The Regulator®
INSURANCE REGULATORY EXAMINERS SOCIETY

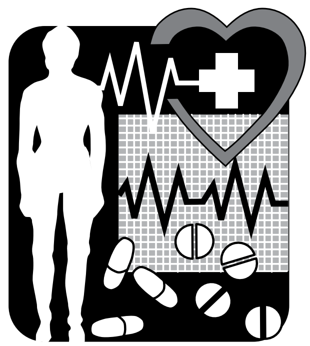
For both the uninsured and insured

Medical debt threatens millions

By Mark Rukavina
Director, The Access Project

Imagine spending thousands of dollars each year on a safety product that promises to protect you and your family. Now, imagine that this product fails to protect nearly one in five consumers who purchase it. Troublesome scenario, right? It's hard to believe that such a significant product failure rate would be tolerated today, but it is.

The product being referred to here is health insurance. The measure of product failure is medical debt.



Medical debt is personal debt or money owed for medical services or medical products. It may be owed directly to a health care provider, to an agent of the provider, or to another source such as a credit card company. The fact that 45 million Americans have no health insurance is understood to be a national tragedy. However, our nation's medical debt problem receives little attention in current health care and financial policy discussions.

The Access Project

The issue of medical debt has been documented and studied by The Access Project for the past eight years. The Access Project is a national organization that works to strengthen community action, promote social change, and improve health, especially for those who are most vulnerable. By supporting local initiatives and community leaders, The Access Project is dedicated to strengthening the voice of underserved communities in the public and private policy discussions that directly affect them.

In 2000, The Access Project conducted a study in two dozen communities and found that nearly half of the uninsured had unpaid medical bills or debts.[1] It was through this effort that The Access Project first documented the problem of medical debt, a problem largely invisible to policymakers. Since then, national data have been collected and we now know that medical debt is fairly common.

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Insurance Regulatory Reform

Looking beyond the rhetoric

by Eric Dinallo
New York Superintendent of Insurance

The following is excerpted from testimony delivered last month by New York Insurance Superintendent Eric Dinallo before the U.S. House of Representatives Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. Dinallo testified on behalf of the National Association of Insurance Commissioners.

One criticism you do *not* hear in the clamor for an optional federal charter is that the states have a weak solvency regulatory system. The NAIC developed several important solvency initiatives in the 1990s, including Risk-Based Capital (RBC), minimum capital requirements that are geared toward an insurer's exposure to certain risks; codified statutory accounting principles and a uniform statutory Annual Statement ("blank") for disclosure of financial results; and analysis and examination handbooks and procedures for state insurance regulators to ensure proper solvency assessment of insurers.

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From the President

Local and Global Teamwork

Last month I was privileged to attend the annual National Insurance School on Market Regulation at the Red Rock Resort, Summerlin, NV, sponsored by the IRES Foundation. The faculty featured senior market regulators from 18 states and representatives from the National Association of Insurance Commissioners (NAIC). In addition, commissioners from Nevada, Louisiana and Montana served as keynote speakers.

Nearly 300 attendees sharpened their professional skills and shared their knowledge and expertise at the School. During the opening session, I commended the Foundation for its vision as well as its mission to provide educational opportunities for professional insurance regulators and representatives from the private sector. I also thanked the Foundation for its generous support for IRES educational programs. School participants may review session highlights at **www.ires-foundation.org**

IRES will continue to team with other professional organizations for our mutual benefit. Global teamwork continues to be one of our major goals.

Locally, I would like to thank Larry Hawkins, Chair of the State Chair Subcommittee of the Membership Committee, who has worked tirelessly to promote State Chapter communication and involvement. In addition to coordinating "IRES Chapter News" for *The Regulator*, Larry has worked with other Subcommittee members to develop a State Chapter Handbook.

The Handbook will be a comprehensive reference tool for State Chairs. Since State Chairs provide a vital link between IRES and the State Chapters (as well as to Retired Members, Unaffiliated Members and Sustaining Members), we all look forward to this important publication.

We have also, for the first time, established National Chairs that represent Retired Members, Unaffiliated Members and Sustaining Members. They are:

- Janet Glover, Retired Members
- Cynthia Amann, Unaffiliated Members
- Jon Bryngа, Sustaining Members

Thanks (once again) to Larry Hawkins for recruiting these new Chairs. We look forward to working with them. Speaking of Larry, he recently said:

> *IRES is our organization. It is vital that more get involved. We should not rely on a few to do all the work. I had many helpful mentors during my early years at IRES and am proud to mentor others. I am very honored to be a part of the organization and to get to know so many great people. IRES is like a big family and the friendships go beyond anything I could have imagined.*

I couldn't agree more. Let us all work to expand the IRES family and achieve our goals through more local teamwork. Currently, four states have no State Chair in place. Let's try to fill those positions as soon as possible. Please support your State Chapter by getting involved with Chapter activities. You may review the list of State Chairs posted on the IRES Web site. Contact Larry Hawkins (**lhawkins@ldi.state.la.us**) if you have any suggestions on State Chapter organization and participation.

Finally, I would like to remind the IRES members to submit your registration forms for the IRES Career Development Seminar (August 10-12) and reserve your room at the Renaissance Grand Hotel at St. Louis as soon as possible.

Polly Chan

Polly Chan, CIE
IRES President

Hang in there, Scott!

The Regulator's premier writer now faces his toughest assignment: Beating life-threatening cancer.

Scott Hoober was recently diagnosed with a large, metastasized brain tumor. On April 21, Scott began radiation and chemotherapy at a Kansas City cancer treatment hospital.

Scott Hoober

Scott has worked for IRES from the Society's earliest days as a freelance writer, Web site designer, and a regular fixture on the annual CDS event management staff.

Those wishing to make contributions to help defray Scott's rapidly escalating medical bills and lost income may send checks to the IRES office made out to SCOTT HOOBER. We will forward them to Scott's wife, Penny.

Welcome, new members!

Mitch Rayborn, CIE, MS
Candace B. Reese-Pickens, DE
April Thomas, AL
Mora Y. Perkins, AL
Deborah L. Jewell, NY
Melissa Gibson, LA
Marie Newman, LA
Marie Sorensen, AIE, MN
Sherice D. Forte, LA
Michele F. Stewart, LA

Medical debt threatens millions of Americans

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More than one in five American adults under the age of 65 has a medical bill or medical debt they are paying off over time.[2] While the risk is greatest for people without health insurance, the problem is far from isolated to them. Most people are surprised to learn that nearly one in five insured Americans (18%) have medical debt.

Unaffordable Premiums

To better understand what is behind the problem of medical debt for insured Americans, it is useful to consider overall trends in health care costs. Between 2001 and 2007, health insurance premiums increased 78%, while workers' wages rose by 19% and inflation by 17%.[3] Obviously, few workers or their employers would be able to absorb such increases in health insurance premiums without consequence.

For many Americans, such premium increases have made health insurance unaffordable. The percentage of Americans that receive health insurance through their employers has declined from 64% in 2000 to less than 60% in 2006.[4] Those who choose to buy coverage do so at great cost. The average worker's share for employer-based family coverage jumped 200% since 2000, reaching an annual cost of $3,281 in 2007. Cost increases are occurring at the same time that coverage is being reduced. Employers struggling to contain their costs are considering further increases in the amount workers contribute to premiums, larger deductibles, increased office visit and prescription drug co-payments.[5]

High premiums and additional out-of-pocket expenses spell trouble for American families. In 2004, an estimated 45 million Americans lived in households that spent more than 10% of their total income on health insurance premiums and associated out-of-pocket expenses. This is an increase of nearly six million individuals from 2001.[6] For many, the burden resulted in medical bills they were unable to pay.

Impact of Medical Debt

Medical debt is a barrier to care. Like uninsured individuals, privately insured adults with medical debt are likely to skimp on medical care. They are more likely to skip a test or treatment, postpone care, or not fill a prescription due to cost than those with insurance but no such debt.[7]

Medical debt also has a detrimental effect on financial health. Nearly one-third of the insured with medical debt exhausted all or most of their savings trying to eliminate it, one-fifth were unable to pay for food, rent or heat due to medical bills and a small percentage took out a mortgage or loan against their home.[8] Those with medical debt are often contacted by collection agencies, carry higher outstanding balances on credit cards, experience housing problems, and have difficulty accessing loans or credit.

The fact that so many Americans are playing by the rules and buying health insurance but still incurring debt is a puzzling public policy problem. The Access Project set out to better understand why health insurance failed to protect people at the time when they most needed it — when they experienced illness or injury. Using a two-pronged approach, Access Project staff conducted surveys and research projects, while at the same time working directly with people who have medical debt.

Access Project research found that the structure of health insurance resulted in medical debt. Problems resulting from the structure of insurance include deductibles, co-payments, co-insurance, caps on coverage or on particular services, and uncovered services. Insurance processes also contribute to medical debt. These processes include confusing policy provisions, out-of-network fees, claim processing procedural issues, revocation of coverage, and the interaction of the complex insurance processes with provider billing and collections systems that are also often obtuse.

One driving factor for medical debt among the insured — out-of-network fees — recently received widespread attention. In February 2008, New York State Attorney General Andrew Cuomo announced an industry-wide investigation into a "scheme by health insurers to defraud consumers by manipulating reimbursement rates." The investigation focused on a national health care billing information vendor, Ingenix, Inc., which provides "reasonable and customary" industry data to most major health insurers to help them determine appropriate reimbursement rates. The AG's office claims insurers inadequately reimbursed their members for out-of-network medical expenses based on Ingenix data.

"Getting insurance companies to keep their promises and cover medical costs can be hard enough as it is," said Attorney General Andrew Cuomo. "But when insurers … create convoluted and dishonest systems for determining the rate of reimbursement, real people get stuck with excessive bills and are less likely to seek the care they need." This is but one of the underlying causes of insurance product failure.

To delve even deeper into the causes of medical debt, The Access Project developed a Medical Debt Resolution Program to assist people in resolving unpaid medical bills. A protocol provides a framework for resolving unpaid bills. It gives people the structure and information necessary to assess whether relief from medical debt might be provided through private insurance, public programs, health care provider charity care, or other forms of financial assistance. The goal is to help people to successfully resolve unpaid bills.

The protocol has proven very effective. One group of approximately 75 Massachusetts residents assisted by this program had medical debt totaling $755,000. The Access Project helped to reduce that debt by $535,000 due to its efforts to obtain payments from private insurance and public programs. As a result of discount negotiations with providers, the debt was further reduced by $140,000. The remaining $80,000 will be paid by the patients themselves, but at renegotiated payment terms.

Remedies

So, what can be done to remedy the various medical debt problems resulting from inadequate, though expensive, health insurance policies? Regulators could begin with some simple steps. First, set rules that prohibit unfair insurance practices. For example, rules should be established to prohibit the retroactive revocation of insurance coverage after a patient has filed a claim. Such rules exist in some states, but they should be in place in all states. Even health insurance industry groups have suggested reform of this practice.

Another example would be rules that protect patients from inadequate reimbursement for out-of-network services. The current "reasonable and customary" co-pay amounts established by health insurers typically lag behind the fees that most providers charge. It shouldn't take an Attorney General's investigation to determine whether current out-of-network practices are fair to health insurance consumers.

Next, establish departments to investigate patient complaints about health insurance policies, contracts and practices. Many states have ombuds programs to help insureds resolve payment and reimbursement disputes. Although every state insurance department has a consumer services division, an ombuds program can provide a valuable additional source of assistance for insurance consumers. More of these programs are needed.

Finally, regulators should ensure that health insurance products are appropriate and premium hikes are justified. Escalating insurance premium and health care costs result in less comprehensive coverage because higher premiums drive employers to seek out less costly alternatives to traditional health insurance. It may be time for policymakers to ensure that insurance products requiring patients to pay significant out-of-pocket expenses be limited to those who can afford such shared costs or be sold with a warning — *Consumer Beware, This Product May be Hazardous to Your Financial Health and Well-Being.*

Footnotes

[1] Dennis Andrulis, Lisa Duchon, Carol Pryor, Nanette Goodman, Paying for Health Care When You're Uninsured: How Much Support Does the Safety Net Offer? (Boston: Access Project, 2003)
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[3] Gary Claxton, Jon Gabel, Bianca DiJulio, Jeremy Pickreign, Heidi Whitmore, Benjamin Finder, Paul Jacobs and Samantha Hawkins, Health Benefits in 2007: Premium Increases Fall to an Eight-Year Low, While Offer Rates And Enrollment Remain Stable Health Affairs, 26, no. 5 (2007)
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[7] Catherine Hoffman, Diane Rowland, Elizabeth Hamel, Medical Debt and Access to Health Care (Washington: Kaiser Commission on Medicaid and the Uninsured, 2005)
[8] Collins, et al., Gaps in Health Insurance

Mark Rukavina is Director of The Access Project. For more information about the Project, Mark can be reached at **rukavina@accessproject.org**

Viva, IRES Foundation!

The 2008 National Market Regulation School

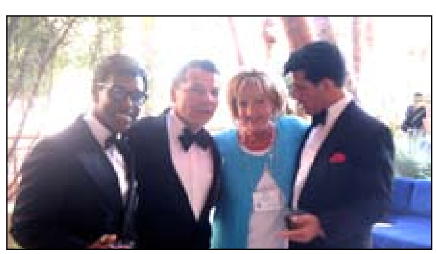
Montana Commissioner John Morrison (left) visits with IRES Foundation's Jon Brynga.

The instructors came from 18 state insurance departments. The nearly 300 students came from insurance companies, law firms and regulatory compliance firms across the United States.

The campus was the Red Rock Hotel in Summerlin, Nevada. The two-day course April 14-15 was the National Insurance School on Market Regulation, hosted the past 15 years by the IRES Foundation.

Katie Johnson, Virginia, (at right in foreground) and David Moskowitz of Texas (center table) visit with attendees during scheduled private appointments.

Attendees gather for informal, unscheduled conversation with regulators during "Round Robin" chats.



Mary Rountree is surrounded by the famed Las Vegas "Rat Pack," during the closing-night party sponsored by Wolters Kluwer Financial Services.

2008 Paul DeAngelo Award

Foundation Board member John Mancini presents the Paul L. DeAngelo Memorial Teaching Award to New Jersey regulator, Anne Marie Narcini.

June DuBard, South Carolina Insurance Department, meets with Terry Tiede.

School attendees sign up for private appointments with state insurance regulators.

Dave Kenepp (standing) moderates a panel on market analysis.

Regulators Dennis Shoop of Pennsylvania (left) and Paul Hogan of Arizona.

Ron Kotowski and Art Chartrand take roll call as the school faculty gathers for a pre-conference briefing.

Dinallo NAIC testimony

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These core solvency initiatives are wrapped up in the NAIC Accreditation Program to prevent a "race to the bottom" where insurers would locate in states with weaker solvency regulations. The Accreditation Program is in force in 49 states and ensures that all jurisdictions use the same solvency standards.

The above initiatives have resulted in the NAIC's ability to host more than sixty financial tools for state regulator use, which can produce more than 100 different types of reports, to help identify potentially troubled companies at an earlier time. The NAIC hosts the largest insurance financial database in the world, providing a centralized tool for use by all states which saves states the cost and resources of having to duplicate this tool. Other tools exist to allow regulators to share important confidential information on permitted accounting practices, possible changes in control of an insurer, the status of a company in receivership and examinations that have been called, among many other important issues.

> ***"Another baseless claim is that state insurance regulators don't have a 'seat at the table' comparable to that of their federal banking and securities counterparts."***

States are also not averse to taking good suggestions from the federal government, as they did in making changes to the Model Audit Rule based on the best aspects from the Sarbanes-Oxley Act, which were adopted by the NAIC membership in 2006. The amendments comprising this key rule were the culmination of a three-year collaborative effort among regulators, industry representatives and trade associations.

. . . [S]tate insurance regulators are working to lower collateral requirements to allow strong foreign reinsurers better access to the U.S. market, and consider a single-state "passport" system of oversight. However, it is the domestic insurance companies that are resisting this modernization effort. They claim we are moving too fast; an irony that calls into question their dubious claims of our inability to take action quickly.

Producer Licensing

The insurance agent (or "producer") community claims that the licensing process can be improved, and we agree. The NAIC identified producer licensing as one of its key strategic issues in 2007, forming the NAIC/Industry Producer Licensing Coalition to partner with the national trade groups on our uniformity initiatives. The Coalition was well represented, with ten states and twelve trades participating . . . .

The 1999 Gramm-Leach-Bliley Act (GLBA), which reaffirmed state oversight of insurance, included a provision requiring that at least 29 jurisdictions meet uniformity or reciprocity requirements by November 12, 2002 in order to avoid federal preemption by the creation of the National Association of Registered Agents and Brokers.

The states exceeded that threshold, set by Congress, and now have 43 reciprocal jurisdictions. Reciprocity is a good start, but shortly after passage of GLBA, the NAIC Producer Licensing Working Group focused its attention on uniformity and the development of uniform licensing standards for implementation nationwide. The NAIC adopted Uniform Licensing Standards in December 2002, and continues to track states' progress in achieving compliance with those standards. In November 2007, the NAIC embarked upon a national on-site assessment of each state's compliance with reciprocity and uniformity standards, reaffirming compliance with GLBA and identifying areas for the states to improve. The NAIC believes that the assessment process and report provides an honest assessment of producer licensing reform efforts.

Although having 43 states meet the agent licensing reciprocity requirements in the Gramm-Leach-Bliley Act may be a laudable achievement, we fully realize that 43 states do not equal a uniform national system. The ultimate goal in this area is reciprocity *and* uniformity, and if achieving that objective requires the assistance of the federal government, consistent with the principles listed above, we are not averse to that help.

The automation of the producer licensing process through technology provided by the NAIC and its affiliate the National Insurance Producer Registry (NIPR) have dramatically altered a historically paper-intensive process. Through NIPR's non-resident licensing service, producers and companies can apply for a non-resident license in 46 jurisdictions and receive confirmation within a few business days. Similarly, the NAIC's State-Based Systems (SBS) is a web-based system provided at no cost to state insurance departments to support the full life-cycle of regulatory activities, including licensing, consumer services, enforcement, product approvals and revenue management.

While the NAIC's efforts to achieve uniformity in producer licensing have been enhanced greatly by the grassroots efforts of Coalition members, the NAIC has asked the trades on numerous occasions to outline a set of uniform, national professional standards for their constituents—to specify the professional standards they would agree to be measured by and perhaps have endorsed by each of the national trades for communication and promotion among their memberships. Each time the trades have indicated that they believe their respective codes of conduct are appropriate in their current form, and that they see no benefit, value or need to develop a common set of professional standards. They state that they would prefer instead a few key fixes, including reciprocity in all states and "streamlining" (which the NAIC interprets as "elimination") of business entity licensing.

....

Interstate Compact

The interstate compact is a significant reform option developed by state regulators and the NAIC. The compact addresses the life insurance industry's call for a central point of filing and product approval, while maintaining state market conduct enforcement . . . .

Reinsurance Framework

The NAIC is actively developing a new regulatory framework for the supervision of reinsurance. We recognize that reinsurance is a business-to-business market that is global and sophisticated. Our goal is a single point of entry for U.S. and non-U.S reinsurers. The focus of the new framework would be on broad-based risk and credit criteria, and not solely on U.S. licensure status.

The proposal calls for creating a new division within the NAIC to serve as the foundation for a risk-based evaluation of reinsurers. The evaluation would cover such key factors as financial strength, operating integrity, business operations, claims-paying history and management expertise. The NAIC's Reinsurance Task Force is developing recommendations regarding the structural changes necessary to carry out the recommended shift in the overall framework of U.S. reinsurance regulation.

Company Licensing

The states have made great strides in streamlining company licensing, and that progress was recently put to the test. The NAIC's Uniform Certificate of Authority Application (UCAA) process has transformed the manner in which companies file for admission in multiple states by providing a uniform format. The NAIC has further simplified the process by making the necessary applications and forms available on its website and by publishing the UCAA Manual, which contains instructions and examples of completed forms. All fifty states plus D.C. accept the UCAA forms in hard copy, and 45 states can accept them electronically.

The recent bond insurance crisis, in which the New York Insurance Department took a leading role, demonstrates the success of this program. In short order, 48 states have reviewed and approved Berkshire Hathaway Assurance Corporation's application for licensure as a bond insurer.

Let me explain just how quickly that happened. I asked Berkshire to apply for a New York license on or about November 15. The company filed with New York on November 30 and had a New York license on December 30. As of today, only four and a half months after Berkshire first filed with us and about three months after we asked the NAIC to expedite the process, Berkshire is licensed in 48 states. That is remarkable.

Processing Rate and Form Approvals

Foremost among the arguments for an optional federal charter has been the purported slowness by

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Dinallo NAIC testimony

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state regulators in processing rate and form approvals. The facts just don't bear that out. In fact, they show the exact opposite. State regulators have greatly increased market efficiencies while maintaining consumer protections.

All fifty states are currently using our electronic rate and form filing system, SERFF, along with the District of Columbia and Puerto Rico, along with nearly 3,000 companies. Several states have mandated its use. In 2007, SERFF received 381,377 filings, an increase of 41% over 2006 filings. And little wonder—a SERFF filing can be submitted for as little as $6 and offer companies significant cost savings by reducing or eliminating long distance telephone charges, copying, postage and other related expenses.

Analysis of Insurer Investments

For over 100 years, the NAIC Securities Valuation Office (SVO), headquartered in New York City, has served the national regulatory community as an independent source of investment expertise. SVO is staffed with financial analysts (many of whom have advanced degrees and/or CFA distinctions), economists, researchers, lawyers, appraisers, accountants and regulatory liaisons. They provide analytical tools and products to ensure that state insurance regulators have access to unbiased information about investment risks and their potential impact on insurers. Funded by fees assessed on insurance company investors, the SVO is comparable to a smaller scale nationally recognized statistical rating organization.

SVO research staff monitors economic developments, performance of specific securities or asset classes and innovations in the financial markets. With this monitoring they can alert regulators of the potential implications for insurance companies. The SVO credit units continually assess the credit risk associated with unrated securities, which serves as the basis for calculation of regulatory capital needed to support those investments.

SVO valuation services are available to insurance departments upon special request and to insurers on an ongoing basis. The SVO Portfolio Analysis Memorandum analyzes the content of an insurer's investment portfolio, providing regulators with a valuable examination planning tool. These tools and information help regulators understand the investment marketplace and its impact on insurers.

Principles-Based Reserving

New York is at the forefront of state insurance regulators who are leading the discussion on a valuation approach that is called principles-based, but is in fact based on an individual company's actual experience to set reserves rather than being forced to use formulas that may be totally unrelated to that experience. This discussion is consistent with efforts underway by our foreign colleagues.

Financial regulation of the life insurance industry has traditionally relied upon the use of prescribed mortality tables, interest rates and application of the Standards Valuation Law, a formula-based approach, to verify that life insurers have established adequate reserves. The goal of an experience-based approach is to more accurately allocate capital to reserves and surplus based upon specific risks and the experience of each individual insurer. The NAIC has created the Principles-Based Working Group, reporting directly to the NAIC Executive Committee, because the organization believes this is an important strategic issue for state insurance regulators and the insurance industry.

Streamlining Market Regulation

State insurance regulators continue our efforts to improve efficiencies in key functions of market analysis, uniformity and collaboration. We are working together to enhance the utility and automation of uniform questions used by market analysts to analyze specific companies. Twenty-four states are currently participating in the Market Conduct Annual Statement process, an initiative designed to improve the collection of information for certain key market performance issues and thereby eliminate multiple requests to insurers for the same information.

State insurance regulators have coordinated multi-state regulatory efforts through the Market Analysis Working Group. Those efforts culminated in a multi-state settlement with insurance regulators from 48 jurisdictions regarding inappropriate life insurance sales to members of the Armed Forces.

Promoting Global Competitiveness

Another favorite theme of OFC proponents is that state insurance regulation somehow impedes global competitiveness. Here are the facts:

- The United States has the largest and most competitive insurance market in the world.
- U.S. consumer, solvency and transparency standards are a model for developing markets.
- The NAIC is leading efforts to develop international standards of insurance regulation.
- State insurance regulators regularly collaborate with the federal government on issues of global financial stability and market access.
- The NAIC engages consistently with its foreign regulatory counterparts to develop international regulatory standards and promote sound U.S. regulatory standards.
- The NAIC aids in establishing sound regulatory regimes in developing countries that ensure stable, open and competitive insurance markets for U.S. companies. The NAIC holds key leadership positions in major international bodies of financial regulators, such as the International Association of Insurance Supervisors (IAIS), which represents insurance regulators worldwide. The NAIC is leading the effort with regulators from around the world to create global standards and to minimize differences in fundamental areas of insurance regulation.

There is no denying that domestic insurance companies will need to increasingly compete with foreign companies for the business of U.S. consumers. While some foreign companies may avoid effective U.S. state oversight, we would note that the tax code is a far more compelling reason to remain "offshore" than any compliance inefficiencies that may exist among the states. State insurance regulators have no interest in trading proven effectiveness for minimal gains in efficiency, and lowering the quality of oversight in an attempt to attract more companies is exactly the kind of race to the bottom that your constituents cannot afford.

Involvement at the Federal Level

Another baseless claim is that state insurance regulators don't have a "seat at the table" comparable to that of their federal banking and securities counterparts. In fact, state insurance regulators interact with their federal financial regulatory counterparts and other federal entities on a regular basis.

The NAIC is a member of the Financial and Banking Information Infrastructure Committee (FBIIC), which reports to the Department of Homeland Security and the Office of Cyberspace Security. FBIIC is charged with coordinating efforts across the financial services sector to improve the security and reliability of the infrastructure necessary for financial markets to function. The NAIC also actively participates in meetings of the Financial Stability Forum (FSF), representing the U.S. and international insurance sectors in meetings with banking and securities regulators from the world's largest economies and those sectors' representative bodies.

The NAIC is a member of the U.S. Department of Treasury's newly formed National Financial Education Network, composed of federal, state and local government organizations for the purpose of advancing financial education for consumers. The Treasury Department selected the NAIC to participate after reviewing the NAIC's premier consumer outreach campaign *Insure U* (**www.insureuonline.org**) and its "virtual" curriculum based around specific life stages.

State insurance regulators have entered into MOUs with a number of federal agencies to facilitate information sharing. The NAIC is working with the Centers for Medicare and Medicaid Services (CMS), and recently drafted a Memorandum of Understanding for states to share complaint information regarding health insurance plans and producers.

The NAIC has worked with the U.S. Department of Health and Human Services, CMS and Congressional staff on a variety of issues raised by states as they create long-term care partnership programs. We have also provided testimony and other technical assistance to address Medicare prescription drug implementation issues identified by state insurance regulators in working with consumers and companies during the roll-out period.

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Dinallo NAIC testimony

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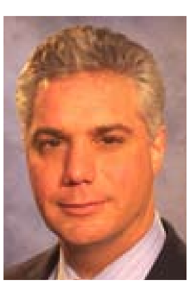
The NAIC and its members have been working closely with the U.S. Department of Defense to facilitate information sharing and to protect military personnel and their families from improper sales of insurance and investment products on military bases.

These efforts are all important but it is clear that all regulators, state and federal, need to actively coordinate to develop a holistic, systemic view of the financial sector. The U.S. Department of the Treasury has put forward a proposal with that in mind. While we disagree with its call for an optional federal charter, we do agree that better coordination is necessary. State insurance regulators have the expertise and the information necessary to offer federal officials a view into our segment of the financial sector so that broad-based economic decisions are not made in isolation.

Conclusion

Insurance oversight in the U.S. is strong and it continues to evolve. States have made great strides in developing tools that can be leveraged to realize the efficiencies necessary for a competitive environment, while preserving states' front-line strength of consumer protection. Congress should look past the rhetoric of a "patchwork system" to see that it is far more efficient and coordinated than proponents of an optional federal charter would have you believe.

However, there may be areas where federal assistance is necessary to realize the objectives and principles we have put forward today. We are working actively to consider specific, structural models for the best way to realize these principles, and we ask for your help in maintaining a system of oversight that is good for companies and good for consumers. ■



Superintendent Dinallo's full testimony is available at **www.ins.state.ny.us/speeches/pdf/sp0804161.pdf**

Modernizing insurance regulation: A blueprint for change

In March 2008, the U.S. Department of the Treasury released "Blueprint for a Modernized Financial Regulatory Structure." The 200+ page report offers a series of recommendations designed to improve the current U.S. regulatory structure, including an optional federal charter. The following article is drawn from the Executive Summary of the Treasury report.

For over 135 years, states have primarily regulated insurance with little direct federal involvement. While a state-based regulatory system for insurance may have been appropriate over some portion of U.S. history, changes in the insurance marketplace have increasingly put strains on the system.

Much like other financial services, over time the business of providing insurance has moved to a more national focus even within the state-based regulatory structure. The inherent nature of a state-based regulatory system makes the process of developing national products cumbersome and more costly, directly impacting the competitiveness of U.S. insurers.

There are a number of potential inefficiencies associated with the state-based insurance regulatory system. Even with the efforts of the National Association of Insurance Commissioners ("NAIC") to foster greater uniformity through the development of model laws and other coordination efforts, the ultimate authority still rests with individual states. For insurers operating on a national basis, this means not only being subject to licensing requirements and regulatory examinations in all states where the insurer operates, but also operating under different laws in each state.

In addition to a more national focus today, the insurance marketplace operates globally with many significant foreign participants. A state-based regulatory system creates increasing tensions in such a global marketplace, both in the ability of U.S.-based firms to compete abroad and in allowing greater participation of foreign firms in U.S. markets.

To address these issues in the near term, Treasury recommends establishing an optional federal charter ("OFC") for insurers within the current structure. An OFC structure should provide for a system of federal chartering, licensing, regulation, and supervision for insurers, reinsurers, and insurance producers (i.e., agents and brokers).

It would also provide that the current state-based regulation of insurance would continue for those not electing to be regulated at the national level. States would not have jurisdiction over those electing to be federally regulated. However, insurers holding an OFC could still be subject to some continued compliance with other state laws, such as state tax laws, compulsory coverage for workers' compensation and individual auto insurance, as well as the requirements to participate in state mandatory residual risk mechanisms and guarantee funds.

An OFC would be issued to specify the lines of insurance that each national insurer would be permitted to sell, solicit, negotiate, and underwrite. For example, an OFC for life insurance could also include annuities, disability income insurance, long-term care insurance, and funding agreements.

On the other hand, an OFC for property and casualty insurance could include liability insurance, surety bonds, automobile insurance, homeowners, and other specified lines of business. However, since the nature of the business of life insurers is very different from that of property and casualty insurers, no OFC would authorize an insurer to hold a license as both a life insurer and a property and casualty insurer.

The establishment of an OFC should incorporate a number of fundamental regulatory concepts. For example, the OFC should ensure safety and soundness, enhance competition in national and international markets, increase efficiency in a number of ways, including the elimination of price controls, promote more rapid technological change, encourage product innovation, reduce regulatory costs, and provide consumer protection.

Treasury also recommends the establishment of the Office of National Insurance ("ONI") within Treasury to regulate those engaged in the business of insurance pursuant to an OFC. The Commissioner of National Insurance would head ONI and would have specified regulatory, supervisory, enforcement, and rehabilitative powers to oversee the organization, incorporation, operation, regulation, and supervision of national insurers and national agencies.

While an OFC offers the best opportunity to develop a modern and comprehensive system of insurance regulation in the short term, Treasury acknowledges that the OFC debate in Congress is difficult and ongoing.

At the same time, Treasury believes that some aspects of the insurance segment and its regulatory regime require immediate attention. In particular, Treasury recommends that Congress establish an Office of Insurance Oversight ("OIO") within Treasury. The OIO through its insurance oversight would be able to focus immediately on key areas of federal interest in the insurance sector.

The OIO should be established to accomplish two main purposes. First, the OIO should exercise newly granted statutory authority to address international regulatory issues, such as reinsurance collateral. Therefore, the OIO would become the lead regulatory voice in the promotion of international insurance regulatory policy for the United States (in consultation with the NAIC), and it would be granted the authority to recognize international regulatory bodies for specific insurance purposes.

The OIO would also have authority to ensure that the NAIC and state insurance regulators achieved the uniform implementation of the declared U.S. international insurance policy goals. Second, the OIO would serve as an advisor to the Secretary of the Treasury on major domestic and international policy issues. Once Congress passes significant insurance regulatory reform, the OIO could be incorporated into the OFC framework. ■

The Treasury's full report is available on www.treas.gov/press/releases/reports/Blueprint.pdf

Wondering what to do on Monday night at the CDS?

The Cardinals are out of town, so join us for a fun evening of bowling!

The IRES Membership Committee has made arrangements for CDS attendees (YOU) to enjoy an evening of bowling, food, cocktails, or shooting pool with fellow regulators at The Flamingo Bowl, the city's premier bowling and cocktail lounge on Monday, August 11.

The Flamingo Bowl is a short three-block walk from the Renaissance Grand Hotel in downtown St. Louis. You can check it out at www.flamingobowl.net

Interested? Contact Marty Hazen at mjhazen@ksinsurance.org.

Quote of the Month

"The plain and simple truth is optional federal chartering would create a new federal bureaucracy from scratch and allow insurance companies to 'opt out' of comprehensive consumer protections and state oversight. Current [optional federal chartering] proposals would gut consumer protection, while outsourcing most critical regulatory functions to an industry-run self-regulatory organization."

– NAIC President and Kansas Insurance Commissioner Sandy Praeger

IRES CHAPTER NEWS

ALABAMA — On March 4-6, the Alabama Department of Insurance held training for examiners on the 2008 version of Risk-Focused Financial Condition Examiners Handbook. The training was provided by the NAIC.

— Cristi Owen; Cristi.Owen@insurance.alabama.gov

LOUISIANA — The officers and committee chairs of the Louisiana Chapter met on March 12, to discuss upcoming meetings, the timeline for nominations for next year's officers (which will include Co-State Chairs), and the feasibility of maintaining an IRES booth at the Annual Filing and Compliance Seminar to be held in New Orleans in July.

The full Chapter met on April 9. **Arlene Knighten**, Attorney for the LA Department, and **Mike Adams**, Contractor for the Department at the Office of Receivership, addressed the group. In their presentation, "Receivership 101," they provided an overview of the Office of Receivership and discussed Office operations. They also reviewed various stages of receivership, such as administrative supervision, conservation, rehabilitation, and liquidation. A question-and-answer period followed their presentation. There were 30 attendees.

— Larry Hawkins; lhawkins@ldi.state.la.us

NEW YORK — The New York Chapter held a general membership meeting on February 27. The meeting was held in the Insurance Department's New York City office with Albany staff participating via a video conference link. A PowerPoint presentation described the many benefits IRES provides to its members and was followed by an open discussion of the benefits of membership. We also explained the various categories of membership, criteria for accreditation, and educational and professional enhancement opportunities. Finally, we discussed general Chapter activities and Chapter plans for the upcoming year. About 80 Department staffers attended, including both current and prospective IRES members. Many recently hired examiners expressed interest in joining IRES and picked up applications at the meeting.

— Maurice Morgenstern; mmorgens@ins.state.ny.us

OHIO — The Ohio Department of Insurance will begin operations at its new location in downtown Columbus on Monday, May 12, 2008. Our new address will be 50 W. Town Street, Third Floor — Suite 300, Columbus, OH 43215. Please update your records to reflect this change.

— Maryellen Baker; maryellen.baker@ins.state.oh.us

UTAH — The Utah Chapter met on February 13. **Laura Shepherd** of the Captive Division of the Department spoke on "The New Frontier for Captives." Laura discussed the three types of captives, group captives, and Department policies and deadlines. **Randy Overstreet**, Director of Producer Licensing, distributed copies of the new "Licensing Information Bulletin" and discussed the changes in his Division. In addition, he outlined new licensing procedures with regard to fingerprinting, criminal history, etc. and distributed "Licensing Procedures for Utah" to all members.

— Brian Hansen; bhansen@utah.gov

VIRGINIA — The Virginia Chapter held a Quarterly Meeting on February 25, with 20 regulators in attendance. **Jim Young**, Senior L&H Insurance Market Examiner, discussed two topics of interest. The first concerned L&H market conduct exams that resulted from complaints filed with the Government Accountability Office about life insurers' policies with "side funds" that were unfairly marketed to active duty military. He also discussed the Military Sales Practices Regulations to protect service members. The second topic was an overview of a 2007 IRES CDS presentation of health insurance mandates in the U.S.

— Andrea Baytop; andrea.baytop@scc.virginia.gov

Regulatory Roundup

by
Stroock & Stroock & Lavan LLP

California — Assembly considering bill clarifying capacity of brokers and agents

On March 25, the California Assembly reintroduced AB 2956, a bill designed to clarify when a California insurance professional is acting in the capacity of a broker versus an agent. AB 2956 finds and declares that "it is in the best interest of consumers of insurance products to encourage and maintain a variety of different insurance delivery systems that will compete for consumers on price and service."

To achieve this goal, the Bill attempts to "remove any ambiguity in the law defining insurance brokers, provide circumstances wherein a licensee can be presumed to be acting in the capacity of a broker, and set forth circumstances where the presumption may be rebutted."

The Bill amends the definition of "broker" under Section 1623 of the California Insurance Code by including in part the following presumption: It shall be presumed that the person is acting as an insurance broker if the application shows that the person is acting as an insurance broker and is licensed to act as an insurance broker in the state in which the application is submitted.

The presumption of broker status may, however, be rebutted if, on the basis of the totality of the circumstances, there is clear and convincing evidence that the broker-agent is performing essential insurer functions on behalf of the insurer, such as establishing underwriting criteria, binding insurance coverage without prior authorization of an insurer, appointing agents, or investigating and paying claims. The Bill also amends Insurance Code Section 1704, which provides that life agents and fire and casualty insurance agents may not act as agents of an insurer unless the insurer has filed with the commissioner a notice of appointment naming the licensees as the insurer's agents. Such notice of appointment under the Bill would also have to specify the scope of the agency appointment. A hearing on the Bill before the California Assembly Insurance Committee was held April 16.
To view AB 2956, visit the Legislative Counsel of California's Web site at **www.leginfo.ca.gov**.

Florida — Senate introduces bill reducing insurers' catastrophe coverage limits

On March 15, the Florida Senate introduced SB 2156, a bill that would reduce the amount of state-funded reinsurance that insurers can purchase from the Florida Hurricane Catastrophe Fund (the "Cat Fund"). The Bill memo notes that the Cat Fund is a tax-exempt trust fund, created in 1993 in the wake of Hurricane Andrew, as a form of mandatory reinsurance for residential property insurers. All insurers that write residential property insurance in Florida are required to buy, through the Cat Fund, reimbursement coverage (reinsurance) on their residential property exposure.

In 2007, the Florida Legislature increased the coverage limits of the fund for the 2007, 2008, and 2009 hurricane seasons by adding the Temporary Increase in Coverage Limit ("TICL") options that allowed an insurer to purchase its share of up to $12 billion in coverage, in $1 billion increments, above the mandatory fund coverage. For the 2007 hurricane season, the mandatory coverage was $15.85 billion above a $6.1 billion retention.

The Bill reduces the amount of optional TICL coverage offered by the state in two ways. First, the bill eliminates the TICL coverage options of $10 billion, $11 billion, and $12 billion, so that a maximum of $9 billion in TICL coverage will be offered in addition to the mandatory fund coverage. Second, the TICL option is changed to offer reimbursement of only 70 percent

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The New York-based Stroock & Stroock & Lavan LLP Insurance Practice Group includes Donald D. Gabay, Martin Minkowitz, William D. Latza and William Rosenblatt. The Insurance Practice Group also includes insurance finance consultants Vincent Laurenzano and Charles Henricks. They gratefully acknowledge the assistance of Robert Fettman, an associate in the group. This column is intended for informational purposes only and does not constitute legal advice.

of the insurer's losses within the TICL layer purchased. Current law permits insurers to purchase reinsurance coverage for 45, 75, or 90 percent of the insurer's losses. The Bill memo notes that the vast majority of insurers elects the 90 percent option as TICL coverage is less expensive than what can be procured from the private reinsurance market and was the primary source of anticipated savings that insurers were required to reflect in rate filings with the Office of Insurance Regulation. To view SB 2156, visit the Florida Senate's Web site at **www.flsenate.gov**.

Kansas — Kansas House Insurance Committee passes Flex-Rating Act

On March 19, the Kansas House of Representatives' Insurance Committee approved SB 560, a bill establishing a flex-rating system that allows property/casualty insurers to increase rates within a 12 percent flex-band or decrease in any amount without regulatory approval.

Under the Bill, no more than one rate filing could be made by an insurer pursuant to the process outlined in the Bill, unless the combination of the filing and all other filings made by the insurer within the previous 12 months does not result in an overall statewide increase (or decrease) in excess of 12%. Filings submitted in accordance with the Bill are deemed to comply with state law unless the Insurance Commissioner determines the filing is inadequate or unfairly discriminatory.

The Bill also addresses retention of claims records and use of credit scores by an insurer. If an insured elects not to be reimbursed by an insurer for damage under a personal insurance policy, the insurer would be prohibited from retaining the claim information in its records of the insured. The Bill would also prohibit all insurers authorized to do business in Kansas from using an insurance or credit score to underwrite or rate risk for any Kansas insured. To view SB 560, visit the Kansas House of Representatives' Web site at **www.kslegislature.org**.

New Jersey — Bill requiring liability insurance for boaters introduced

New Jersey Assembly Bill No. A1013, as introduced on February 28, would require that all boat owners mandated to be registered in the state maintain liability insurance coverage insuring against loss for bodily injury or death sustained by any person arising out of the ownership, maintenance, operation or use of that vessel. Under current law, all vessels greater than 12 feet in length and all power vessels, regardless of length, are required to be registered. The Bill requires that coverage must be maintained in an amount or limit of $100,000 on account of injury to, or death of, one or more than one person, in any one accident. A person who owns or operates a vessel without such liability insurance would be subject, for the first offense, to a fine of not less than $300 or more than $1,000, and his right to operate a vessel on the waters could be suspended for one year.

The Bill also requires an insurance identification card to be in the possession of the owner or operator of a vessel any time it is in operation and must be exhibited when requested by a law enforcement officer. Failure to produce an insurance identification card could result in a fine or jail time, and the operator must terminate the voyage and immediately return the vessel to its point of departure or proceed to another location as may be designated by the law enforcement officer.

A law enforcement officer is not required, however, to escort the vessel to its point of departure or other designated location, and may not be held liable for any claim arising from the termination of the voyage. To view Assembly Bill No. A1013, visit the New Jersey Assembly's Web site at **www.njleg.state.nj.us**.

Casual Observations

A Special Kind of Hubris

Two publications of interest to IRES members were issued by the federal government in March. The first, the U.S. Treasury's *Blueprint for a Modernized Financial Regulatory Structure,* should have the most impact on insurance regulators since it recommends an optional federal charter (OFC) approach to insurance regulation.

The second, authored by the President's Working Group on Financial Markets, was commissioned last summer by President Bush to determine the root causes of the subprime crisis and recommend changes. The group includes representatives from the Treasury, the SEC and the Federal Reserve Board of Governors. This report also impacts state insurance regulators, but to a lesser extent than *Blueprint*.

With respect to the first report, our objections begin with its title: *Blueprint for a Modernized Financial Regulatory Structure*. The word "modernization" always sticks in our craw when coupled with proposals to dramatically alter our financial regulatory landscape. What bothers us is the notion that any new proposal — regardless of how flawed it may be — would *modernize* our current system. We think a title such as *Blueprint to Replace a Hopelessly Outmoded, Out-of-Date Regulatory Structure* would more accurately reflect the authors' anti-state bias.

What's more, most of these proposals aren't even new. They've simply been dusted off by long-time opponents of state regulation with the hope that they'll be adopted under the rubric of regulatory reform.

The Working Group report points to "weak mortgage underwriting standards" between late 2004 and early 2007 as the prime reason for this nation's financial troubles. If the lending practices of banks, which are largely federally regulated, are indeed primarily responsible for our current financial woes, why would we want to bring even more financial entities under the federal regulatory tent?

In our book, *weak mortgage underwriting standards* means *no underwriting standards* when it comes to most adjustable rate subprime mortgages issued during that period. When prospective homeowners are permitted to submit mortgage applications with little or no documentation, prudent underwriting standards fall by the wayside.

Would state regulators permit auto insurers to discard underwriting rules and then sell those policies to third parties? Would they let it go on for more than two years? We don't think so.

Online searches reveal that of the 16 *Blueprint* authors credited in the report, only one — Roy Woodall — appears to have any meaningful insurance regulatory background. He served briefly as Kentucky Insurance Commissioner more than 40 years ago, but spent a much longer time as an executive for the American Council of Life Insurers (ACLI) before joining the Treasury Department early in the current Bush Administration. The ACLI has long advocated an OFC approach to insurance regulation. In fact, the organization boasts that in 2000 it "developed a proposal to establish an optional federal charter for life insurers."

As a general principle, we submit that it's unwise for federal banking regulators to attempt to devise new approaches to insurance regulation.* For the most part, insurers and banks offer vastly different products. That's a major reason why the convergence of banks and insurance that was so widely anticipated following the enactment of Gramm-Leach-Bliley failed to materialize.

Lastly, we wondered why — if a federal insurance regulatory system is so vastly superior to a state-based system — are insurers given an *option* under OFC to choose their favorite regulatory system? Doesn't that just lead to a "race to the bottom," whereby insurers choose the least onerous form of regulation? If federal regulation of the insurance industry is so clearly superior to the structure currently in place, why not just eliminate the state-based option altogether?

It's a special kind of hubris that leads federal regulators in one financial services sector to believe they're capable of regulating them all. It's also a special kind of hubris to believe that when federal regulation fails, the answer is to bring more financial services entities into the fold. Will reason prevail? Stay tuned.

— *W.C.*

*At a lecture a few years ago, we heard a former high-level Fed official confess he had just recently learned that the insurance industry was regulated by the states. We were only mildly surprised at the time since he was a bank, not an insurance, regulator. Ever since then, however, we've wondered how much most federal bank regulators really know about the business of insurance regulation.

ST. LOUIS

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(includes lunch, continental breakfast and snack breaks for both days)

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CANCELLATIONS AND REFUNDS

Your registration fee minus a $25 cancellation fee can be refunded if we receive written notice before July 10, 2008. No refunds will be given after that date. However, your registration fee may be transferred to another qualifying registrant. Refund checks will be processed after Sept. 1, 2008.

If registering after July 10, add $40.00. No registration is guaranteed until payment is received by IRES.

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Insurance Regulatory Examiners Society®

Call for more details: 913-768-4700. Or see IRES web site: www.go-ires.org

BULLETIN BOARD

√ Don't wait to book a room in St. Louis for the 2008 Career Development Seminar. Our room block sells out quickly. Get your room now, register for the seminar later.

√ Yes, your state can "register" you for the CDS even though your registration fee can't be processed until July 1. If you are certain you will be attending the CDS, submit the registration form with an official state Purchase Order or comparable documentation that identifies the person or agency responsible for making payment. Meanwhile, don't delay booking a hotel room — you may find the hotel sold out before your registration is processed.

√ There are now state chairs for unaffiliated members, retirees, and Sustaining Members. Visit the State Chair page of the IRES Web site for contact information.

In the next REGULATOR:

Prior Approval vs Open Competition

Protecting Policyholder Privacy

Bulletin Board items must be no more than 75 words, and must be accompanied by the sender's name, e-mail address and phone contact information. Submit plain, unformatted text (no special font stylings, underlined hyperlinks or special margins). Email to Wayne Cotter at: quepasa1@optonline.net.

√ CE NEWS — IRES is moving toward an all-electronic means of communicating with AIEs and CIEs about continuing education requirements. Beginning May 1, IRES will no longer mail a printed copy of the annual NICE transcript to designees Instead, an e-mail message will remind everyone to visit the IRES Web site — **www.go-ires.org** — to review their continuing ed credits. Those with AIE and CIE: Be sure the IRES staff has your current e-mail address!

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Montana Commissioner greets IRES President Polly Chan at the IRES Foundation's recent *National Insurance School on Market Regulation.* See pp 6-7.