responsibility into his own hands

Underwriting and Rating: Many of the obvious items that you would imagine are involved are, such as ensuring that rates, forms, endorsements, etc. are compliant and filed in accordance with applicable statutes and do not unfairly discriminate, and that both the company and its appointed producers use only the approved versions. The additional title standards add elements related to simultaneous rates, re-issue and refinance credits, and collusion in setting rates. The standards also contemplate “other” charges and fees (when regulated), CPL and other indemnity practices, document recordation procedures and experience, and the coding of policies.

Claims Handling: The Claims Handling standard is the last examination standard, but it is by far the least. As in all examinations that include claim handling, the emphasis is on ensuring that the company

handles claims timely, accurately, and completely and without violating unfair trade practices such as forcing an insured to sue the company before they will settle a claim. The title standards for claims also includes indemnification of a proposed insured solely against the loss of settlement funds and ensuring that loss statistical coding is complete and accurate.

Follow the money

Does the state require title agents to have a separate fiduciary trust account to hold escrow or closing monies?



Depending on the state, title agents will perform other duties, including the collection or disbursement of premiums, escrow or security deposits or other funds, and the handling of escrows, settlements, or closings. This could be sizeable! It also leads to temptation. There is not a week that goes by that I do not see some sort of impropriety whereby a title agent has misguided funds from his fiduciary responsibility into his own hands. Regulators need to follow the dollar transactions.

As mentioned in the earlier article, the HUD-1 Settlement Statement is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with a settlement. Commitment letters and disbursements instructions need to be reviewed. Regulators need to verify what transactions the agent is performing and then verify that all amounts received at a closing are disbursed as they were intended.

All of this gets to the three standards mentioned earlier that are specific to title insurance in the business category standard of Escrow, Settlement, Closing or Security Deposit Funds. This also meets the second and fifth benefit mentioned above to a consumer: ensuring all payments were made to prior lienholders and knowing that escrow funds were set up and held in a fiduciary capacity. It could be the regulated entity the regulator is reviewing that is responsible for receiving and distributing those payments to lienholders and it is therefore the regulator’s responsibility to follow up in this regard. The market conduct examiner

also needs to make sure the premium was distributed and received by the title company.

Kickbacks and rebates

The downturn in the economy beginning in the fall of 2008 has affected title insurance immensely. There are fewer agents, fewer title companies, and fewer home sales, but there is an increase in competition in the marketplace. Regulators have tried—and were successful, in many cases—to curtail any kickbacks and rebates in procuring title insurance business to the title company. Many regulators have said that the margins are so reduced that there are not as many kickbacks and rebates at this time. That does not mean to say the problem is past us. Regulators need to be vigilant.

Advertising and referrals

Many states have very unique laws or regulations related to advertising and referrals. In some states, no amount of money or item of value is allowed; in others, the amount may be limited to \$50. Regulators

could also determine inappropriate actions by reviewing closing and escrow documents revealing any agreements between the lender and the title agent guaranteeing any prices other than the title agent's filed fees or charges were made. Regulators should also obtain a list of all disbursements pertaining to advertising, sales and marketing, and promotional activities to be certain the state laws are being met.

At the end of the day...

A market conduct review of a title insurance company or title agent cannot be performed by a novice. An experienced person who knows what title insurance is and what the differences and similarities with P&C business are is of utmost importance in conducting an examination of a title company or title agent. If you are a company or an agency and you are looking to establish a compliance program, you are encouraged to work with your state regulators. Some states are moving towards the implementation of risk assessments that test a company's "self governance" before they conduct a market conduct examination. Part of the theory behind the

use of risk assessments is to eliminate an unnecessary use of an examination if the regulator can determine that a company is actively self-governing and can demonstrate through the assessment that there is no need to look further (transparency recommended). By working with your state regulators to set up your system, you are essentially inviting the regulator to see what you are doing even before they might initiate the assessment. That may go a long way towards giving your regulator a sense of confidence that you are successfully self governing your company for continuous compliance. ■

Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS, is senior regulatory services advisor with the NAIC. Before joining the NAIC in 2006, Joe spent nine years at Wolters Kluwer Financial Services and more than 20 years of his insurance career with the nation's largest personal lines stock company. Joe currently serves as an elected board member of the Kansas City Chapter of the CPCU Society and as chair of the Regulatory and Legislative Interest Group Committee of the CPCU Society.

Regulatory Roundups

The Experiment Continues...

Florida

by Travis Miller

Governor seeks to reduce size of residual market

Florida's residual property insurance market, Citizens Property Insurance Corporation, continues to grow and poses a threat of potential deficit assessments from future hurricanes. Governor Rick Scott is seeking recommendations from Citizens and others for privatizing the residual market or significantly reducing its size. The governor has asked Citizens to present its recommendations in December.

Catastrophe fund capacity under review

The Florida Hurricane Catastrophe Fund (FHCF), which sells a low-cost form of

reinsurance to residential property insurers, says that global financial conditions create a narrow margin by which it expects to meet its obligations. The FHCF proposes to address this by gradually reducing the capacity it offers and increasing its price. However, some observers are concerned that the FHCF's proposals will increase insurance rates and be detrimental to efforts to reduce the size of Florida's residual property market. This issue will be debated in Florida's 2012 legislative session, which begins in January.

New deputy commissioner named for life & health insurance

Michelle Robleto has joined the Office of Insurance Regulation as its deputy commissioner for life and health. In this

capacity, she will oversee the life and health product review section and the life and health financial oversight section. Ms. Robleto most recently served as the director of the Division of State Group Insurance within Florida's Department of Management Services. ■

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Joplin, Missouri: A Day to Remember

by Lisa Crump

May 22, 2011, is a day that changed life in Southwest Missouri—especially Joplin. When you live in “tornado alley,” it is a fact that, every spring and fall, one is likely to experience bad weather with severe storms and tornadoes that can spawn from these storms. The storms are not like a hurricane or flood as they are random, can range in severity, usually have little warning, and can change one’s life in an instant.

On that May 22nd day, it was a pleasant spring Sunday afternoon in Joplin. People were relaxing at home, barbecuing, shopping, or dining out. As you may have heard, Joplin is a tight-knit community. Many family members live only a few miles away from each other. Some live right across the street. Joplin was built on top of lead mines, and many of the homes in the center of town were several years old and built on small lots (like most homes were during that time of our country). As Joplin grew, so did the size of lots and also the size of homes.

That day, a short 75 miles away in Springfield, Missouri, I was visiting my grandmother in the nursing home. When word came that a powerful storm was brewing to the west, I decided to leave the nursing home for home. As I left the nursing home, I looked at my cell phone and noticed that I had missed a call; the message said “come home now!” That was my first inkling of what was setting up to occur. As I entered our house, the local news was blaring on TV. I heard the weatherman report: “Tornado on the ground in Joplin, crossing Range Line Road.”

Having grown up in a small town 40 miles away as the crow flies, this was nothing new. Throughout my lifetime (and my parents’ lifetime), Range Line

Road was always getting hit now and then by a tornado. Only in the last 10 years or so, it seemed that the storm damage had moved further to the east. Pierce City had been wiped off the map a few years ago, the outskirts of Marionville had also seen damage twice along the same path in the last three years, and Stockton had been hit not that long ago.

However, the urgency of the weatherman’s voice did cause me to take notice. I hurried to the other room and turned on the Weather Channel. What I was about to witness is what many of you throughout the country witnessed, as well: an entire town severely damaged by an EF5 tornado. The only thing left standing was the remains of St. John’s Hospital. What was hard to understand was that there should have been business, homes, and multi-family complexes all around the hospital and down the roads. Instead, all that was there was rubble when news cameras canvassed the area. It wasn’t until a few days later, when I saw a “before and after picture” of an insurance agent’s office (below) did I realize the magnitude of this storm. Unless

you have witnessed this in person, the pictures do not do justice.

The insurance company that I worked for at the time was thrown into alert status. This wasn’t some storm that happened states away; it was just down the road. As time passed, it wasn’t long before my life changed, as well. Thanks to an offer from Missouri Insurance Director John M. Huff, I found myself back as a regulator working at Governor Jay Nixon’s newly-opened State Resource, Recovery & Rebuilding Center in Joplin. The stories that I heard were touching. Everyone coming in had a story to share. Most were unbelievable, some funny, some inspiring, and some just sad. The days and hours flew.

I’ve heard incredible stories about the fortitude of Joplin. It’s a group of people who had sustained an EF5 tornado but have moved forward and are working for the future. A FEMA representative told me that, the day after the storm, trucks came in with supplies of water. Lines began to form. There was no pushing or shoving or jumping ahead; everyone waited patiently until it was his or her turn. That’s the

Midwest. When deadlines were set for debris to be removed, people worked day and night in 100-degree weather for days at a time to meet the deadline. It wasn’t just a deadline to them; it was their future.

On September 13, 2011, the Missouri Department of Insurance announced that insurance payouts from the tornado had surpassed \$1 billion. Director Huff has said publicly he expects the total amount to approach the \$2 billion mark when all claims are settled, making it easily the largest insurance event in Missouri history.

What hasn’t been said and needs to be is how we have all worked together.



Insurance is that intangible asset that can never be touched until an event occurs. Agents go out and sell it on that idea. Shortly after I was in Joplin, I attended a city council meeting. After the meeting was over, I heard several members of the council talking among themselves about how pleased they were with the insurance companies they'd worked with. Some already had their checks while others were expecting one soon.

When it comes to insurance, we have all worked together: the regulators to educate consumers and make sure that everyone plays fairly, and the companies who make good on their promise to cover. It's been a privilege to serve in Joplin's recovery. ■



Lisa Crump works for the Missouri DIFP as a disaster recovery coordinator. She is a 24-year veteran of insurance, having spent the last 12 years with industry (ANPAC) and, prior to that, working in the Missouri Department of Insurance as a market conduct examiner. She has also worked as an agent for a prominent life company. Lisa is currently an IRES board member and past member of the IRES Foundation Board.



2012 Proposed Charges

...of the Market Regulation and Consumer Affairs (D) Committee

The mission of the Market Regulation and Consumer Affairs (D) Committee is to monitor all aspects of the market regulatory process for continuous improvement. This includes market analysis, regulatory interventions with companies, and multi-jurisdictional collaboration. The committee will also review and make recommendations regarding the underwriting and market practices of insurers and producers as those practices affect insurance consumers, including the availability and affordability of insurance. The following charges were adopted by the (D) Committee this fall at the NAIC meeting.

Ongoing support of NAIC programs, products or services

1. Provide policy recommendations regarding the centralized collection and storage of market conduct data, national analysis, and reporting at the NAIC. Monitor implementation, with a specific focus on confidentiality and public availability of data. – *Essential*
2. Monitor and assess the current process for multi-jurisdictional market conduct activities and provide appropriate recommendations for enhancement, as necessary. – *Essential*
3. Oversee the activities of the Market Information Systems (D) Task Force. – *Essential*
4. Oversee the activities of the Antifraud (D) Task Force. – *Essential*
5. Appoint a **Market Actions (D) Working Group** of 16 individuals to facilitate interstate communication and coordinate collaborative state regulatory actions. – *Essential*
6. Appoint a **Market Conduct Examination Standards (D) Working Group** to develop market conduct examination standards. – *Essential*
7. Appoint a **Consumer Connections (D) Working Group** to: 1) provide a forum for dialogue among the state consumer service representatives to share best practices and enhance consumer advocacy efforts; 2) provide a forum for dialogue among state consumer service representatives, consumer groups, regulators, and the industry regarding current marketplace issues; 3) advance recommendations to the Market Regulation and Consumer Affairs (D) Committee for further interaction with appropriate technical working groups and receive tasks as assigned by the Committee. – *Essential*
8. Appoint a **Consumer Disclosures (D) Working Group** to: 1) Develop a work product outlining best practices and guidelines for use by state insurance regulators in developing information disclosures for insurance consumers. The product would include a discussion of situations in which consumer disclosures are appropriate and can reasonably be expected to address a market problem and/or empower consumers. The best practices and guidelines would address effective ways to create and deliver information disclosures and would be applicable across product lines. 2) Monitor state implementation of the Privacy Disclosure Model Bulletin. 3) Provide a recommendation on how to sunset the safe harbor of compliance with state privacy notice requirements through the use of the sample clauses in the NAIC *Privacy of Consumer Financial and Health Information Regulation* (#672). 4) Assess consumers' understanding of the standards of care associated with the sale of insurance products, as recommended by the U.S. Government Accountability Office (GAO) in its report titled, "Consumer

Congratulations!

The following members have received their AIE, CICSAR, CIE, or MCM designation since the last issue of *The Regulator*. Please join us in congratulating them!

AIE

- ★ Tony Greer, AIE, MS
- ★ Elizabeth Klicker, AIE, OR
- ★ Christine Mavour, AIE, CIE, NY
- ★ Marc Springer, AIE, MCM, CPCU, unaffiliated
- ★ Gennady Stolyarov, AIE, NV
- ★ Courtney Williams, AIE, NY

CIE

- ★ Tina Hansen, CIE, MO
- ★ Frank Kyazze, CIE, MCM, ALHC, FLMI, PA
- ★ Christine Mavour, AIE, CIE, NY
- ★ Robert Reichart, CIE
- ★ Karen Rimel, CIE, MO

Welcome, New Members!

The following individuals have joined IRES since the last issue of *The Regulator*. Visit the online member directory to learn more about them—and please join us in welcoming them!

- ★ Sarah Bailey, AK
- ★ Pauline Hall, unaffiliated
- ★ Patricia Kraven, unaffiliated
- ★ Christine Mavour, CIE, NY
- ★ Philip Rowley, unaffiliated
- ★ Maribel Salonga, CA
- ★ Lee Sidebottom, VA
- ★ Gennady Stolyarov, AIE, NV
- ★ Courtney Williams, AIE, NY
- ★ Karin Zimmerly, unaffiliated

The following organizations have also joined IRES since the last issue of *The Regulator*.

- ★ Central States Health & Life Co. of Omaha
- ★ Maiden Re
- ★ Sun Life Financial

Finance,” which was issued in January 2011. – *Essential*

9. Monitor the underwriting and market practices of insurers and producers, as well as conditions of insurance marketplaces, including urban markets, to identify specific market conduct issues of importance and concern; hold a public hearing on these issues at the NAIC national meetings, as appropriate. – *Important*
10. In collaboration with other technical working groups, discuss and share best practices through public forums to address broad consumer concerns regarding personal insurance products. – *Important*
11. Coordinate with the International Insurance Relations (EX) Leadership Council to develop input and submit comments to the International Association of Insurance Supervisors (IAIS) and/or other related groups on issues regarding market regulation concepts. – *Important*
12. Appoint a **Social Media (D) Working Group** to: 1) develop a white paper on how insurance companies and producers use social media in the business of insurance; 2) identify regulatory and compliance issues that might arise through the use of social media in insurance; and 3) provide guidance on how to address any identified regulatory and compliance issues. – *Important*
13. Appoint a **Limited Medical Benefit Plan (B/D) Working Group**—a joint working group of the Market Regulation and Consumer Affairs (D) Committee and the Health Insurance and Managed Care (B) Committee—to coordinate efforts and review issues related to limited medical benefit plans, including: 1) misrepresentation in sales and marketing; 2) product utility; and 3) authorized and unauthorized agents. The Working Group shall develop recommendations to address concerns and issues addressed during the review. – *Important*

New objectives and goals (representing new NAIC programs, services or initiatives)

1. Coordinate with the Health Insurance (B) Committee to provide policy recommendations regarding uniform state enforcement of the federal Patient Protection and Affordable Care Act (PPACA). – *Essential*
2. Appoint a **Regulatory Information Retrieval System (D) Working Group** to review the coding structure for the NAIC’s Regulatory Information Retrieval System and provide recommended changes to the coding structure. – *Important*

The Executive Committee will be voting on these charges within the near future. As always, if you have any questions, please feel free to contact Timothy B. Mullen, NAIC, at tmullen@naic.org.

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MARK YOUR CALENDAR

April 15-17, 2012

19th Annual National School on Market
Regulation
Austin, TX

April 18-20, 2012

IRES – MCM Course
Austin, TX

August 26-28, 2012

IRES – 2012 Career Development Seminar
Hollywood, FL

2012 MCM courses are currently being planned. Stay tuned for specifics as they're confirmed.

Watch the calendar at www.go-ires.org for more upcoming events.



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