

MARKET REGULATION ACCREDITATION (EX) TASK FORCE

Market Regulation Accreditation (EX) Task Force October 19, 2010, Minutes

W:\National Meetings\2010\Fall\TF\MRA\Contents.doc

Market Regulation Accreditation (EX) Task Force
Orlando, FL
October 19, 2010

The Market Regulation Accreditation (EX) Task Force met in Orlando, FL, Oct. 19, 2010. The following Task Force members participated: Roger A. Sevigny, Chair (NH); Thomas B. Considine, Vice Chair, and Anne Marie Narcini (NJ); Sharon P. Clark (KY); Elizabeth Sammis represented by Nancy Grodin (MD); Mila Kofman represented by Eric Cioppa (ME); John M. Huff represented by Jim Mealer (MO); Brett J. Barratt represented by Marie Holt (NV); Mary Jo Hudson and Lynette Baker (OH); Kim Holland represented by Mathangi Shankar (OK); Mike Bertrand represented by Charles Piasecki (VT); Sean Dilweg and Jo LeDuc (WI); and Jane L. Cline represented by Mark Hooker (WV). Also participating were: Ron Musser (LA); Bruce Ramge (NE); Chuck Vanasdalan (NH); and Joseph Torti, III (RI).

1. Discussion of Market Regulation Accreditation Proposal Process

Commissioner Sevigny stated that he wanted to suspend moving forward with any draft accreditation proposal until the Task Force had determined the goals of such a program. He stated that the Task Force should first determine what an accreditation program should accomplish, what the incentives would be for regulators and the industry, and what it would mean for those states that were not accredited. He stated that he could not recommend to NAIC membership that the NAIC spend more than \$500,000 per year on a program unless he believed it “raised the bar” for market regulation and addressed ongoing market regulation issues.

Commissioner Sevigny stated that the Task Force should actively look at how domestic deference might be used in a market regulation accreditation program. He stated that he would like to explore the issue, while preserving the states’ rights.

Superintendent Torti stated that the *Market Conduct Surveillance Model Act* (#693) appeared to place more restrictions on the states than on companies. He said that, while industry representatives were concerned about the market regulation accreditation program indicating that one state “may” rely upon the work of another, they did not have the same issue with the financial accreditation program, which also indicates that one state “may” rely upon the work of another. He said he understood that prior practices by market regulators might have caused the industry’s concern.

Director Hudson stated that the broad goal of the Task Force should be to reduce the duplicity of market conduct examinations. She stated that the financial accreditation program had been working well for some time, and said she thought a market regulation accreditation program could be successful if the states were held to certain standards when a market issue was raised.

Mr. Hooker stated that the NAIC *Market Regulation Handbook* already has requirements for the states when an issue is discovered that might impact multiple jurisdictions. He stated that all of the states should follow the requirements in the handbook and use the tools and processes that had already been developed. He suggested that additional training might be needed. He stated that he thought it was important the Task Force adopt something as a starting point. He added that the U.S. Government Accountability Office (GAO) had criticized market regulators in a 2009 report by indicating that there was room for substantial improvements.

Commissioner Sevigny stated that he wanted to know if an accreditation program should be for all market regulation processes.

Mr. Mealer stated that an accreditation program should include market analysis and market conduct examinations. He added that a market regulation accreditation program might have the need for comprehensive examinations, similar to those required by the Financial Industry Regulatory Authority (FINRA), which requires comprehensive examinations every four years, and more frequently, if necessary.

Commissioner Sevigny stated that his goal is to develop a recommendation for the Executive (EX) Committee regarding the core requirements of an accreditation program.

Ms. Baker stated that it took some time for the financial accreditation program to be developed and for the states to receive the initial accreditation. She stated that the goal of the development of model laws is that of uniformity among processes. She stated that an accreditation program should assist with encouraging uniformity among the states.

Commissioner Dilweg noted that the financial accreditation program had encountered pitfalls through its development.

Julie Glaszczak (NAIC) stated that it took five years for the majority of the states to be accredited in the financial accreditation program and 20 years for all of the states to be accredited at the same time. She noted that several states failed the first time they were reviewed by the financial accreditation team.

Commissioner Sevigny said that a state's current lack of resources should not discourage having a vision for what could be developed with an accreditation program of this type.

Director Hudson stated that the Task Force should look for areas where there already is uniformity among processes.

Commissioner Sevigny stated that he would like to know if regulators and the industry shared common goals.

Superintendent Torti stated that he would like to know if there had been an analysis of where the problems existed with market regulation processes.

Mr. Ramage stated that, in addition to duplicative examinations, company representatives had expressed concerns about duplicative market analysis, which is then billed to companies.

Dan Schwarcz (University of Minnesota Law School) stated that he supports the idea of a market regulation accreditation program, but stated that consumers often expressed concern about the use of domestic deference in such a program. He suggested that the Task Force research the problems with market regulation. He stated that the Task Force should not adopt a simplistic coordination rule, which would only be confusing for the states to implement.

Commissioner Sevigny stated that he did not believe domestic deference had been properly defined for a market regulation accreditation program.

Commissioner Considine stated that it might be beneficial for the Task Force to explore the idea of having the state with the largest premium volume being responsible for general oversight of a company.

Mr. Schwarcz stated that he was not sure whether one state could best deal with issues in a faraway state. He said state insurance regulators had been telling the U.S. Congress that one of the benefits of state-based insurance regulation was the number of regulators providing oversight of companies.

Ms. Baker stated that she thought there might be a place for the domestic state to have more responsibilities in the market regulation process. She stated that she wanted to clarify that coordinated market conduct examinations were not like coordinated financial examinations. She stated there could be success if the domestic state properly handles issues that are national in scope, resulting in a reduction in the number of duplicative examinations.

Mr. Schwarcz stated that coordination occurred when one state took the lead of a multi-state examination. He stated that coordination could be successful when issues were multi-jurisdictional.

Ms. Narcini stated that the Task Force might find that "one size does not fit all." She stated that, in some situations, the domestic state might be the best to lead an examination, but, in other situations, the state with the largest premium volume might be the best to coordinate an examination. She stated that the Task Force might develop different alternatives for the states to use.

Commissioner Sevigny stated that the Task Force needs to understand what types of market regulation problems would be addressed by an accreditation program.

Mr. Hooker stated that he believed the Task Force should adopt something as a starting point.

Lee Covington (Insured Retirement Institute—IRI) stated that market regulators had made great progress over the past few years, but there were still several companies who receive numerous duplicative examinations each year. He also stated that many regulators start a regulatory process with the goal of imposing a large fine.

Superintendent Torti stated that Mr. Covington should ask his organization's members for evidence of duplicative examinations. Mr. Covington stated that he would develop a process to get feedback from companies, but he wanted to ensure that the states retained their individual authority.

Superintendent Torti stated that financial analysts are required to notify other states when an issue is discovered, but said he was not sure if that was a good idea for market regulation. He stated that financial regulation was developed for the minority of companies who fail to follow regulatory rules and are facing insolvency.

Commissioner Considine stated that he agreed the Task Force needed to get a better understanding of the issues. He suggested that a survey be performed to determine how many market regulatory examinations were actually occurring and which states were conducting the examinations.

Superintendent Torti asked that a report be developed from the NAIC systems regarding the number of examinations and analysis by company code. He stated that a survey should be developed that would get information from the states regarding the number of examinations being conducted.

Ms. Baker stated that there would be inconsistencies between what companies report and what the states report, because companies often include any continuum action as an examination.

Mr. Musser stated that, when a survey is developed for companies, it should request information about continuum options and lines of business.

Mr. Schwarcz stated that companies would be incentivized to provide inadequate information, so as to paint a bleak picture about market regulation processes.

Commissioner Sevigny stated that he wanted to appoint a subgroup to develop a research plan to identify the issues that a market regulation accreditation program should address. Ms. LeDuc, Mr. Mealer, Ms. Narcini, Ms. Baker and Mr. Vanasdalan volunteered to participate on the subgroup.

Having no further business, the Market Regulation Accreditation (EX) Task Force adjourned.

W:\National Meetings\2010\Summer\TF\MRA\08-MRA.doc