



New Mexico's accreditation with the NAIC, a status based on an individual state's reasonable conformance with insurance regulatory standards promulgated by the NAIC for its accreditation program. The NAIC's standard for states' adherence to its models, is "substantial compliance," and it is our belief that the deviations we observe between the NAIC model and the text in this docket are of such number and of such magnitude as to call into question its viability against that standard for accreditation with the NAIC. We encourage consultation with the NAIC on this matter of reasonable congruence of the proposal with the NAIC model.

It is imperative for us to note that the NAIC model was contentiously and laboriously deliberated over more than two years within the relevant NAIC committees. The final result was accepted by all parties as a reasonable compromise, and all parties were ready to move on to the process of adoption and implementation by the states. We do not know or understand the reason for the departures from the NAIC's model. They are, again, of such number and magnitude, that we believe the Superintendent should dispense with the current proposal and propose the NAIC model with those few changes needed for its local adoption.

Included among a multitude of departures of the proposed text from the NAIC model, we list the following:

- Absence of a threshold for application of internal control provisions. The NAIC model uses \$500 million of direct and assumed premium.
- Absence of language that allows management's report on internal control to be filed in the domiciliary state of the insurer.
- A general absence in the proposed rule of definitions of terms used in the proposed rule.
- Absence of language that prohibits indemnification of auditors.
- A deletion of the NAIC model's carefully crafted, tiered thresholds for the proportion of independent directors on the insurer's audit committee.

Further, there are indications in the proposal that the distinction between audit and examination are not understood, as well as requirements for reporting on the adequacy of internal control. Moreover, the very extensive departures from the NAIC model leave the proposal in this docket dysfunctional and liable for poor compliance on the part of insurers.

We acknowledge the intent, by both the State of New Mexico and the NAIC that the MAR be implemented by January 1, 2010. However, for those reasons stated above, we believe that some delay to achieve reasonable fidelity to the NAIC model would be appropriate. We were informed Wednesday, November 18, 2009 by NAIC staff that "a few months' wiggle room" would be acceptable in terms of implementation after January 1, 2010. The same NAIC official cautioned that "nine or ten months would be of concern." Short delay, in other words, to attain reasonable consistency with the NAIC model will not imperil New Mexico's NAIC accreditation or tarnish New Mexico's reputation among accredited states.

Finally and in summary, we suggest that the current proposal does not substantially comply with the NAIC's "Annual Financial Reporting Model Regulation," or Model Audit Rule, and therefore ask the Superintendent to cause the proposal in this docket to become consistent with the NAIC's "Annual Financial Reporting Model Regulation," or "Model Audit Rule." We note that thirty-two or more states have already done so and that fifteen or more are in process of doing so.

Respectfully,

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