

AICP NW Chapter Meeting
WA Market Conduct Oversight
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Today's Presentation

- What is Market Conduct Oversight?
- Brief history on Market Conduct Oversight development in Washington State
- A look at the Market Conduct Oversight Legislation (RCW 48.37)
- What the Market Conduct Oversight Legislation changed
- Review of new Market Conduct Oversight Units and workflows

What is Market Conduct Oversight?

- Market Conduct Oversight consists of two distinct Units.
 - Market Analysis
 - Designed to identify potential market or company issues through broad industry, market and company analysis
 - Market Conduct
 - Designed to determine the extent of market or company issues and work directly with companies to resolve those issues

What is Market Conduct Oversight?

- Market Oversight is a standardized process of collecting, organizing and analyzing data and other information to enable regulators to identify general market disruptions and specific market conduct problems as soon as possible, while maintaining an efficient and effective regulatory framework.
- Market oversight is intended to identify those issues where consumer harm is likely to occur.

What is Market Conduct Oversight?

- Market oversight can be conducted at a variety of levels, using a variety of techniques.
- Market oversight provides the framework for collaboration and leads to proportionate regulatory responses.
- Market oversight promotes uniformity of oversight processes among various states.
- In other words, Market Oversight is designed to work like a smoke detector providing early detection of potential market problems.

How Does Market Oversight Work?

- Activities in market oversight are broken down into two areas
 - Market Analysis works with data to determine trends and to determine potential hazardous company activities
 - Market Conduct takes the information gathered by the Analysis team and works with the company or industry segment to correct problematic areas

Market Oversight in WA

- Mid 1980's – stand alone market conduct
- Mid 1990's – expanded market conduct staff to handle health care
- 2003 – began doing basic analysis as designed by the NAIC
- 2005 – WA recognized the need for specific legislation to have a full scope market oversight program

Market Oversight in WA

- June 2005 – Contracted with outside firm to help us set framework for program including need for legislation
- November 2005 - Delivery of consultant proposal
- February 2006 - Began meetings with interested parties to write the Market Oversight Bill
- Meeting held every 2 weeks until May 2006 to discuss issues and create legislation

Who Had Input About Market Conduct Oversight?

- Regulators
- Insurance Companies
- Consumers/Consumer Groups
- Federal Government
- Trade Associations
- NAIC Staff

Chapter 48.37, RCW Market Oversight Law

- The Market Conduct Oversight law is contained in Chapter 48.37, RCW and was effective July 22, 2007.
- Rules to administer the new law became effective September 1, 2007 and are contained in Chapter 284-37, WAC.

Chapter 48.37, RCW

Market Oversight Law

- New law repealed references to market conduct in RCW 48.03, Exam Statute as well as applicable sections of RCW 48.44 and RCW 48.46
- We now have one of the most stringent confidentiality laws in the country.
- We have a unique complaint verification process.
- The 5 year exam requirement is gone
- Establishes a requirement for the Market Conduct Annual Statement

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Chapter 48.37 RCW Market conduct oversight

[Complete Supplement Chapter](#)

RCW Sections

- [48.37.005](#) Short title.
- [48.37.010](#) Purpose -- Intent.
- [48.37.020](#) Application.
- [48.37.030](#) Definitions.
- [48.37.040](#) Market analysis procedures -- Commissioner's duties -- Rules.
- [48.37.050](#) Protocols for market conduct actions -- Rules -- Report to the legislature.
- [48.37.060](#) Market conduct examinations -- Procedures -- Final orders -- Fees.
- [48.37.070](#) Access to records and information -- Commissioner's authority -- Depositions, subpoena, and oaths.
- [48.37.080](#) Confidentiality.
- [48.37.090](#) Market conduct oversight personnel.
- [48.37.100](#) Immunity for the commissioner, market conduct oversight personnel, authorized representatives, and examiners.
- [48.37.110](#) Fines and penalties.
- [48.37.120](#) Dispute resolution -- Rules.
- [48.37.130](#) Coordination with other state insurance regulators through the NAIC.
- [48.37.140](#) Additional duties of the commissioner.
- [48.37.900](#) Captions not law.

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[WACs](#) > [Title 284](#) > [Chapter 284-37](#)

Chapter 284-37 WAC Market conduct oversight program

Last Update: 8/1/07

[Complete Chapter](#)

WAC Sections

- [284-37-010](#) Definitions.
- [284-37-020](#) Procedures manuals.
- [284-37-030](#) Access to records.
- [284-37-040](#) Market conduct annual statement.
- [284-37-050](#) Complaint verification.
- [284-37-060](#) Dispute resolution.

Who does the Market Conduct Oversight Legislation apply to?

“This chapter applies to all entities regulated by this title, and to all persons or entities acting as or holding themselves out as insurers in this state, unless otherwise exempted from the provisions of this title.” RCW 48.37.020

Every Insurance Company who does
business in Washington

What is the scope of Market Conduct Oversight?

- (1) Market conduct actions shall be taken as a result of market analysis and shall focus on the general business practices and compliance activities of insurers, rather than identifying obviously infrequent or unintentional random errors that do not cause significant consumer harm. RCW 48.37.050

What is the Market Oversight Confidentiality?

- (1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced, or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market conduct actions or examinations made under this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, to the extent the documents are in the possession of the commissioner or the NAIC, shall be confidential by law and privileged, shall not be subject to the provisions of chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

RCW 48.37.080

What about the Market Conduct Annual Statement?

(2)(a) Each entity subject to the provisions of this chapter shall file a market conduct annual statement or successor product, in the general form and context, in the time frame required by, and according to instructions provided by the NAIC, for each line of business written in the state of Washington. If a particular line of business does not have an approved market conduct annual statement form, the company is not required to file a report for that line of business until such time as [the] NAIC adopts an annual statement form for that line of business.

RCW 48.37.040

What about the Market Conduct Annual Statement?

- What lines of business does the MCAS current apply to?
- Homeowners
- Auto
- Life
- Annuity

What about the Market Conduct Annual Statement?

- The Company is exempt from filing in a particular participating state if it is not licensed to do business in that state or if it reported less than \$50,000 automobile premiums and less than \$50,000 homeowners premiums for that particular participating state. – NAIC Call Letter
- The Company is exempt from filing in a particular participating state if it is not licensed to do business in that state or if it reported less than \$50,000 life premiums and less than \$50,000 annuity considerations for that particular participating state. – NAIC Call Letter

What other sources can we use for Market or Company Data?

(3)(a) The commissioner shall gather information from data currently available to the commissioner, surveys, required reports, information collected by the NAIC, other sources in both the public or private sectors, and information from within and outside the insurance industry. The commissioner may request insurers to submit data and information that is necessary to conduct market analysis...
RCW 48.37.040

In short, we can use data from virtually anywhere!

What is the purpose in collecting all of this Data?

- (b) The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC market regulation handbook as one resource in performing this analysis.
- RCW 48.37.040

What happens if potential abuses or misconduct is identified?

(4)(a) If the commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market actions may be considered before conducting a market conduct examination. The commissioner shall not be required to follow the exact sequence of market conduct actions in the continuum or to use all actions in the continuum. As part of the chosen continuum action, the commissioner must discuss with the insurer the data used to choose the option and provide the insurer with an opportunity for data verification at that time. These actions may include, but are not limited to:

What are the most common steps in the Continuum of Responses?

- (i) Correspondence with the insurer;
- (ii) Insurer interviews;
- (iii) Information gathering;
- (iv) Policy and procedure reviews;
- (v) Interrogatories;
- (vi) Review of insurer self-evaluation and compliance programs. This may include consideration of the insurer's membership in a best practices organization, if the commissioner is satisfied that the organization's qualification process is likely to provide reasonable assurance of compliance with pertinent insurance laws;
- (vii) Desk examinations; and
- (viii) Investigations.

RCW 48.37.040(4)a

What are the most common steps in the Continuum of Responses?

(b) Except in extraordinary circumstances, the commissioner shall select the least intrusive and most cost-effective market conduct action that the commissioner determines will provide the necessary protections for consumers.

RCW 48.37.040(4)

Why is the Market Conduct Oversight Program Important?

- Proactive method to oversee and review company activities in the market place.
- Provides a method to review **current** market place activity on an **annual** or more frequent basis.
- Allows regulators to focus resources on activities that are potentially harmful to consumers instead of a retrospective review of companies regardless of their marketplace activities.

How We Used To Oversee the Market – (Market Conduct Exams)

- Statutory requirement to examine domestic companies every 5 years
- Examine foreign companies based on market share and complaint numbers
- Almost always, big players got multiple exams, small to medium companies were almost never examined. We left out a whole market segment!
- Retrospective – most problems were corrected before we found them

A Review of what the Legislation Changed

- We are discontinuing the mandatory 5 year exam cycle
- Replacing domestic exam cycle with required market analysis on all companies (domestic and foreign) every year
- Expands the scope of responses available to Market Conduct Oversight staff.
- Provides the potential for a greater level of cooperation between insurers and OIC staff in sharing of information and requesting and making corrective regulatory responses.

A Review of what the Legislation Changed

- Sets standards for market analysis by adopting the NAIC Market Regulation Handbook procedures
- Establishes a requirement for companies to send us a Market Conduct Annual Statement each year and/or for the OIC to request industry survey information that can be used to benchmark normative practices and policies.
- Allows for domestic deference if the domestic state has similar laws and processes

A Review of what the Legislation Changed

- Affords insurers the ability to review information used in Market Oversight
- At any point in the process, insurers may request mediation to resolve conflicts that might arise out of disputes of accuracy or interpretation of information made by Market Conduct Oversight personnel.
- Sets standards for confidentiality of analysis materials
- Ultimately, it allows the OIC to move market regulation out of the 19th century and into the 21st century

Market Conduct Oversight Departmental Structure

As previously noted, the department consists of two units

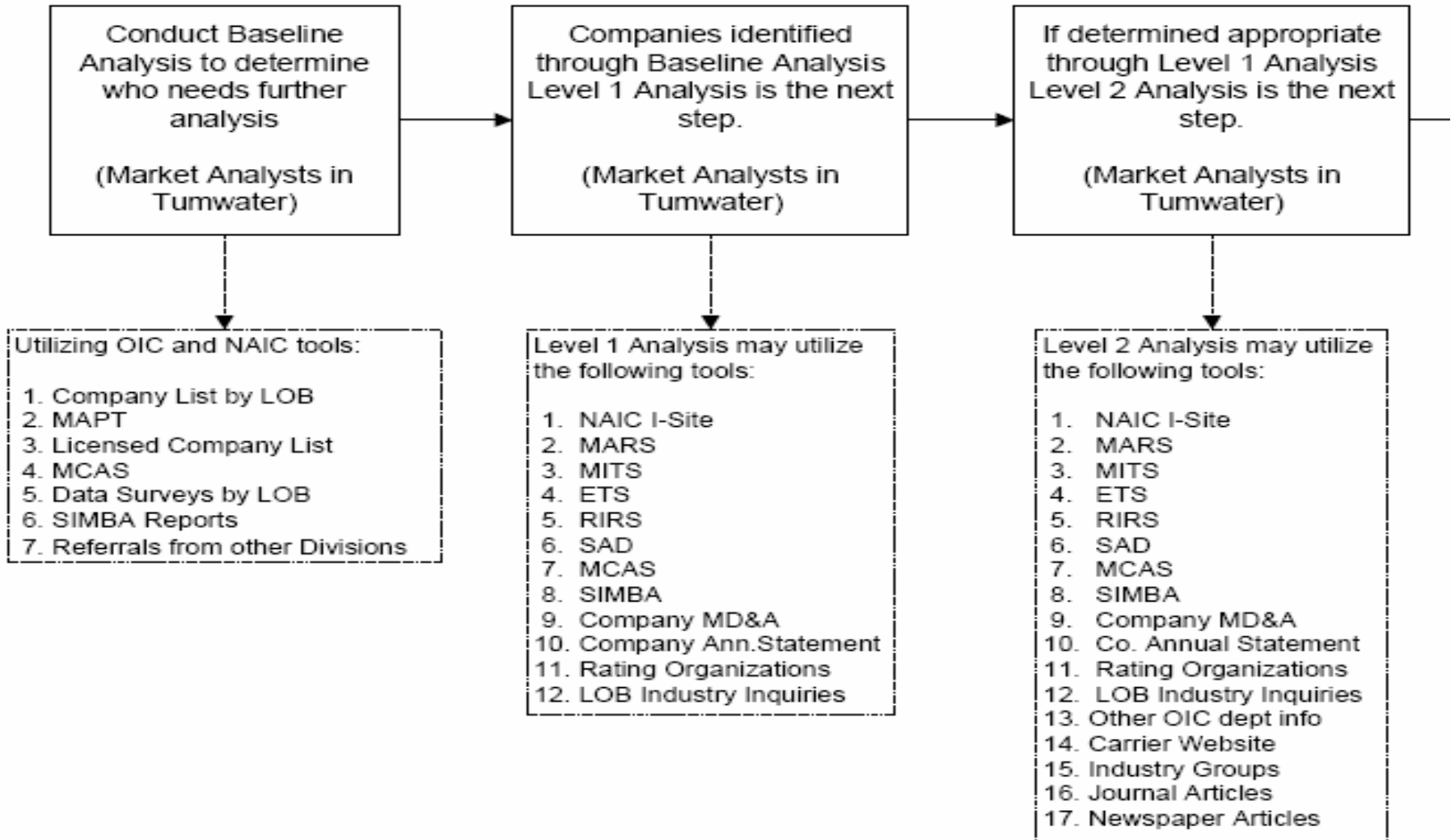
■ Market Analysis

- Based in Tumwater
- Heavily focused on data, data mining and trending analysis

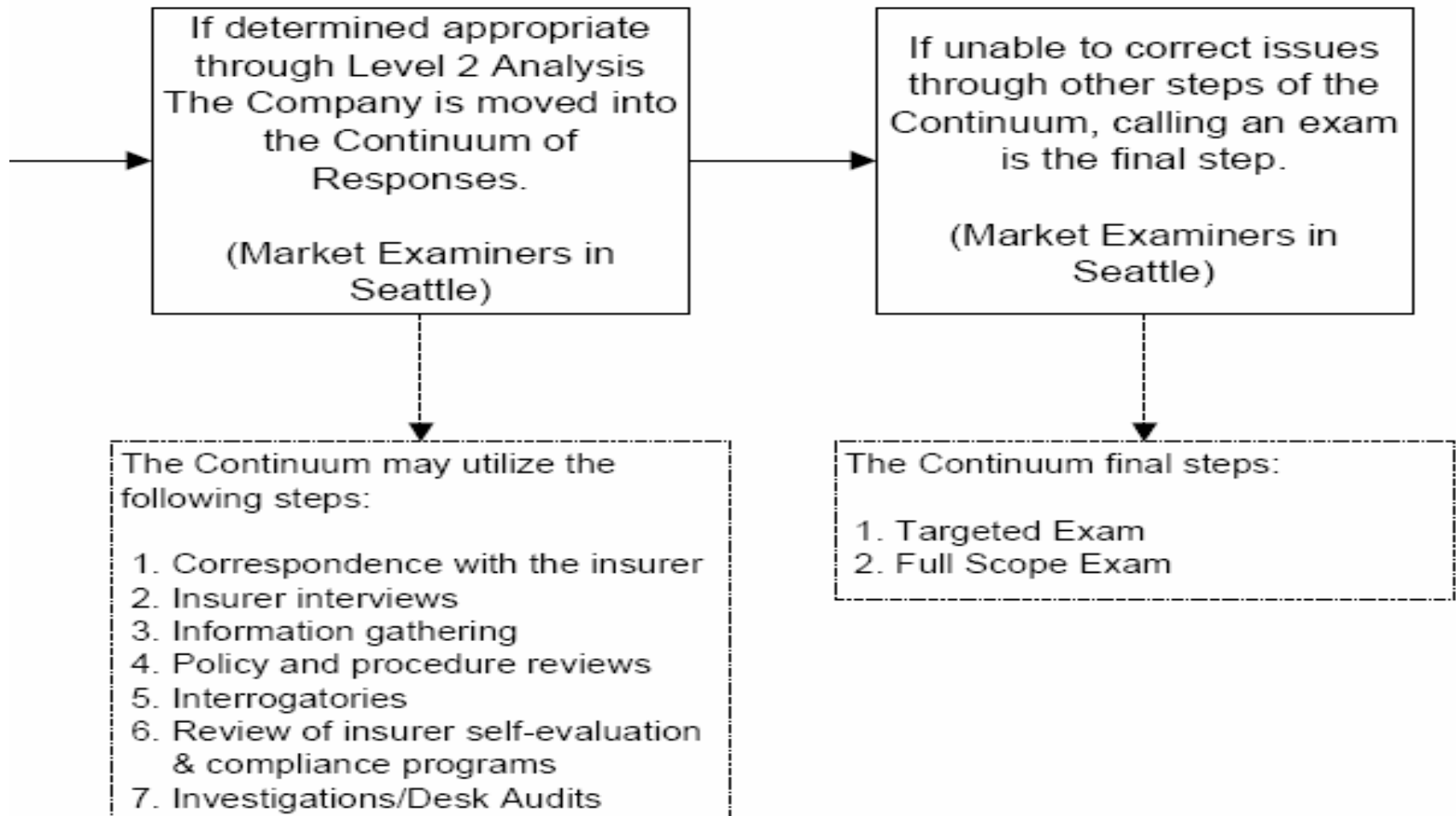
■ Market Conduct Examination

- Based in Seattle
- Heavily focused on company contact and cooperation to further identify and correct issues.

Market Oversight Workflow



Market Oversight Workflow



How The Market Conduct Oversight Process Looks

Baseline Analysis is the first step in the Market Conduct Oversight Process.

Through Baseline Analysis, we can begin to:

1. Identify companies who may be of concern in the marketplace
2. Identify marketplace trends beyond any one company that may be harmful to consumers.

How The Market Conduct Oversight Process Looks

Examples of tools and data sources that Baseline Analysis may use:

- Review Market Conduct Annual Statements
- Review Industry Surveys
- Utilize Market Analysis Prioritization Tools provided by the NAIC
- Review referrals from other OIC departments
- Review referrals from other regulatory agencies
- Review data from news, scholarly or journal articles

How The Market Conduct Oversight Process Looks

Level 1 Analysis is the next step in Market Conduct Oversight and is used to further identify companies who may be of concern in the marketplace

■ Level 1 Analysis

- Utilizes a NAIC standardized process for company review by Line of Business to further identify when companies may acting outside of normative market practices.

How The Market Conduct Oversight Process Looks

Level 2 Analysis is the final step in Market Conduct Oversight and is an in-depth method to identify companies who may be of concern in the marketplace

■ Level 2 Analysis

- Affords the Analyst the flexibility to data mine virtually any available source to further determine if an insurance company is acting outside of normal market practices.

How The Market Conduct Oversight Process Looks

The Continuum of Regulatory Responses are the Market Conduct Oversight steps that may occur upon completion of Market Analysis.

■ Continuum

- Provides framework of responses where Examiners have flexibility to contact insurance companies and work toward confirming concerns raised through Market Analysis and/or working with companies to correct their market actions quickly.

How The Market Conduct Oversight Process Looks

The Continuum of Regulatory Responses last steps still include officially calling a targeted or full-scope exam.

■ Examination

- If deemed necessary, examination is the final step in the Continuum.
- We still charge for non-domestic examination
- Exams may be on-site or desk exams where the required information is forwarded to our offices.

How The Market Conduct Oversight Process Looks

The Continuum of Regulatory Responses provides a framework for the company and the regulator to work closely and cooperatively to resolve issues before the need to call an exam occurs. The benefits of this cooperation may include:

- Exam Fees saved (we don't charge for Continuum work)
- Faster improvements for the consumer, your customer.
- Better data for future Market Analysis to assure you are measured appropriate to your actions.

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