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November 23, 2004

Dear Commissioner:

The National Association of Mutual Insurance Companies (NAMIC) has reviewed the template developed by the NAIC Executive Task Force on Broker Activities.

We understand states are being asked to use the template to inquire of their domestic carriers about possible relationships with large brokerage firms and their use of contingent commissions.

As NAMIC considered the guidance to provide our members on this template, three broad areas of concern became apparent: 1) the questions themselves; 2) the degree of confidentiality attached to information obtained by regulators in response; and 3) whether these questions are specifically related to any criminal investigations.

Concerns about the questions

Overall, the questions are extremely broad and will require extensive effort to provide accurate answers. Even for a company with significant resources and no objection to answering all of the questions, the 30-day deadline is not realistic.

We do not understand the phrase "consumer agreements" used in question 1. Questions 3 and 4 request information, including whether the insurer has hired counsel, and the scope of that assignment. We are particularly concerned that specifying the scope of an attorney assignment might in some instances violate the attorney-client privilege.

Answering many of these questions, but particularly Questions 9 and 10, might improperly require a company to incriminate itself in violation of the 5th amendment to the federal constitution. We will discuss this more fully below, but state here that we are particularly concerned about this in light of the current atmosphere in which the line between legal and criminal conduct has been significantly blurred.

The degree of confidentiality attached to these answers

NAMIC believes any information derived from answers to these questions should remain confidential. However, there is no reference in the template as to the nature of the questions and the resulting confidentiality attached to the answers. Is this a market conduct examination, an investigation, or something else? Allowing answers to become public could have many negative consequences, including:

- Serving as free discovery for attorneys looking for a cause of action.
- Unintended anti-competitive consequences as they could reveal confidential company information that could not otherwise be made public.

Are these questions related to any criminal investigations?

A number of public officials have made statements referring to unspecified extensive corruption within the insurance industry. These statements are frequently accompanied by comments about unspecified criminal activity, or suspicion of such activity, and the promise of further investigation. As clearly legal practices are woven into these comments, the uncertainty they create makes the legal and regulatory environment increasingly treacherous. In this light, it is important to note that it would be improper for a regulator cooperating with law enforcement to use its investigatory authority to obtain potentially incriminating information from a company, see: *Garrity v. New Jersey*, (1967) 385 U.S. 493, 87 S.Ct. 616.

We recognize the challenging atmosphere in which the regulatory community finds itself. As we stated in our Nov. 3rd letter to NAIC President Diane Koken, “[t]he difficult challenge, against the backdrop of Mr. Spitzer’s statements, will be for policymakers to review any alleged misconduct in an objective and impartial manner while under pressure to take action of some sort.” We also recognize the NAIC has attempted to focus its efforts on the specific concern of compensation agreements. However, we feel compelled to suggest that our members, at a minimum, raise all of the above concerns with counsel before answering these questions.

Finally, we ask that if your state has not yet sent this template to your domestic carriers that you please consider amending the document to address the concerns we have raised above. If the template has been sent, we ask that you consider sending the carriers a memorandum clarifying the questions we have raised.

Thank you in advance for your prompt attention to this matter. If I can be of any further assistance, please let me know.

Sincerely,



Peter A. Bisbecos
Director, Legal and Regulatory Affairs