The Future of Market Regulation Post COVID-19

How Insurers and Regulators Will Need to Adapt in a Post-Pandemic Environment

Mike Rohan, Of Counsel

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How Insurers and Regulators Will Need to Adapt in a Post-Pandemic Environment

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Mike Rohan, Of Counsel

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1. CEFLI's Antitrust Policy.
2. Webinar Recording.
3. Certificate of Attendance Template.
4. Questions.
5. Post Event Information.

Introduction

Michael P. “Mike” Rohan
Of Counsel
Locke Lord, LLP

Agenda

- Introduction
- Pre-Pandemic State of Market Regulation
- Where We Are Now
- What Does the Future of Market Regulation Look Like?
- What Will Insurers and Regulators Need to Do to Adapt?
- Insider Tips For Life Insurers

Introduction

- Michael P. “Mike” Rohan, Of Counsel (Chicago)
  - Former Deputy Director, Illinois Department of Insurance
  - Former IL DOI Representative to numerous NAIC groups, including Market Actions (D) Working Group

- Locke Lord’s Insurance Regulatory and Transactional Group
  - 2019 Law360 Insurance Group of the Year; 2020 US News Nat’l Tier One
  - Over 40 attorneys in 18 US offices (plus London); 100+ Years of Service
  - Former CA, IL, and NY Regulators; Handle Matters Before All Departments
  - Over 100 Attorneys Across All Aspects of Insurance (Litigation, M&A, etc.)

PRE-PANDEMIC STATE OF MARKET REGULATION

Pre-Pandemic State of Market Regulation

- Departments Overworked and Understaffed
- Lack of Uniformity in Approaches
- Comprehensive Exams and Significant Onsite Work
- Lack of National Standards and Practices

Pre-Pandemic State of Market Regulation

- Departments Overworked and Understaffed
  - 2019: **5,922 Domestic Insurers**
  - 270,000 Formal DOI Complaints and 1.6m Inquiries
  - Under 11,000 DOI Employees Nationwide (trend is down)
  - Market Conduct/Analysis = 4.4% of Staff
  - 124 FTE Market Analysts, 218.5 Market Conduct Examiners, 72 Supervisory Staff = **414.5 Regulators Overseeing Market Regulation for the Entire US Insurance Industry***
  - **Insurers Outnumber Market Regulators Over 14:1**

*Does not include contract examiners

Source: NAIC 2019 Insurance Department Resources Report https://www.naic.org/prod_serv/STA-BB-20-01.pdf

Pre-Pandemic State of Market Regulation

- Departments Overworked and Understaffed
  - 511 Completed Market Conduct Exams Reported in 2019
    - 138 Domestic, 367 Foreign, 6 Other
    - 19 States Reported No Exams
    - 7 More States Reported 1-2
  - Another 163 Statutory MC/Financial Exams (TX, AR, TN, MS, IA, etc.)
  - By Contrast, There Were 1,712 “Market Actions”

Source: NAIC 2019 Insurance Department Resources Report https://www.naic.org/prod_serv/STA-BB-20-01.pdf

Pre-Pandemic State of Market Regulation

- Lack of Uniformity in Approaches
  - Statutory vs Discretionary Exams
  - Comprehensive vs Targeted Exams
  - Onsite Exams vs “Desk Audits”
  - Analysis Methods Vary Widely

Pre-Pandemic State of Market Regulation

- Comprehensive Exams and Significant Onsite Work
  - Look at Everything Whether Potential Problem Flagged or Not
  - Spend Weeks/Months Onsite at Company Sites
  - Increased Costs (Travel, Per Diem, Daily/Hourly Fees)
  - Contract Examiners (Even Higher Costs)

Pre-Pandemic State of Market Regulation

- Lack of National Standards and Practices
  - NAIC Market Regulation Handbook (Guide)
  - No National Peer Review Like Financial Regulation
  - Wide State-by-State Variation in Analysis Methods, Exam Protocols, Priorities, Staffing, Enforcement, Severity of Penalties
  - NAIC and States Recognize Problem

WHERE WE ARE NOW

Where We Are Now

- NAIC and DOI Offices Closed (or Barely Open)
- Less Collaboration and Meeting Opportunities
- Work Interrupted and Delayed

Where We Are Now

- Examiner Capacity Reduced (Temporarily?)
- Loss of Expertise
- Triage Mode
- Expect Dramatic Decrease in 2020 Exam Activity

WHAT DOES THE FUTURE OF MARKET REGULATION LOOK LIKE?

What Does the Future of Market Regulation Look Like?

- Staffing
- Market Analysis
- Examinations

What Does the Future of Market Regulation Look Like?

- Staffing
  - Downward Trend in DOI Employees Likely to Continue
  - Retention Difficult vs Private Sector
  - Cross-Training
  - Examiner Roles Less Personally Demanding

What Does the Future of Market Regulation Look Like?

- Market Analysis
  - More Reliance on Data / More Collection of Data
  - Market Conduct Annual Statement Expansion
    - Current: Disability Income, Health, Homeowners, Individual Annuity, Individual Life, Lender-Placed Auto & Homeowners, Long-Term Care, Private Passenger Auto
    - Coming Soon: Private Flood, “Other Health,” Travel
    - Expansion of Life and Annuity Categories? (current 4 to 20+?)
  - Data Visualization / Technology

What Does the Future of Market Regulation Look Like?

- Examinations
  - Less Frequent
  - More Continuum Actions Short of Exams
  - Exams More Targeted, Shorter in Duration (“Risk-Based?”)
  - Less Onsite Time
  - Less Expense
  - Less Reliance on Contract Examiners for General Work
  - Continued Use of Contractors for Specialized Expertise (IT, MH Parity, Unclaimed Property)

WHAT WILL INSURERS AND REGULATORS NEED TO DO TO ADAPT?

What Will Insurers and Regulators Need to Do to Adapt?

- Insurers
  - Complete MCAS Accurately and On Time
    - If Uncertain About Definitions, Ask First
    - Don't Be the Sore Thumb
  - Provide Remote Access to Data
    - Have a Plan
    - Limited Network Access / Data Room
      - Remember Regulators Probably Have Worse IT Than You
    - Get the Data Right the First Time
  - Respond Promptly to ANY DOI Inquiries
  - Be Prepared to Demonstrate **How** You Comply (Focus on Systems and Procedures vs. Actual Files)
  - Make Sure IT/Data Scientists Know Insurance (a little), and Vice Versa

What Will Insurers and Regulators Need to Do to Adapt?

- Regulators
  - Invest in IT / Data Science
  - Invest in Training and Retention of Personnel
  - Redirect Resources to Analysis
  - Work With Other States to Achieve More Uniform Standards and Practices
  - Implement Certification of DOI Market Regulation Functions (Staffing, Training, Standards, Legal Authority, etc.)

What Will Insurers and Regulators Need to Do to Adapt?

- Regulators (Continued)
  - Focus on Problem Actors Through Analysis
  - Focus on Narrow Issues at Target Companies (Unless Wider Inquiry Warranted By Results)
  - Phone Calls Versus Call Letters
  - Increase Multistate Collaboration and Communication
  - More Regulator Telework, Less Manual Operations

INSIDER TIPS FOR LIFE INSURERS

Insider Tips for Life Insurers

- Areas of Focus for Regulators
  - Replacements
  - Annuity Suitability (NAIC Best Interest – *IA, AZ, RI so far*, Fiduciary Duty - *NY*, Others In Between)
    - FAQ Document in Works for New Model Regulation
    - Life Insurance Could Be Next Nationally
  - Unclaimed Property Practices
  - IT (NAIC Data Security Model Law Expansion – 2021 and Beyond)
  - Accelerated Underwriting (Use of Big Data)
  - Discrimination (NAIC Race and Insurance Committee)

Insider Tips for Life Insurers

- Maintain Relations With Career Regulators
  - Median Commissioner Tenure = Under 3 Years
  - Have Someone to Approach if Need Arises

- Why Do Companies Get Examined?
  - High Complaint Ratios / Multiple Complaints Same Issue
  - “Hot” Issues Spotted By Regulators
  - MCAS Data Comparison to Competition
  - Whistleblowers
  - Time Since Last Exam
  - Results of Last Exam (Compliance Exams)
  - Activity in Other States
  - No Magic Formula

Insider Tips for Life Insurers

- Common Issues
  - Untimely Claim Payment / Interest
  - Poor Customer Service Response (TPAs)
  - Nonconforming Correspondence (Delay Letters, Cancellations)
    - Reasonable Explanations
    - Proper Timeframes
    - Required Consumer Notices
  - Late or Incomplete Response to Complaints
  - File Documentation Incomplete
  - Use of Unfiled Forms/Rates
  - Unlicensed/Not Appointed Producers

Michael P. “Mike” Rohan
Of Counsel
Chicago
T: 312-443-1713
C: 708-420-8972
michael.rohan@lockelord.com

Atlanta | Austin | Boston | Brussels | Chicago | Cincinnati | Dallas | Hartford | Hong Kong | Houston | London | Los Angeles
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  CEFLI Joint Educational Webinar: CEFLI Affiliate Member BrownWinick will moderate a Year-End Review webinar on Thursday, December 10, 2020. Registration will be open on CEFLI.org on Wednesday, November 25th.