

DATE: August 28, 2008

TO: IIPRC Management Committee

FROM: IIPRC Industry Advisory Committee

SUBJECT: Operating Procedures for Public Inspection of Information and Official Records of the IIPRC

We appreciate the efforts made by the Vermont staff, as well as other Member states, in acknowledging that industry has a legitimate concern with innovative products being open to access during the filing review process. Industry representatives spent a considerable amount of time reviewing the parameters of the proposed draft and attempted to rewrite them, but in the end we came to the realization that changing the Public Access Rule was unnecessary and would be creating an administrative nightmare for the IIPRC staff and filers.

Re: Proposed Amendment To Allow Access During the Filing Review Period, and for Disapproved and Withdrawn Filings

It remains our position that the current Public Access Rule strikes the appropriate balance between the industry's need to protect trade secrets, innovative product features and competitive strategies prior to public introduction of new products and services and the public's right to access product information. Because industry's practical experience is that the majority of states today do not allow public access to filings during the review period, the balance seems appropriate and fair.

Our understanding is that no evidence has been presented that there is anything wrong with the current rule; changes are being contemplated for no reason other than some states' rules are different. That tension is exactly the nature of the IIPRC. Member states intend to collectively and uniformly regulate insurance by relying on one another to ensure that while each Members' rules may not be adopted *in total*, the public is well protected in a healthy and competitive insurance market.

Companies allocate significant resources in designing and developing new products. The competitive information included in some filings, including something as simple as the fact that a company is making a filing, can be a very valuable asset. While not all components of a filing may be protected once approved, competitors could glean

enough information from a non-protected element of a pending filing, such as a description of a specific market, target consumers, etc., and thereby eliminate a filing company's competitive head start. In order for the IIPRC to offer an incentive to file innovative products with it, the IIPRC needs to **not allow** access to filings that are pending review, as well as those that have been disapproved or withdrawn.

In practical terms, the proposed changes are signaling to the companies that:

- they do not have the right to expect a head start to hold on to a competitive advantage for innovative product features, strategies or markets
- the public may be reviewing and commenting on filings that may never be introduced to the public
- the IIPRC review process may be delayed/complicated due to the juggling of a review process and a public access process; and
- they will be asked to pay the cost of implementing the capabilities and processes required to accommodate the proposed changes (currently estimated at over \$100,000, and some addition to IIPRC staff).

At a broader level, if the Public Access Rule is changed in a little over a year after it was adopted, it will send a message to participating companies and those seeking to participate that the rules, procedures and product standards that have been adopted by the IIPRC, as well as those that will be adopted in the future may not be relied upon. Companies may question their commitment to file with the IIPRC and may lose incentive to keep doing so. Industry does not want the IIPRC to fail. We strongly support and have worked very hard with all interested parties to create a system that will create the intended efficiency and effectiveness.

At a practical level, we had previously asked some detailed questions regarding the process that would have to be built and additional staff that may be required to support the amendment. It does not appear at this point that all the details have been fully developed; however, from the responses that we did receive, it is quite obvious that the IIPRC would have to develop a new process, that additional staff would be required, and that at least \$100,000 would be required initially. From our experience with SERFF enhancements, we believe that the actual cost may be well in excess of this amount. ***We do not understand why an organization that is not yet financially independent, and that needs filing revenue to grow and survive, would entertain making expensive changes that have not been shown to be necessary.***

We strongly recommend that the existing Public Access Rule be left unchanged. The Rule has been in effect for over a year, and we do not have any information that this has harmed any consumer or regulator.

Re: Proposed Vermont Amendment to the Pending Proposed Amendment To the Public Access Rule

As we mentioned, we spent considerable time working with the draft and we were very pleased that Vermont and other Member states had made a very thoughtful attempt to strike a middle ground. Here are some of the areas that we discussed and with which we had questions and concerns:

“substantive and unique”: These terms are subjective – it is quite possible that no two companies would agree on this. Because of this, we had concerns with how the IIPRC staff would make such determinations, and if they would be able to do so on a consistent basis. In our opinion, one would need to have extensive experience and knowledge regarding the life, annuity, disability income and long term care products in the marketplace and the dynamics that drive innovation for each of these products. We just do not have the comfort level that IIPRC staff will have the required knowledge and experience. We were also not sure of the intent of “unique” – with respect to the company, or all companies? Companies may not know what all other companies have filed.

“demonstrate to the satisfaction of the IIPRC”: Again, we have concerns about the subjective nature of this requirement and the ability of the IIPRC staff to evaluate this and do so on a consistent basis.

“significant competitive advantage”: What may be significant to the company may not be significant to the IIPRC – the companies develop products on a fairly regular basis and have their own measure of what is “significant”. We have concerns about the subjective nature of the requirement and the ability of IIPRC staff to judge this and do so on a consistent basis.

“that otherwise satisfies the definition of Trade Secret”: To the industry, an innovative product may or may not have trade secrets. The distinction the industry makes is that an innovative product needs to be protected during the filing review process so that a company can get a head start and capitalize on its innovation. Once the filing is approved, the filing is subject to public access. A trade secret would never be subject to public access. To link the two together is therefore problematic for the industry.

“Technical changes such as revision, modification or enhancement to an existing form, rider or endorsement shall not be considered an Innovative Product.” We believe that a revision, modification or enhancement should be considered an innovative product. We believe that the IIPRC should accept an innovative benefit feature that could be used with previously approved policies, or those that would be approved in the future.

“the Executive Director prefers to consider requests for trade secret or innovative product status...at the completion of the product review process, rather than at the beginning.” We were not sure how this would work if someone requested access during the review process. If access is not allowed, this is how the current Rule works. We also

had concerns about waiting until the filing review is completed to make the determination regarding trade secrets or innovation status – if the filer gets turned down on these assertions, he will withdraw the filing, having wasted his time and the IIPRC staff time. If there is an uncertainty about the asserted status, companies may very well choose to file directly with the states. With regard to innovative products, if the filing is hours or days away from getting approved, after which it is public, there is no sound reason to allocate the resources and time to determine the status of the filing after completing the review.

In summary, while the Vermont draft attempted to address industry concerns, it established subjective requirements to determine the innovation status and it intertwined the innovation concept with trade secrets which further complicates the process that would have to be built to administer this. We believe that the administration of this would pose a significant risk to slow down the filing review process and impact the “speed to market” initiatives of the IIPRC.

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