Comments of the Center for Economic Justice

To the NAIC Market Analysis Procedures Working Group

May 18, 2018

We were unable to participate in the entire MAP WG call on April 26 and, consequently, could not respond to all working group member questions in real time. We submit these comments based on the draft minutes of the April 26, 2018 call to respond to issues identified in those minutes regarding proposed Lender-Placed Insurance ("LPI") MCAS ratios.

For the reasons set out below, CEJ requests and recommends the working group adopt the proposed LPI ratios 1 through 5 and 8 through 20.

1. It is reasonable to initially include ratios of uncertain value.

Market regulators encounter certain market problems relatively frequently and the MCAS blanks, in part, reflect data elements to allow market analysis and identification of these relatively common problems. But MCAS also contains data elements that allow market regulators to identify problems not historically common as well as problems that have historically been rare but are more prevalent in recent times. Stated differently, one goal of MCAS is to help market analysts identify issues the analyst was not previously aware of or did not previously consider significant.

These arguments are particularly important for the LPI line because it is a line of business which does not get as much regulatory attention as other MCAS lines and because some of the known issues in LPI are unique to LPI, such as, for example, false placements and tardy refunds.

The upshot is that regulators simply do not now know which of the proposed ratios, if any, will turn out to be not useful. The logical approach is to calculate and provide the proposed ratios for the first year or two or LPI MCAS and, based on that experience, revise, remove or add ratios as needed.

2. The calculation and provision of the proposed ratios to market analysts does not require each state to utilize each ratio. But eliminating a ratio means that the state-wide ratio is no longer available to the public.

It is important to note that in addition to the primary function of assisting regulators with market analysis of a particular line of business and market, the MCAS ratios also serve a function of providing information to the public on state-wide, industry-aggregate experience for that line of business. While the presence of a ratio does not require a regulator to use the ratio and while the absence of a ratio does not preclude a regulator from calculating that ratio if desired, the absence of the ratio eliminates the possibility of providing the state-wide ratio to the public.

3. There is a difference between a ratio that fails to accurately measure a consumer outcome versus a ratio which someone believes will not identify a market problem.

There is a distinction between a ratio that is not useful or counter-productive because it fails to accurately measure a consumer outcome and a ratio for which someone does not believe it will identify a market problem. Ratios 6 and 7 are example of mis-specified ratios – ratios for which numerator and denominator are not related in time, in this instance.

The arguments reported in the draft minutes against Ratios, 14, 15, 16, 17 and 19, where such arguments were presented, were in the nature of "concern with the usefulness" of the ratio. Please see point 1 above for why this concern is premature.

4. Ratios 14, 15, 16, 17, and 19

The draft minutes of the April 26, 2018 working call indicate concern raised by two working group members about ratios 14, 15, 16, 17 and 19.

<u>Suits Ratios – 14-17</u>

Ratio 14. Suits opened during the period to claims closed without payment (Original Draft Ratio)

Ratio 15. Suits closed with consideration for the consumer to suits closed (CEJ Proposal)

Ratio 16. Suits open at beginning of period to sum of certificates in force and individual policies in force at beginning of the period (CEJ Proposal)

Ratio 17. Suits opened during the period to sum of average coverages in force (CEJ Proposal)

Each of these ratios utilizes data on suits from a different angle or perspective and, <u>together, provide a holistic view of suits activity</u>.

Ratio 14 provides suits open during the period to claims closed without payment – a potential indicator of unfair claims denials if a high number of consumers file suits to protest a claims denial.

Ratio 15 provides suits closed with consideration for the consumer to suits closed – another potential indicator of unfair claims settlements if a high number of consumers are prevailing in suits against the insurer. This ratio is truly essential and reflects the decision to include the data element of suits closed with consideration for the consumer as a data element.

One of the comments of concern for ratios 14 and 15 noted in the minutes for the April 26, 2018 working group call is that there is "often a long delay between the opening of suits and the tail on claims closed." This comment does not seem applicable to ratio 15 because ratio 15 compares a subset of suits closed to all suits closed. Further, this comments has limited relevance for ratio 14 because, one, LPI auto and home are short-tailed lines (property / physical damage claims are closed relatively quickly), and, two, the purported lag between opening a suit and a claim denial might be measured in weeks or a couple of months, not in years and, consequently, will not distort ratio 14.

Ratio 16 provides suits open at beginning of period to exposures in force at beginning of period. This is a benchmark ratio to indicate the level of lawsuit activity at the beginning of the period. By "benchmark ratio," we mean this ratio provides a benchmark against which to compare suit activity during the period. Consequently, this ratio improves the functionality of other suits' ratios, like ratios 14, 15 and 17.

Ratio 17 is suits opened during the period to average exposures during the period. This is a useful measure of suits activity and complements ratio 14 and 16. While ratio 14 relates to suits opened during to the period to claims closed without payment, ratio 17 provides suits opened to exposures during the period. This, ratio 17 complements ratio 14 because suits are measured across to different bases, thereby providing useful information regardless of whether the insurer is growing or shrinking.

Similarly ratio 17 complements ratio 16 because ratio 17 measures suits activity during the period while ratio 16 measures the benchmark suits activity at the beginning of the period. By comparing the two ratios, the market analyst can identify trends that may suggest market issues.

Complaint Ratio 19

Ratio 19. Total complaints to claims opened (CEJ Proposal)

Ratio 19 complements ratio 18. While ratio 18 relates complaints to exposures (a measure of sales), ratio 19 compares complaints to claims activity. Together, the two ratios provide a holistic picture of complaints activity. Consider a company growing that dramatically increased LPI placements during the year in which there were no major catastrophes. In this scenario ratio 18 would likely be low. But ratio 19 might show that even the small number of complaints relative to sales were still a high number of complaints relative to the small number of claims during the year. The purpose of having two measures of complaints is to avoid reliance on one ratio that may be skewed in a particular period.