

PROJECT HISTORY – 2003

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION (#910)

1. Project Description

The Market Conduct Record Retention and Production Model Regulation has been revised to address the electronic retention of records along with methods for retention using a variety of media forms. The model was previously titled Market Conduct Record Retention Model Regulation (#910). Since the model includes some standards related to the time frames to produce records, the term “production” was added to the title of this regulation.

2. Group Responsible for Drafting Model and States Participating

The Market Conduct Record Retention Working Group of the Market Regulation (D) Task Force was responsible for reviewing the model and overseeing its development. The working group includes: Missouri (Chair), Alabama, Arizona, Florida, Hawaii, Illinois, Kentucky, Maryland, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington and Wisconsin.

3. Charge Authorizing Project

The 2003 charge of the working group is, “The Market Regulation Task Force shall review and update the NAIC Market Conduct Record Retention Model Regulation. Report by the NAIC 2003 Winter National Meeting.” This charge or similar language was first authorized in March 2000.

4. General Description of Drafting Process

The drafting process was open as the Record Retention Working Group solicited comments from all interested parties, including interested regulators, funded consumer representatives and industry representatives. The working group produced 10 versions of the model before it was adopted by conference call on February 27, 2003. All of the meetings and conference calls of the working group were open to all interested parties. All revised drafts of the paper were posted on the NAIC Website and circulated for public comment. The working group received and reviewed numerous comments from interested parties and made substantive revisions to the model based on those comments.

5. Significant Issues Raised

The most significant issues raised and discussed by the working group and interested parties include (1) the definitions incorporated in the model and clarification of the intent to retain various types of comments; and (2); the time frame for the production of documents. The working group and interested parties developed mutually agreeable definitions. There continue to be concerns about the time frame for record production (5 days) but the working group determined a change to lengthen the time frame for production was not necessary. The primary rationale for not increasing the time frame concerns criticism that market conduct examinations are too lengthy and too costly. If the time frame for production of documents is increased, there will be an impact on the cost and length of examinations. In addition, the current emphasis to follow standard market regulatory guidelines as outlined by the Uniformity (D) Working Group supports a shorter time frame. The uniformity guidelines promote a minimum of 60 days advance notice to a company of the examination and the records required for the examiners. The working group believes the advance notice is sufficient to allow companies the ability to provide records within 5 days. If a company is unable to produce the records in the allotted time frame, the model provides for an extension request by the company.

The Executive Committee requested that this model be reconsidered by the Record Retention Model Working Group in light of concerns about potential conflicts in the model language with the requirements of the Uniformity (D) Working Group’s uniformity outline. As a result, some changes were made to Section 11. This language was considered with input from interested parties, including the trade association that voiced the concerns about the potential conflict.

6. Other Pertinent Information

This model is another piece of the project to reform market regulatory activities. By adopting the regulation, states will provide details to companies for the retention of information for use by market regulators. In addition, the adoption of this model will promote further consistency by states in the market regulatory area.