



**Testimony of**

**Brian K. Atchinson**

**Executive Director**

**Insurance Marketplace Standards Association**

Subcommittee on Oversight and Investigations of the  
House Committee on Financial Services  
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**Introduction**

Good morning, Chairwoman Kelly, Ranking Member Gutierrez and members of the Subcommittee. Thank you for the opportunity to speak to you today on market conduct reform and Increasing the Effectiveness of State Consumer Protections.

I am Brian Atchinson, Executive Director of the Insurance Marketplace Standards Association (IMSA). IMSA is an independent, non-profit membership organization created in 1996 to strengthen consumer trust and confidence in the marketplace for individually-sold life insurance, annuities and long-term care insurance products. We encourage you to visit our website ([www.IMSAethics.org](http://www.IMSAethics.org)) to learn more about IMSA. IMSA members comprise more than 200 of the nation's top insurance companies representing approximately 65 percent of the life insurance policies written in the United States. The IMSA Board of Directors is comprised of chief executive officers from IMSA qualified companies as well as non-insurance industry directors. To attain IMSA qualification, a life insurance company must demonstrate its commitment to high ethical standards through a rigorous independent assessment process to determine the company's compliance with IMSA's Principles and Code of Ethical Market Conduct.

From 1992-1997, I served for five years as Superintendent of the Maine Bureau of Insurance. In 1996, I was President of the National Association of Insurance Commissioners (NAIC). Prior to joining IMSA, I served as an executive officer in the life insurance industry. As a former regulator and company person, my views on market conduct regulation are based upon a number of different vantage points.

**The Changing Role of Market Conduct Regulation**

Insurance regulation is intended to ensure a healthy, competitive marketplace, protect consumers, and create and maintain public trust and confidence in the insurance industry. The history of market conduct regulation goes back to the early 1970s when the NAIC developed its first handbook for market conduct examinations and did its first market conduct investigation. We've come a long way -- by 2001, the states employed 353 market conduct examiners and 103 contract examiners, 815 Complaint Analysts, and 494 Fraud Investigators. In 2001, departments reported a total of 1,163 market conduct exams and 439 combined financial/market conduct exams.

Yet, because there is little uniformity in the manner in which individual states perform market conduct examinations, the current state-based system of market conduct regulation presents challenges that even many in the regulatory community acknowledge is in need of improvement/updating. State market conduct examinations have been described as being like snowflakes -- no two are alike. Insurance companies often are subject to simultaneous or overlapping market conduct examinations from different states applying different laws and regulations. This lack of uniformity places significant costs and human resource burdens upon insurance companies that translate into higher costs which are ultimately passed on to consumers in the form of higher prices for their products.

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**Making Market Conduct Regulation More Efficient**

The challenge going forward is to create a uniform system of market conduct oversight that creates greater efficiencies for insurance companies while maintaining appropriate consumer protections.

The NAIC has been working toward uniform regulation for some time. But, unfortunately, the efforts developed since issuance of the NAIC's Statement of Intent over three years ago have not attained substantial improvements in market conduct regulation. The pace of change has been slow and has prompted the industry to promote more efficient and effective alternatives.

Regulators could improve the current system of market conduct regulation in several ways. Today's market conduct examinations tend to focus upon technical instances of noncompliance rather than exploring whether a company has a comprehensive system of policies and procedures in place to address market conduct compliance issues. As a result, many market conduct examinations are conducted with an emphasis upon identifying technical violations without considering the ultimate impact of these infractions upon consumers.

State insurance departments should not view market conduct examination activity as a means to generate revenue for their operations but rather they should be determining whether a company has a system in place to detect and remedy market conduct improprieties before they become widespread. Determining whether an insurer has a sound market conduct and compliance infrastructure in place will allow market conduct regulation to better serve consumer interests.

**Response to Market Conduct Challenges**

IMSA's mission is primarily to strengthen trust and confidence in the life insurance industry through commitment to high ethical market conduct standards. IMSA qualification also provides a consistent uniform template of market conduct compliance policies and procedures at all IMSA member companies. To become an IMSA-qualified company, an insurer voluntarily undergoes an internal assessment of their existing policies and procedures to determine whether they comply with IMSA standards. They must then successfully complete a review by an independent assessor to qualify for IMSA membership. By undergoing the independent review required to attain IMSA qualification, a company must have in place a comprehensive system of compliance throughout the organization.

Companies that qualify for IMSA membership devote considerable resources to maintaining IMSA's standards. They also are well-positioned to respond quickly and effectively to state market conduct inquiries and to comply swiftly with new federal or state legislative requirements.

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The USA Patriot Act offers a prime example. As you know, this law gives federal authorities much wider latitude in monitoring potential money laundering activities. Recently the media reported that terrorists, drug dealers and other criminals may be using life insurance products to launder money.

With an infrastructure of policies and procedures in place to detect and cure questionable sales practices based on IMSA's principles, IMSA qualified companies are already in a good position to comply with the intent of federal anti-money laundering efforts.

In the last two years, IMSA has gained greater acceptance by regulators and rating agencies. In fact, a small, but growing, number of state insurance departments use IMSA membership as an informational tool when planning and conducting market conduct exams. We applaud these efforts and would like to see more state insurance departments using IMSA information to create greater efficiencies in the market conduct examination process. During a period of time in which state insurance department budgets are under tremendous pressure, we encourage regulators to pursue all available means to leverage increasingly limited market conduct examination resources. The IMSA independent assessment analysis currently encompasses sales, marketing and advertising activities. IMSA can serve as a valuable resource to help state insurance departments allocate their limited resources more effectively.

IMSA continually strives to meet the needs of consumers, companies and the marketplace as a whole by helping its member companies develop and refine an infrastructure of policies and procedures designed not just to detect but to resolve questionable marketing, sales, and distribution practices before they become more widespread.

Consumer protection through market conduct regulation means more than a system of examinations with technical violations. Consumers should be able to expect honesty, fairness and integrity in their insurance transactions. Neither regulators nor companies alone can ensure that the marketplace is always operating in a fair and appropriate manner at all times. Organizations like IMSA, working in conjunction with regulators, can offer invaluable support to reform market conduct regulation and may even offer a blueprint for reform solutions.

**Conclusion**

The financial services marketplace is becoming increasingly competitive for life insurance companies. To be able to bring products to market and conduct their operations in an efficient manner, the life insurance industry, as represented by IMSA member companies, believes market conduct regulation must be more uniform and efficient. IMSA qualified companies stand as the benchmark for excellence in the life insurance industry and provide a de facto nationwide set of uniform market conduct and compliance standards that can serve as a template for true market regulation reform.

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We, at IMSA, will continue to work with you and the representatives of the NAIC and state insurance departments to explore ways to improve market conduct regulation for the benefit of regulators, insurers and consumers alike. I would like to thank the members of this Subcommittee for examining this crucial topic and for the opportunity to share my perspectives on this important issue.