

The Center For Economic Justice

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June 11, 2001

Rosanne Mead
Chair, NAIC Suitability Working Group

Re: Follow Up Comments to June 9, 2001 Meeting

Dear Ms. Mead:

Based upon the discussion of the Compliance Section 7A at the June 9, 2001 meeting of the Suitability Working Group, the Center for Economic Justice submits the following comments to replace the comments in our June 6, 2001 letter regarding Sections 7A and 7B in the draft Suitability Regulation

Compliance

Sections 7A and 7B should be deleted. At a minimum, discussion on the proposal to allow insurers to demonstrate compliance with suitability requirements by virtue of membership in IMSA, NASD or other independent certification organization should be deferred until the Market Conduct (D) Committee has finished its work on the issue. The current draft suggests deferring further discussion of the credit insurance exemption until a new working group has evaluated a related issue. The same logic would indicate that the Suitability WG should defer further discussion of the role of independent certification organizations in providing a suitability safe harbor until the Market Conduct Committee finishes the examination of an issue that has been ongoing for many months.

If the Suitability WG continues to discuss the issue of safe harbors, our recommendation is that Sections 7A and 7B should be deleted. First, current section 7A creates a second hurdle to enforcing the suitability regulation. As drafted, in addition to proving an insurer did not make suitable recommendations, the regulator will have to additionally prove the insurer did not have and did not maintain procedures and guidelines “reasonably designed to assure compliance.” Yet, there is no rationale for this second hurdle because there is no required relationship between the absence of unsuitable recommendations and having procedures and guidelines in place. Thus, our second objection is that Section 7A provides a safe harbor – an immunity – for violations of the suitability regulation by having procedures and guidelines in place – regardless of whether those procedures and guidelines have any actual relationship with compliance.

As we have stated previously, we encourage insurers to participate in IMSA as part of their efforts to ensure compliance with laws, regulations and sound market conduct practices. And state regulators could recognize IMSA's efforts by issuing a bulletin to insurers with such a statement. However, IMSA is requesting more of the NAIC than "recognition," although "recognition" is the word IMSA uses. IMSA is asking the NAIC to provide insurers with a safe harbor – an immunity – for suitability violations by virtue of being a member of IMSA. Despite all the protestations to the contrary, Section 7A and its drafting predecessors provide a new and additional legal defense to insurers for violations of the suitability regulation for being a member of IMSA.

Finally, we hope regulators are not swayed by IMSA's argument that without "recognition" of IMSA by the NAIC, insurers will lose interest in continuing their membership in IMSA. It is ironic that while insurers are demanding the NAIC move towards "market-based" regulation, IMSA is arguing that it cannot survive in the market on its own merits. Rather, IMSA is asking regulators to intervene in the market – the market for independent certification of market conduct compliance – and provide IMSA with a regulatory crutch. If IMSA is providing a useful service to insurers – helping insurers better comply with sound market conduct practices – then IMSA can survive and prosper without regulatory intervention in the independent certification market. And if IMSA can demonstrate to regulators and the public that membership actually improves an insurer's market conduct performance and/or results in insure compliance with laws, regulations and sound market conduct practices, then IMSA has a product it can market to regulators and the public. To date, however, we have seen no such data or analysis.

Thank you for your consideration.

Sincerely,



Birny Birnbaum
Executive Director