



Vermont . . .

Department of Banking, Insurance, Securities and Health Care Administration

To: Frances Arricale, Executive Director, IIPRC
From: Herbert W. Olson, General Counsel
Date: July 22, 2008
Re: Further proposed amendments to the Public Access Rule - Innovative Products

Dear Fran,

At the request of Commissioner Paulette J. Thabault, please distribute this memo, and the Further Amendments to the Public Access Rule dated July 22, 2008 (“Further Amendments”) to the members of the IIPRC Rules Committee, and to the members of the Management Committee. Please also post or otherwise circulate these materials to the advisory and legislative committees and interested parties in your usual manner.

In summary, on June 6, 2008 the Management Committee commenced the rule amendment process by formally providing notice of the recommendation of the Rules Committee to amend the Rule for Establishment of Conditions and Procedures for Public Inspection and Copying of Information and Official Records of the Interstate Insurance Product Regulation Commission (“Public Access Rule”). The amendment to the Public Access Rule is intended to repeal the exemption from the general rule of disclosure for “product filings that are pending approval, have been disapproved, or are withdrawn.” See Section 103(b)(11). The proposed amendment recommended by the Rules Committee essentially would permit disclosure of products from the time they are filed with the Commission. Other technical and clerical corrections have been proposed that are not relevant to the current discussion.

At the IIPRC meeting in San Francisco, considerable discussion took place concerning the appropriateness of this amendment. Industry representatives in particular expressed concerns that the disclosure of innovative products upon filing would create a disincentive for Commission filings. Consumer representatives questioned the need for additional confidentiality.

At the San Francisco meeting, Vermont agreed to work on possible solutions to the issue, and to that end offer for the consideration of members and interested parties the attached Further Amendments:

1. The first proposal, in Section 102, page 1 of the “Further Amendments”, would expressly define “Innovative Products” as:

* * * a substantive and unique product design, construction and/or feature that is not currently approved for use in any state in which the filer does business, that the filer has demonstrated to the satisfaction of the Commission is likely to bestow a significant competitive advantage on the filer, and that otherwise satisfies the definition of Trade Secret set forth in this subsection (h). Technical changes such as a revision, modification or enhancement to an existing form, rider, or endorsement shall not be considered an Innovative Product. An Innovative Product shall become a Public Record upon approval of the filing.

This further amendment is intended to address the concerns of industry relating to truly innovative products, while conferring confidentiality only on the types of materials which the Public Access Rule already considers a “trade secret.”

2. The second proposal, in Section 103, Page 1 of the Further Amendments, is intended to follow up on the suggestions of members on the last conference call to confer with Fran Arricale, the IIPRC Executive Director, about the process for administering the Innovative Products definition. It is Vermont’s understanding based on a discussion with the Executive Director that she would prefer, for administrative efficiency and staff resource reasons, to consider requests for “trade secret” and “innovative product” status of a filing at the completion of the product review process, rather than at the beginning. The second proposal of amendment, therefore, would permit a filer who has requested Innovative Product status to withdraw the product filing before it is approved or disapproved if the Commission later determines that the filing in fact does not satisfy the criteria for consideration as an Innovative Product.

We understand that a public hearing of the Rules Committee will be scheduled to allow additional discussion of these matters, with the goal of scheduling the matter for consideration by the Management Committee and the full Commission at our September meeting in Washington, D.C.

Please let me know if there any questions concerning the above.

cc: Paulette J. Thabault, Commissioner