

UNITED STATES
HOUSE OF REPRESENTATIVES



EDWARD R. ROYCE
Fortieth District-California

July 12, 2012

FOREIGN AFFAIRS
Subcommittees:
Chairman, Terrorism,
Nonproliferation, and Trade
Asia and the Pacific

FINANCIAL SERVICES
Subcommittees:
Capital Markets and
Government Sponsored Enterprises
Financial Institutions and
Consumer Credit

The Honorable Michael McRaith
Director
Federal Insurance Office
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Director McRaith:

As you may be aware, I recently wrote to the NAIC to raise concerns about the organization's status. That letter is attached as is the NAIC's response. Given the pending Federal Insurance Office (FIO) report on insurance modernization and the looming questions surrounding the NAIC's operations and structure, I write to ask that the FIO undertake a review of the nature and scope of NAIC operations. The areas I believe should be addressed are provided below.

The NAIC appears to be engaging in regulatory activity.

In 1945, Sen. O'Mahoney, one of the lead conferees on the McCarran Ferguson Act, said, "there are three forms of regulation"—"State regulation," "Federal regulation," and "regulation by private ... groups ... through private rules and regulations." Congress authorized state regulation in McCarran. It has not authorized substantial federal regulation. And, as the Supreme Court explained, it explicitly intended to outlaw private regulation (*FTC v. Travelers*). Yet several actions and statements by the NAIC suggest private regulation has occurred and continues to occur through the NAIC, a private corporation. Several such actions are highlighted below.

SERFF Letter

In its response to my letter, the NAIC asserts that it has never "presented itself as having [regulatory] authority" and that "it is not a regulator." Yet several public examples contradict these statements.

Regarding the System for Electronic Rate and Form Filing (SERFF) mentioned in my initial letter, the NAIC states that SERFF "do[es] not amount to regulating interstate commerce or exercising regulatory authority."

Yet, on December 6, 2011, the NAIC's Executive Committee sent a letter to the SERFF Board, instructing that, under SERFF's guiding purposes, "the Board is responsible for *furthering the regulatory activities of the NAIC by providing for the overall improvement of insurance*

regulation through voluntary participation in the SERFF system.” The letter continues: “[T]he Executive Committee hereby expressly directs the SERFF Board to support the use of SERFF for regulatory initiatives.” The letter further explained that the “regulatory initiative ... fall[s] under the jurisdiction of the [NAIC] Speed to Market (EX) Task Force” and that [t]he role of the [SERFF] Board is ... to support the implementation of this initiative in SERFF.”

NAIC Members' Public Statements and Regulatory Documents

NAIC members have repeatedly referred to NAIC as an organization exercising regulatory authority in their public statements and official regulatory documents, such as (emphases added):

- In a January 3, 2008, press release announcing the results of a market conduct examination, Washington State Insurance Commissioner Mike Kreidler stated that “The multi-state examination was **initiated in 2005 by the National Association of Insurance Commissioners.**”¹ The examination report states: “On March 15, 2005, **under the direction of the National Association of Insurance Commissioners (NAIC) Market Analysis Working Group (MAWG),** the States of Washington and Alaska issued a call letter to UICI for a multi-state examination.”²
- The New York commissioner on Oct. 18, 2010 stated that a carrier was fined after “an 18-month targeted National Association of Insurance Commissioners (NAIC) **multi-state examination.** ... The NAIC examination ... **focused primarily on....**”³
- The official 321-page examination report of another insurer is entitled “**NAIC Multistate Market Conduct Examination Report**” and explains that “The National Association of Insurance Commissioners (NAIC) **sanctioned** an initial multi-state examination.”⁴
- The Ohio commissioner of insurance stated on May 19, 2011, that “Ohio supports the **NAIC efforts** to review the extent of these practices in the life insurance and annuity industry.”⁵

Much of the NAIC’s work is done behind closed doors.

The very reason why Congress insisted that “nothing in” McCarran-Ferguson “would ... authorize any private group or association to regulate in the field of interstate commerce”⁶ was to avoid the application of authority by groups which do not follow the accountability and due process requirements of public bodies.

¹ http://www.insurance.wa.gov/news/2008/1_3_2008.shtml

² <http://commerce.alaska.gov/ins/insurance/programs/Consumers/Market%20Conduct/Exams/MCE05-02.pdf>

³ <http://www.dfs.ny.gov/insurance/press/2010/p1010181.htm>

⁴ http://www.oregoninsurance.org/company_exams/market_conduct/statefarm_multistate-mc.pdf

⁵ <http://www.insurance.ohio.gov/Newsroom/Pages/05192011LtGovernorTaylor.aspx>

⁶ *FTC v. Travelers*, 362 U.S. 293 (1960).

Thus, serious questions arise when the actions listed above are taken by an organization with a \$70 million budget that does not follow open meetings laws, does not appropriate its budget through a public authority and does not abide by the same standards of due process as its members.

Further, the NAIC continues to make misleading statements regarding its processes. Commissioner Voss recently stated that NAIC closes only a "very few secret meetings," and only "because we're doing a market conduct or there's some kind of issue with a company."⁷ However, a brief look at the agenda for its recent national meeting⁸ reveals a sizeable number (roughly one in five) of the meetings were held behind closed doors, many of which had nothing to do with true regulatory confidentiality.

Additionally, NAIC's so-called Open Meetings Policy automatically exempts all "roundtable discussions, zone retreats and meetings, commissioner's conferences," and "other like meetings of the members," which now include lengthy Executive Committee retreats. As you know from your recent tenure at the NAIC, most of the important public policy sessions take place at these closed regulator meetings. That policy making, by definition, is best done in public, and is presumably one of the main reasons why NAIC has adopted a Policy Statement On Open Meetings in which it "commit[s] to conducting its business openly."⁹

It is my hope that your pending FIO report on insurance modernization will kick off a comprehensive discussion on the future of insurance regulation in the U.S. However, I do not believe that debate can take place without a thorough review of the NAIC and its operations. Therefore, I ask that you address the following questions either as a part of the pending report or in a direct response.

1. In your opinion, what is the NAIC?
2. In your opinion, is it inconsistent for NAIC to state that it does not "present itself as having [regulatory] authority" and "is not a regulator," yet also state that it performs "regulatory activities" and that "regulatory initiative[s] ... fall under [its] jurisdiction"?
3. Regarding the SERFF program, is it inconsistent for the NAIC to assert that SERFF "do[es] not amount to regulating interstate commerce or exercising regulatory authority," when NAIC has "direct[ed] the SERFF Board to support the use of SERFF for regulatory initiatives"?
4. Do you believe the actions taken by the NAIC mentioned above amount to regulatory activities? Are these actions consistent with McCarran Ferguson's instructions, as

⁷<http://www3.ambest.com/ambv/displaycontent/MediaArchive.aspx?LID=latestaudio&VID=voss312>

⁸http://naic.org/meetings120http://www.naic.org/documents/meetings_naic_policy_mtg_801.pdf3/agenda.pdf

interpreted by the Supreme Court, that no private association may regulate in interstate insurance commerce?

5. If the NAIC is to play a significant role in our nation's regulatory structure going forward, do you believe its self-imposed rules on transparency and oversight, and the manner in which it implements those rules, are consistent with a world-class regulatory organization?
6. In your opinion, does the NAIC restrict its closing of meetings to a select number of meetings that deal with market conduct or "some kind of issue with a company"?
7. Does the NAIC provide a public record of all of its closed meetings? Are dates, subject matter, reason for meeting closure, and general topics of discussion quickly made public? How routine are closed meetings—not only those of the types described above, but those of working groups and task forces crafting policy proposals in between national meetings?
8. Do you believe reforms need to be made to improve the transparency and oversight of the NAIC's budget and Open Meeting Policy?

Thank you in advance for your timely consideration of this request.

Sincerely,



EDWARD R. ROYCE