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Insurance Regulators as Market Developers

A long-standing debate within the insurance regulatory world has been to what extent should regulators be responsible for market development, meaning closing protection gaps and increasing insurance penetrations rates. In light of evolving markets, insurers withdrawing from some coverages and persistent (and in some cases growing) protection gaps, this is receiving new attention— and it should!

First, let me elaborate on the parameters of this debate, including defining what is meant and not meant by market development.

Insurance regulation's highest priorities must be to deliver a financially sound market, one where insolvencies are infrequent (but not non-existent) and where there are sufficient market conduct rules to ensure fair treatment of consumers. These are the prudential (solvency) and market conduct roles of insurance regulators and supervisors. Done well and in a measured, proportionate way (which is easier to write than to do) such regulation will attract insurance capital, help create a robust insurance market to serve the needs of consumers and provide suitable consumer protection. The reverse is also true. Excessive or misplaced regulation can curtail the development of a market or even cause insurers to withdraw from the market. Within the context of this discussion, I want to be clear that there is no suggestion to imprudently relax these standards.

In addition, a related topic (but one that is beyond the scope of this piece) is the impact of an insurance regulatory regime in driving economic development by making the jurisdiction an attractive jurisdiction for insures to domicile. These initiatives are often <u>not</u> tied to making insurance available to a particular market, but as part of a strategy to develop an industry that will provide jobs, tax revenues, etc. Bermuda and many US "captive states", such as Vermont, South Carolina, Colorado, and others have successfully pursued this agenda. Similarly, one can see this issue addressed in the current debate in the UK over whether UK regulation needs to be amended to make the UK a more competitive jurisdiction in attracting insurance capital to London.

In this discussion, I want to focus on the role insurance supervisors/ regulators can and should have in actually working to increase the uptake of insurance. This can include taking steps to enhance speed to market of new carriers and products, embracing and changing regulations to accommodate technological advancements and innovations, educating consumers on how the market works, why insurance is important and how it is regulated to protect policyholders. I believe they should do this— but there are many regulators who believe that their responsibilities begin and end with the solvency and market conduct roles described above.

In 2011 the National Association of Insurance Commissioners published a paper entitled "State Insurance Regulation", which reviewed the history and basic elements of insurance regulation. In it, the NAIC stated "The public wants two things from insurance regulators. They want solvent insurers who are financially able to make good on the promises they have made, and they want insurers to treat policyholders and claimants fairly. All regulatory functions will fall under either solvency regulation or market regulation to meet these two objectives."

The NAIC's assertions may have accurately reflect public sentiment on the goal of insurance regulation, but even ten years ago, many state insurance regulators understood that regulators played an important role in creating a market that would have the capacity and risk appetite to provide adequate coverage for the citizens and businesses of their state. And indeed, US regulators collectively and individually have taken steps to build their domestic markets and to make insurance more affordable and responsive to consumer needs. But I believe more can be done.

In 2018, the OECD published a paper entitled "The Institutional Structure of Insurance Regulation." In part the paper addressed the goals and objectives of insurance regulation. Of course, for all jurisdictions, there was the goal of establishing fair, safe, and stable markets. But in addition, the OCED found in a survey of 50 countries (28 OECD countries and 22 non-OECD countries) that 31 of them had market development as an objective of their insurance regulatory regime.

Notwithstanding the precedents in many countries, there are still many jurisdictions where insurance regulators reject the concept that their job is to develop markets, take steps to ensure that more of their citizens and business are adequately insured. Many will cite, correctly, that there is no such mandate in their enabling legislation or political instructions. Accordingly, they operate with an exclusive focus on authorizing carriers and ensuring their solvency and providing market conduct protections.

But if regulators do accept the responsibility to help grow their insurance markets and act to do so, they could have a powerful impact in closing the myriad protection gaps that exist in most countries and certainly exist at a crisis level in many emerging or developing countries. But they must have the statutory authority or other government mandate to so act. Where needed, this authority should be sought. And then regulators must embrace this role.

I am not suggesting that insurance regulators should become a shill for the industry. But we know that two of the biggest barriers to closing protection gaps is lack of insurance literacy and lack of trust in the marketplace. Insurance regulators can do a great deal to help consumers understand what insurance is, how it works, the types of policies that exist and how it is regulated—for their protection. A prime example of this type of initiative was the effort by the California Department of Insurance a few years ago to create and place on its website a catalog of green and sustainable insurance products that were available in the California market. These included, for example, home insurance policies that promised to build back with fire resistant materials after a wildfire loss. The Insurance Department was not endorsing any particular carrier or product, they were just letting consumers know what was available. The websites of many insurance departments carry consumer education materials, but more could be done.

Of course, the industry must step up on this issue as well. It must do more to increase consumer insurance literacy—and to make its policies understandable and responsive to consumer needs. But this does not eliminate the role of regulators. As noted above, there is much that insurance regulators can and should do to help their citizens make better- and better-informed decisions about protecting their lives, families and livelihoods from losses that are insurable. This is all the more urgent at a time when climate change, pandemics, cyber risks are growing dramatically, and protection gaps are widening.

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