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Comments of the Center for Economic Justice

To the NAIC Market Conduct Examination Standards Working Group

July 19, 2017

CEJ submits the following comments on the proposed Life Standardized Data Requests and on the proposed process-review approaches to market conduct examinations.

Standardized Data Requests for Life Insurance Sale

The current proposals include three SDRs for life sales – declinations, policies-in-force and replacements. We suggest the three be combined into a single SDR for life sales to enhance analytic capacity and to increase efficiencies by reducing redundant data fields. Each of the three SDRs includes the same company, producer and applicant/policyholder information. A single SDR would request these data once while incorporating the activity data elements from all three SDRs into a single SDR. This is clearly more efficient for reporting companies with no added difficulty for regulators. In addition, a single SDR for life sales would provide a better overall picture by presenting declinations, sales and replacements in a single data set. This would also ease and enhance analysis of sales across these three topic areas.

As mentioned during the last call, the statistical plan for life insurance in the Valuation Manual utilizes a single table for sales with more detail than the proposed SDRs. We suggest that market regulators consider the additional detail included in VM-51 (the statistical plan chapter of the Valuation Manual) since these data elements and categories within data elements will be in use by life insurers: In particular, we suggest data elements for type of underwriting requirements (underwritten fluid collected, underwritten no fluid collected, not underwritten/not accelerated underwriting, accelerated underwriting, conversion), type (or plan) of insurance and premium payment modality/premium finance/secondary guarantee. These data categories would be very useful for evaluation of consumer outcomes for both sales and claims.

"Risk-Based" Process Review vs. Empirical Evidence of Consumer Market Outcomes

The working group's agenda has provided and provides two starkly different approaches to market regulation. On the one hand, we have data specifications for transaction-level activities which a regulator would examine for poor market outcomes for consumers or violations of applicable law or regulation. The result of such data collection and sophisticated data analysis would be empirical evidence of insurer market performance and consumer market outcomes and, consequently, a powerful tool to use to determine what, if any, areas or issues upon which to focus regulatory attention.

On the other hand, we have two proposals for compliance risk or process risk review, based in the premise that good process and corporate governance will lead to good consumer outcomes and good insurer compliance. Both proposals involve collecting a large number of documents regarding governance and controls as a way to "determine areas of potential compliance deficiencies."

As we have mentioned several times, we agree that regulators should have tools and skills to examine corporate governance and procedures **when actual market outcomes indicate compliance problems attributable or possibly attributable to failures of corporate governance or procedures.** We continue to object to the use of compliance or process review as a baseline approach to market regulation. The baseline approach to market regulation should be the routine collection and analysis of granular market outcome data – data like the SDRs.

The foundation of future of insurance market regulation should be routine – quarterly – collection and analysis of detailed consumer market outcomes – transaction-detail records of sales and claims. This approach is more efficient and more effective than the alternatives for several reasons:

1. Routine reporting of detailed market outcome data is more efficient and more accurate than special calls or one-time data reporting. Stated differently, with routine data collection, more time is spent on analysis than on data reporting issues.

2. Routine reporting of detailed market outcome data better allows regulators to identify problem areas in a company or a market with greater precision, thereby allowing more focused follow-up and remediation.

3. Routine reporting of detailed market outcome data allows regulators to leave alone those companies producing good consumer outcomes. A data-driven foundation for market regulation means that problems are identified by actual empirical evidence. In contrast, the process-review approach to market regulation is based on the premise that good policies and procedures produce good market outcomes. That premise was the basis for the rejected proposal by the Insurance Market Standards Association proposal that insurers complying with the IMSA standards be given credit by regulators. The fact is that no empirical evidence has been put forth to substantiate the claim that good corporate governance – defined by whom? – is associated with uniformly good consumer market outcomes.

4. Routine reporting and analysis of detailed market outcome – quarterly – allows regulators to better monitor markets by identifying market-wide issues not discernable through a process review of an individual insurer and by more timely analysis of consumer outcomes than any type of company-specific target or process examination

We appreciate and applaud the work of those presenting the process-review tools and techniques. There is a role for these tools if market outcome data analysis indicates particular problems for a particular company. But, it is a misnomer to describe this approach as risk-based since there is no analysis of risk factors, but, rather, a presumption that risk is associated with certain corporate governance issues.

While it is vitally important to improve existing regulatory tools to better address today's market regulation challenges, we suggest that the working group consider and articulate what market regulation should be five and ten years from today. In our view, regulators are already far behind insurers in data collection and data analytics and that any meaningful future for market regulation will involve more and better regulatory data collection and analysis. A step in that direction would be to replace the current Market Conduct Annual Statements with the quarterly reporting of the Standardized Data Requests data for the respective lines of business. This action would put the NAIC and states on a solid road to more effective and more efficient market regulation.

Finally, creating transaction-detail Market Conduct Quarterly Statement data collection and analysis builds on and improves the current tools and capabilities of state insurance regulators. All existing tools – other than the current MCAS – remain in the regulatory toolbox -- including process-review methodologies – but utilized in a more focused and informed manner.