Market Conduct from a Company Perspective

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Introduction to Market Conduct

Definition

› Compliance with state laws regulating the sales and marketing, underwriting, issuance, and servicing of insurance products.
› Proper market conduct means conducting insurance business fairly and responsibly.
› An insurer has the responsibility to treat customers fairly and within the parameters set by statutes and regulations.
Examples of Non-Compliance with Market Regulations

› American Investors Life – Fined $1.4 million for deceptive sales practices and unsuitable sales.
› Citigroup Life – Fined $2 million for failing to properly provide adequate and accurate disclosures if a replacement was involved, as well as unsuitable sales.
How an Insurer is Contacted by a Regulator

› Phone Calls
› Letters
› Agents
› Data Surveys
› Market Analysis
› Market Conduct Examinations
How Does a Regulator Choose to Examine a Company

› Statutory requirements

› Complaints – Significant changes in the ratio of consumer complaints in a relatively short period of time

› Significant increases/decreases in premium volume; growth or decline in one or more lines of business

› Significant changes in the company’s book of business
How Does a Regulator Choose to Examine a Company (cont.)

› Rapid expansion and significant premium volume in new states
› High degree of reliance on third parties to perform company functions, such as managing general agents or third party administrators
› Significant problems with electronic data processing systems such that the integrity of data for claims, underwriting, and financial systems is questionable
How Does a Regulator Choose to Examine a Company (cont.)

› Information from other areas of an insurance department
› Information from other jurisdictions
› Court records
› Media
Most Common Criticisms for Life and Health Insurers

- Failure to use compliant policy forms
- Failure to use licensed and appointed producers and to provide notification of producer appointments and terminations
- Failure to properly acknowledge, pay, investigate, or deny claims within specified time frames and notices
- Improper documentation of files
Most Common Criticisms for Life and Health Insurers (cont.)

› Failure to provide required disclosures including coverage issues, fraud warnings, free-look periods, right of appeal, or guaranty fund notices
› Failure to respond to the department of insurance and/or produce records requested during the exam process
› Using unapproved/unfiled forms
› Failure to adhere to replacement regulations
› Failure to provide compliant explanation of benefits to consumers
How Can You Help Compliance?

› Be aware of what regulators are looking at. These issues don’t necessarily signal a problem, but be aware of what information is being monitored

› A complete, honest and responsive answer to correspondence or interrogatories can prevent a more intrusive on-site review or investigation

› If we are in compliance in all areas, there is less chance for surveys, data calls, and examinations
How Can You Help Compliance? (cont.)

› Consistency among product lines. One action by a division may impact an examiner’s feelings across all lines of business

› REMEMBER: Examiners from one state will talk to examiners in other states
Market Analysis

› Once a market conduct issue has been identified, regulators will match the regulatory response to specific situations
Continuum of Market Conduct
Regulatory Responses

› Office-based information gathering
› Contact with the regulated entity
› Interview with the company
› Targeted information gathering
› Correspondence
› Policy and procedure review
› Interrogatories
› Desk audits
Continuum of Market Conduct
Regulatory Responses (cont.)

› Company self-audits
› Voluntary compliance programs
› Information sharing
› On-site reviews
› Investigation
› Targeted examination
› Comprehensive examination
› Multi-jurisdictional cooperative examination
Enforcement actions

Proposal of new statutes or regulations

It is important to note that initial contact with a regulator can go either way. The inquiry can be complete or the inquiry can evolve into a full-blown market conduct examination.
Market Conduct Annual Statement (MCAS)

- Started by the NAIC in 2002
- The goal is to collect uniform market conduct related data
- Provides regulators with information not otherwise available through state market analysis initiatives
- Promotes uniform analysis by applying consistent measurements and comparisons between companies
Collaboration of regulators, industry and consumers recognizing the benefits of monitoring, benchmarking, analyzing, and regulating market conduct activities

Has grown from 8 states to 45 states
MCAS Data Collection

› Applies to life insurance and annuities
› Number of policies
› Number of replacements
› Number of surrenders
› Number of 1035 exchanges
› Premium dollars
› Claims
› Complaints
Market Conduct Examinations

› Call Letter – Advises a company that an exam has been scheduled
› First Day Letter – Communicates what data will be examined and includes a listing of all records and data that must be furnished; also includes a list of all office accommodations that must be met
› Pre-Examination Conference – A discussion surrounding the examination requirements and establishes lines of communication between the regulators and the company
Market Conduct Examinations (cont.)

› Examination Commencement – When the actual examination begins, whether it will be a desk audit at the regulator’s office or an on-site examination

› Concluding Conference – The lead examiner will initiate a conference after completion of material review to present a summary of findings and discuss pertinent issues

› Report Draft – The lead examiner prepared a draft of the exam report
Market Conduct Examinations (cont.)

› Company Report Review – The company reviews the report and is given an opportunity to provide additional information or dispute findings

› Final Report – Issued after a response to the draft report is sent to the regulator

› Informal Conference on Report – If all issues in the report are not agreed upon, the company can request to meet with the regulators to discuss issues
Market Conduct Examinations (cont.)

› Formal Hearing – If the company and the regulators still do not agree, a company may request a formal hearing before an Administrative Law Judge

› Regulatory Action – Final disposition is determined by the Department of Insurance that conducted the examination

› Compliance Plan – Evidence of compliance with items discovered in an exam must be provided to the regulator at intervals determined by the regulator
Business Areas Subject to Market Conduct

› Sales Material
› Marketing and Sales
› Complaints
› Underwriting
› Form Filing
› Policy Issue – New Business
› Policy Administration – Customer Service
› Claims
› Agent Licensing
What Do Examiners Look For?

› COMPLETE files
› Written procedures
› Ongoing training of staff
› Policy administration in accordance with contract provisions
› Quality self-audits
› Adherence to regulatory timelines
› Non-discriminatory patterns – uniformity in treating all policyholders the same
What Do Examiners Look For? (cont.)

› Misrepresentation of pertinent facts about a policy
› Failing to act promptly to communications
› Failing to promptly settle claims
Red Flags for an Examiner

› Data runs that are incomplete
› No documentation
› “Lost” records
› Internal control points are ignored or skipped
› “I don’t know” answers
› Updated procedure manuals that haven’t had old versions saved or that don’t have revision dates
› No self-audit process
The Cost of an Examination

› Examiner costs – Wages, benefits, travel
› Office Accommodations – Workspace for the examination team, office supplies, mailing expenses
› Possible fines
› Reputation cost for egregious errors
› Reputation cost for media exposure
Procedures

› Have written procedures in place and follow them

› Reasons for violations
  › Lack of established procedures
  › Not following established procedures
  › Internal control and communication of procedures
Procedures (cont.)

› Market conduct examiners may review policies and procedures as an alternative to performing sampling and file reviews

› If the written procedures are sound and demonstration of process can be confirmed, file review may not be necessary

› Consistency among product lines – One action by a division may impact a regulator’s viewpoint about another division
File Documentation

› DOCUMENT, DOCUMENT, DOCUMENT

› A file should tell a “story” from beginning to end

› A regulator should not have to ask questions or need additional information

› IF THERE IS NO DOCUMENTATION, IT DIDN’T HAPPEN!
Communication with Compliance

› Communicate with Compliance early and often
› Don’t wait until something goes wrong
› Compliance’s goal is to help you do your business better.
› Compliance may not know your processes, but we do know what is required for regulatory compliance
› Ask questions!!!!