

Comments of the Center for Economic Justice on Proposed IAIS Public Participation

September 2, 2014

The Center for Economic Justice (CEJ) is a non-profit, consumer advocacy organization. CEJ's has individual and organizational members who support CEJ's mission to promote the availability and affordability of essential services to low-income and minority consumers, including credit, insurance and utility services. CEJ's work is guided by a Board of Directors. CEJ was founded in 1995 and our work has focused on advocacy before administrative agencies, including U.S. state insurance department and federal financial regulatory agencies. The bulk of our work has been on insurance-related issues and over the past 20 years, CEJ has appeared before numerous U.S. state insurance departments, the NAIC, federal agencies, state legislatures, Congress and a variety of industry trade and professional organizations. CEJ has challenged the approval of products and rates by state insurance regulators and has, in many instances, changed the outcome in favor of insurance consumers. Through Birny Birnbaum, CEJ has been a designated consumer representative at the NAIC, a member of the U.S. Federal Advisory Committee on Insurance and a consumer observer at the IAIS. Mr. Birnbaum has experience as an insurance regulator as Associate Commissioner for Policy and Research at the Texas Department of Insurance and as the Chief Economist of a formal state insurance consumer advocacy agency, the Texas Office of Public Insurance Counsel. This experience over the past 23 years has informed CEJ's views about public participation in regulatory processes and the ability of consumers to participate in and impact regulatory proceedings.

Our work over the years has revealed that industry interests have virtually unlimited resources to participate in regulatory proceedings and that these resources necessary for industry participation come from policyholder-supplied funds. Insurers, producers and their trade associations are able to pool amounts from millions of individual consumers to finance the industry regulatory advocacy. In contrast, consumers generally do not have such mechanisms to easily pool resources. For example, few, if any, jurisdictions require a notice with periodic insurance billing statements for consumers to donate funds to an insurance consumer advocacy organization. The IAIS should be aware of the disparity between industry resources to participate and consumer resources to participate in regulatory proceedings given the history of the IAIS's funding from industry Observer fees. Until the waiving of fees for designated IAIS consumer observers, no consumer or consumer organization paid the fee to be an IAIS Observer.

Our work over the years has also revealed the bias of financial regulators towards prudential regulation issues over market regulation issues. This bias is not only reflected in the disproportionate time and resources devoted to prudential regulation versus market regulation and consumer protection, but also in the limited action by supervisors to seek out consumer views on regulatory issues. Simply stated, many insurance supervisors view their role primarily

as ensuring insuring solvency and believe that consumers have little expertise to offer on these prudential regulatory issues. We submit that were consumer interests as fully involved in regulatory proceedings as industry interests, supervisors would spend more time and resources on market regulation and consumer protection issues and better understand that effective consumer protection is as essential to financial stability as capital standards.

We present this background on CEJ to frame our comments on the Draft IAIS Procedures on Meeting Participation and the Development of Supervisory and Supporting Material and Draft Policy for Consultation of Stakeholders. We summarize our major comments as follows:

1. We applaud the IAIS proposal to stop “pay-to-play” and allow any interested party to follow and participate in the activities of the IAIS. However, meaningful participation by consumers of insurance in IAIS processes requires the establishment of a formal IAIS consumer participation program reflecting a commitment to obtain consumer input and with funding for expense reimbursement necessary for consumer organizations to participate. We note the irony of a request for comment on public participation procedures with a note on page 1 limiting the information to Members and Observers.
2. The Glossary of Terms should have a definition of Stakeholder to ensure that all IAIS members have a common understanding of the term. Stakeholder should be broadly defined as any person or entity potentially affected by the activities of the IAIS.
3. Annual training in public participation procedures should be required for Committee, Subcommittee, Working Group and Task Force leadership with emphasis on the need for and methods of consumer involvement.
4. The proposal for discretion by the Chair of a Committee or Subcommittee to invite guests based on “exercise [of] his or her discretion in an objective and a transparent manner” is a contradiction. Such discretion, by definition, cannot be transparent. The decision to invite guests should be broadened beyond the Chair to members of the Committee or Subcommittee and guidance should be provided that such invitations actually include a variety of perspectives, including consumer interests.
5. As pointed out the NAIC comments, the default position should be that Committee and Subcommittee meetings are open to the public with the authority to close a meeting for specific reasons that involve, for example, discussion of individual company issues or IAIS strategy. A policy of closing meetings of insurance regulators by default will not improve “efficiency.” Open meetings can be run efficiently if committee leadership is trained to organize the sessions to allow public input at the appropriate time, stop presentation of repetitive comments, and stop discussion of matters previously decided.
6. The process for development of supervisory and supporting materials should start with a public consultation before a proposal is submitted to the Executive Committee. As currently proposed, the first time interested parties will have to comment on a new IAIS initiative is only after the initiative has been formulated and prescribed by the Executive Committee. New initiatives would be better formulated if interested parties were able to

weigh in at the design stage to ensure that the issue to be work on was fully described and all relevant issues identified.

I. Attendance at Committee and Subcommittee Meetings

Prior to Section 1 is a Glossary of Common Terms. The term “stakeholder” should be defined to ensure that all IAIS members have a common understanding of the term. Stakeholder should be broadly defined as any person or entity potentially affected by the activities of the IAIS.

The proposed draft states:

The Chair of a Committee or Subcommittee has the discretion to invite and admit guests (e.g. non-members of the Committee or Subcommittee or non-Members) to a meeting. In inviting guests, the Chair should:

- Exercise his or her discretion in an objective and transparent manner.
- Avoid the perception that any one individual or group is favoured over another.
- Invite guests only to the part(s) of a meeting where his or her specific input is required.
- Provide members of the Committee or Subcommittee with sufficient opportunity to discuss issues amongst themselves.

Situations in which it would be appropriate to invite a guest include:

- When specific, technical input is required on an issue.
- To solicit targeted feedback on an issue or proposal.
- To receive an explanation of practices and developments within the industry or certain regions or jurisdictions.
- To engage with consumer groups or representatives and other stakeholders on relevant issues.

Comments:

1. It is contradictory for the Chair of a Committee or Subcommittee to exercise discretion in the invitation of guests in a transparent manner. The decision to invite guests should be broadened to the entire Committee or Subcommittee and there should be requirements to invite a range of interests and perspectives, including consumer interests. It is not enough to avoid the perception that one individual or group is favoured over another; procedures should be in place to ensure a broad spectrum of perspectives. This will require an initiative by the IAIS to establish a formal consumer participation program.
2. The proposed process is cumbersome and inefficient. Instead of allowing meetings to be open by default, there is a process in which some stakeholders are invited, but only to that part of the meeting where his or her specific input is required. It makes more sense to allow interested parties to offer input as they deem relevant, subject to oversight by the Chair.

3. We agree that Committee and Subcommittee members should have sufficient time to discuss issues among themselves, but disagree that all such discussions should be in closed meetings. If the committee is discussing an issue of policy with general applicability, there is no basis for excluding members of the public from viewing such discussion.
4. The list of situations in which it would be appropriate to invite a guest indicates the need for training of Committee and Subcommittee leadership in public participation to, for example, ensure that “technical input” does not exclude consumer interests and that “explanation of practices and developments” includes actual consumer experience and to ensure that engaging on “relevant issues” is understood in broad terms. Again, these problematic issues could be largely avoided with open meetings, a formal consumer participation program and training for committee leadership in how to run meetings effectively and efficiently.

II A 1, 2, and 3 none

II B

1. The process for development of supervisory and supporting materials should start with a public consultation before a proposal is submitted to the Executive Committee. As currently proposed, the first time interested parties will have to comment on a new IAIS initiative is only after the initiative has been formulated and prescribed by the Executive Committee. New initiatives would be better formulated if interested parties were able to weigh in at the design stage to ensure that the issue to be work on was fully described and all relevant issues identified.
2. Item vii calls for public discussion of comments and resolution, including receiving feedback on work completed to date and future work planned and engagement between Members and stakeholders on relevant topics. As formulated, this public discussion is part of the single required public consultation in the entire development of the materials and, for any work product of even modest complexity and/or with disputed issues, would be a very lengthy event. Consider the time required to carry out the five items in vii a through e. Does the IAIS expect this to normally be a full day event? By consolidating stakeholder consultation into one request/event, the IAIS is likely creating an inefficient method of obtaining stakeholder input.
3. Item viii calls for subsequent public consultations as necessary. First, public consultations should be permitted prior to the issuance of a formal draft as set out in item vii if such consultations will promote a more efficient identification and discussion of issues. Second, no guidance is provided as to if and when subsequent consultations are likely to be necessary or who decides whether such additional consultations are necessary. Is it at the discretion of the Committee Chair? Does any request for subsequent consultation require approval of the Executive Committee as set out for the consultation in item vii?

4. The second to last paragraph of this section states:

The process set forth above does not limit or prohibit a Committee/Subcommittee from:

- Getting input from Members and other stakeholders prior to submission of a project plan to the Executive Committee.
- Holding additional public sessions to gather input or disseminate information as necessary.
- Inviting technical input or feedback, either publicly or from selected stakeholders, at any time through means such as questionnaires, surveys or other requests for input.
- Inviting subject matter experts to Committee/Subcommittee meetings to provide input on the development of matters as necessary.

As discussed above, the first bullet – to obtain input from stakeholders prior to submission of a project plan to ExCo – should be a requirement and not an option. For all these points, the procedures should specify that consumer interests should be included as part of “technical” or other input, that input should be sought from a broad range of interests, including consumer interests and that subject matter experts include consumer interests both as analysts of regulatory issues and as consumers experiencing the marketplace impacts. Again, these problematic issues could be largely avoided with open meetings, a formal consumer participation program and training for committee leadership in how to run meetings effectively and efficiently.

III part 1 The draft proposal states:

The purpose of this policy is to set forth the IAIS’ expectations of stakeholders. Its principle aims are to:

- Ensure that all relevant stakeholders are properly consulted in the IAIS’ development of policy.
- Encourage more involvement of interested stakeholders through a transparent consultation process and other interactions.
- Build a standardised framework for consultation that is clear and consistent yet flexible enough to take account of the specific requirements or circumstances of individual projects.
- Promote the exchange of experience, expertise and information between and among our Members and stakeholders.

CEJ respectfully submits that the proposed policy for consultation of stakeholders will not accomplish these purposes. The procedures will not ensure all relevant stakeholders are properly consulted because there is no formal consumer participation program or assistance, because the implementation is left to the discretion of the Chair and because there is no formal training for Members or Committee leadership in implementing public participation policies and procedures.

The proposed process is clearly not transparent as its implementation rests largely at the discretion of the Committee Chair, as discussed above. The proposed “standardized framework” is too short on the required interactions and too long on the options to ensure consistent stakeholder interaction across Committees and projects.

III part 2 – see comments above

III part 3 – We applaud the proposal for an open session between ExCo members and stakeholders, but suggest that this section needs to be much more fully developed. For example, when and where would such a session occur to ensure ExCo and stakeholder participation? Absent a formal consumer participation program, how would consumer interests weigh in on topics for discussion and participate in such sessions? As with the single consultation in the development of materials, a single annual ExCo public dialogue risks placing too many topics into a single session. We suggest this interaction might be better organized as multiple public dialogues with ExCo organized around ExCo meetings. In this way, the dialogues could occur in a timelier manner as new issues arise. Finally, a formal IAIS consumer participation program is essential for consumer participation in such an ExCo dialogue as well as other IAIS proceedings

III part 4: The proposal states the IAIS will, when needed, hold public dialogues at the Committee level with qualified experts on specific topics related to policy development. This proposal is vague – who determines if a public dialogue is needed? Who determines who a “qualified expert” is? Why is the proposal limited to public dialogues at the Committee level and not available at the Subcommittee, Working Group or Task Force levels? Again, these problematic issues could be largely avoided with open meetings, a formal consumer participation program and training for committee leadership in how to run meetings effectively and efficiently.

III part 5 – We applaud the IAIS for committing to greater transparency with stakeholders. However, we suggest that summary records of meetings are insufficient to allow stakeholders to understand how and why decisions were made. We suggest more detailed minutes of meetings be developed and posted so stakeholders can better understand the different views of Members on particular issues and how those varying views were reconciled in the final decisions.

III part 6 -- This proposal allows the ExCo to create one or more formal stakeholder groups. This is a problematic proposal for several reasons. First, stakeholder is not defined in the glossary of terms, so there is no guaranty of a common understanding of stakeholder across members and Committee leadership. Second, no guidance is provided to ensure that stakeholders include consumer interests or that consultation with one stakeholder group does not give privileged access to one set of interests over another. Third, this is another, in a long list of mostly optional actions to ensure communication between stakeholders and Members necessitated by the proposal to close all meetings. The list of optional actions includes additional public consultations, additional public dialogues, invitation of certain stakeholders as guests to certain meetings and formal stakeholder groups in addition to the formal requirements for a

public discussion following the single required consultation and the ExCo public dialogue. This is not an efficient method of obtaining stakeholder input nor does it ensure that the stakeholder input received will reflect the variety of stakeholder interests. Again, these problematic issues could be largely avoided with open meetings, a formal consumer participation program and training for committee leadership in how to run meetings effectively and efficiently.