Compliance Program Management

What’s in Your Market Conduct Program Management?

WHITE PAPER

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Market conduct compliance is first, and foremost, all about ensuring an insurer’s operations consistently meet the underlying regulatory requirements applicable to underwriting, claims, sales, policy servicing and related functions. An insurer’s Market Conduct Program Management inherently needs certain capabilities to achieve continuous regulatory compliance including the dynamic identification of key operational areas of regulatory concern, the understanding of often varying regulatory treatment of compliance issues, the fulfillment of examiner’s data requests, the completion of corrective action plans and critical benchmarking of results. As daunting and challenging as these capabilities or components appear to be, you can and should include all of these on your own market conduct program management operational plan…successful implementation of a “cycle of compliance” is within the reach of insurance compliance professionals.

Executive Summary

Market conduct examinations and regulatory enforcement actions are a way of life for insurance companies across all lines of business and written premium levels. Having identified applicable regulatory requirements and key areas of regulator concern and market conduct focus for each of the states and applicable lines of business, insurers are better equipped to develop and firmly establish a solid and sustainable process to enable their market conduct examination and regulatory enforcement experiences. The absence of a reliable Market Conduct Program Management can easily reveal the true costs of failed regulatory compliance with the assessment of fines, corrective action and restitution, as well as the associated negative publicity inherent in press releases and publication of market conduct actions. Additionally, there are the regulator exam costs associated with the examiners’ per diem expenses which are directly correlated with the time required for exam and inquiry engagement. Generally speaking, the more inefficiency in an insurer’s management of the exam process, the longer the examiners are required to be in-force and charging per diem costs, not to mention the internal costs associated with employees being engaged in the exam process.

Not knowing the expected, and sometimes exacting, regulatory treatment of compliance issues can result in unnecessary negative findings and result in a protracted on-site exam time. Implementing and enabling a solid Market Conduct Program Management in an organization can significantly mitigate both external and internal costs. From an external, and extremely public-facing perspective, the first nine months of 2019 produced over fifty direct fines of $100,000 or more, with four exceeding $1,000,000 in published state market conduct actions. Determination of required restitution, implementation of corrective actions and required reports to departments of insurance, coupled with the not insignificant internal staffing costs necessary to accomplish these steps certainly add to the overall support for sustainable Market Conduct Program Management.
The Four Essential Capabilities of Market Conduct Program Management

An insurer’s goal of a successful market conduct management program requires adherence to all regulatory obligations that pertain to the customer relationship and, in doing so, reduce the risk of financial penalties, including fines and remediation costs, and prevent harm to the organization’s reputation. Compliance professionals know that achievement of this goal requires identification of all regulatory requirements applicable to the lines of business. In order to create and maintain an effective plan to manage a Market Conduct Program, insurers require four fundamental capabilities or components, which can effectively deliver sustainable and successful results.

- Managing External Regulatory Exams
- Verifying Compliance Controls
- Resolving Corrective Actions
- Benchmarking Program Performance and Reporting

Success in each one of these areas can be evaluated, with that assessment process representing a basic step in determining an insurer’s current or planned program’s strengths and maturity. In fact, by using some initial evaluation screening questions, insurance compliance professionals can help facilitate the overall assessment of an existing program’s “maturity status,” as well as identify operational areas that may need attention. Assistance and direction in better understanding “What’s in your current Market Conduct Program Management” system, can be determined by reviewing and responding to the evaluation questions presented below (Figure 1).

**Figure 1: Questionnaire to help you evaluate the effectiveness of your Market Conduct Program Management processes**

<table>
<thead>
<tr>
<th>Program Capability</th>
<th>Market Conduct Program Management - Evaluation Questions</th>
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| Management of External Regulatory Examinations | • How well can your company demonstrate to regulatory authorities that it is meeting all applicable requirements?  
• Are fines and remediation costs in alignment with expectations? Is there a trend of increasing or decreasing fines?  
• Are reputational issues arising from examinations harming business retention and/or growth capabilities?  
• Are practices in place to contain the costs and/or frequency of regulatory examinations?                                                                                                                                                                                                                                           |
| Verification of Compliance Controls  | • What practices are in place that allow your company to understand where compliance vulnerabilities exist?  
• How often are internal compliance reviews performed?  
• What determines which business processes, lines of business, and/or jurisdictions of business will be reviewed?  
• Do the outcomes of compliance reviews feed into compliance risk assessments?                                                                                                                                                                                                                                                   |
| Resolution of Corrective Actions    | • Is there a method of ensuring projects are completed on time?  
• Is evidence suitable for review for an outside examiner collected that demonstrates corrective actions are resolved?  
• How often do repeat examinations occur due to excessive corrective actions? How often do exams determine that corrective actions were not implemented? Are the trends trend negative or positive?                                                                                                                   |
| Benchmarking Performance and Reporting | • Is information collected that allows for an evaluation of trends in market conduct-related costs/performance?  
• To what extent is data collection manual vs automated?  
• Is data collected which allows for a comparison of market conduct performance with industry peers?  
• Does data from your company’s past performance, as well as that of peer companies, help prioritize the focus of the internal audit plan?                                                                                                                   |
Management of External Regulatory Examinations

Demonstrating actual regulatory compliance is what market conduct exams and enforcement actions are all about. To the extent that compliance “misses” occur outside of a regulatory exam, as in internal compliance audits, best practices would involve using these findings to implement immediate corrective actions. Similarly, actual market conduct exams frequently produce findings of noncompliance. All findings, and presumably new or revised controls, would also be incorporated into ongoing compliance audit procedures. The end goal is enhancing practices to further control compliance and contain the costs and/or frequency of regulatory examinations. Being responsive to examiner inquiries throughout exam or inquiries certainly plays an important role in this aspect of effective process management. Other critical components involve determining if fines and remediation costs are aligned with general expectations and if reputational issues arising from examinations are harming business retention and/or growth capabilities. Maintaining awareness of fines and related costs allows insurers to be able effectively articulate to internal stakeholders, as well as in discussions with regulators.

Facilitating the “compliance demonstration” element in managing these external exams involves the coordination of essential examination activities within a comprehensive framework ideally including regulatory exam compliance reviews, workflows to assist assigning and monitoring of tasks for on-time completion, compliance preparedness, responses to examiner inquiries and reporting on the end results of compliance reviews and regulatory actions. For example, having the ability to routinely demonstrate through workflow metrics the number of cases or exam tasks meeting various milestones (Figure 2), assists in proving strong process management to both internal stakeholders as well as examiners.

Figure 2: Sample case assignments “Milestone metrics”
Verification of Compliance Controls

Achieving positive exam outcomes is also dependent on ensuring that solid compliance controls exist and that these are maintained dynamically, with each noncompliance determination being evaluated against a control, followed by these reviews being fed into compliance risk assessments. Ideally, as each new or updated risk is identified, it is linked to a control which is also embedded in the compliance audit processes.

Having data on those operational areas presenting the most significant challenges, year over year, in both an insurer’s organization and the industry as a whole can provide valuable insight into compliance vulnerabilities. The chart below [Figure 3], illustrates the perennial challenges for the life and health companies in the claims area, followed primarily by noncompliance findings in underwriting and rating, grievance procedures, producer licensing and marketing and sales. Claims, underwriting and rating also dominate the areas of significant challenges for property and casualty companies. Understanding the specific challenges in these business process, coupled with lines of business and jurisdictional focus can also assist in defining compliance controls in market conduct program management, as well as in determining appropriate frequency of an insurer’s internal compliance audits.

**Figure 3: NAIC Categories for Life and Health Market Conduct actions: 1/2019 - 9/2019**

![Figure 3 Chart](image-url)
Resolution of Corrective Actions

With the conclusion of market conduct exams come the stipulations or orders and the “wrap-up” challenge. Oftentimes, these include corrective action plans that provide detailed steps that state regulators require as conditions to full satisfaction of the order. Full implementation can be fraught with difficulties, as the same problems which caused the initial noncompliance may continue to exist in the underlying processes. Any required corrective action plans can suffer the same consequences as well-intentioned proactive compliance efforts. Despite any manual adjustments that may ensue to immediately correct violations to meet the corrective action plan stipulations, fundamental controlled processes need to be put into place. Regardless of the market conduct category, those broken processes which resulted in the need for the corrective action plans need attention.

Insurers need to ensure that the responsibility for resolving corrective actions is clear, documented and communicated to all appropriate staff. For corrective actions, whether a direct result of regulator determination or from internal compliance audits, companies must have a process that enables and verifies that corrective actions are completed on time. Verification of such actions may need to be provided as evidence in future exams or to internal auditors as to resolution, so tracking methods and record retention are an absolute. Corrective action failures are frequently noted in subsequent exams, as well as in “promised” follow-up exams targeted solely on previously agreed to corrective actions. It is not uncommon for these corrective action failures, discovered by examiners or company staff during the course of a subsequent or follow-up exam, to be addressed by more detailed corrective action plans and higher fines.

Benchmarking Performance and Reporting

The market conduct management program does not stop with the corrective actions, but rather continues with the steps involving the insurer’s analysis of its performance and benchmarking. Reporting back to the business units, as well as to management are critical ongoing components. Insurers should assess information available in their processes so that trends can be evaluated in terms of how well the company performed and associated costs, along with performance analysis versus industry peers. This data can, and should, be used when establishing and updating compliance controls, thus facilitating an information flow with credible data.
**Cycle of Compliance**

Embedding all four Market Conduct Program capabilities into an insurer’s processes achieves the end goal, that is a true “Cycle of Compliance.” Regulatory requirements are known and updated as needed and compliance controls are informed by regulatory changes, as well as by market conduct feedback and mandated corrective actions. This Cycle needs to be both dynamic and systemic, constantly ingesting new and updated content, and providing output to the organization on successes and challenges.

**Market Conduct – Your Management Program Matters**

There is little doubt that market conduct program management is a necessity for successful overall regulatory compliance. Insurers are continually seeking ways to conduct their business in a cost-effective manner that is relatively free from examination criticisms and other enforcement actions. Evaluating one’s processes in terms of the outlined capabilities and components presented can pave the way for implementation of a sound system, or strengthening an existing one, in which ongoing regulatory requirements are confirmed, exam processes are effectively managed, controls are established, audits are thoroughly conducted, corrective action plans are fulfilled and performance analysis becomes a unifying reality.
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