BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-11-155

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FARMERS INSURANCE EXCHANGE

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Farmers Insurance Exchange ("Respondent"), pursuant to §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S.

The Commissioner has reviewed and considered the MCE Report ("Report") dated April 8, 2011, the relevant examiners' work papers, all written submissions and rebuttals provided by Respondent, and the recommendations of staff. The Report covers the examination period of January 1, 2009 through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a private passenger auto insurer in the State of Colorado.

2. In accordance with §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S., on February 9, 2011, the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.

3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1)(a), C.R.S.

4. The MCE was completed on February 9, 2011. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which was timely filed with the Division, under oath, on April 8, 2011. The Report was subsequently timely transmitted to Respondent on April 8, 2011.

5. Pursuant to § 10-1-205(1) the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.

6. On May 6, 2011 Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.

7. The Commissioner has fully reviewed and considered the Report, all of Respondent's submissions and rebuttals, including but not limited to the Respondent's May 6, 2011 response to the Report.

8. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.

9. This MCE was not conducted as an informal investigation of consumer complaints.

10. This MCE was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

CONCLUSIONS OF LAW AND ORDER

11. Unless expressly modified in this Final Agency Order, pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as filed.

12. The Commissioner has modified and corrected the Report to reflect it was authored on April 8, 2011. The Report transmitted to Respondent on April 8, 2011 contained a February 9, 2011 date on the cover page and the correspondence to the Commissioner. The February 9, 2011 date was the date of the completion of the examination and not the date the verified written report was filed with the Division.

13. In addition to the correction set forth in paragraph 12 above, the language in the Report has been modified or corrected by the Commissioner, for both substantive and non-substantive purposes, pursuant to § 10-1-205(3)(a) C.R.S., at the following pages and/or provisions:

a. Pages 2, 5, 6, 7, 16, 17, 18, 19, 20, 21, 26, 28, 29, 30, 32, 37, 38, 44, 46, 50, 52, 56, 58, 59, 60, 64, 65, 69, 70, 73, 78, 80, 82, 84, 88, and

b. Recommendation Numbers 2, 5, 11, 12, 13, 14, 17, 18, 19, 20, and 21 to provide for consistency and clarity, and 3, 4, 5, and 6 to allow additional time to provide documentation of corrected forms.

c. Issues E6 and F3 were removed from the Report.

14. The Commissioner finds the Respondent is operating in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.

15. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

16. A copy of the April 8, 2011, Report is attached to the Final Agency Order and is incorporated herein. The April 8, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its response on May 6, 2011. The Commissioner hereby orders Respondent to cure the violations set forth below in the time frame and manner set forth below.

17. Issue A1 concerns the following: Failure to retain and provide medical payment claims received dates as required for testing of timeliness of paid and denied medical payment claims for market conduct purposes. This failure constitutes a violation of § 10-4-642, C.R.S., and Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its record maintenance procedures to ensure all medical payments records are maintained in such a way that the received and adjudication dates are recorded in the system and can be provided within the timeframes required by Colorado insurance law.

18. Issue A2 concerns the following: Failure, in some instances, to provide requested records and/or documentation within the required time period during the course of a market conduct examination. This failure constitutes a violation of Colorado Insurance Regulations 1-1-7 and 1-1-8. No later than thirty (30)

days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure all records required for market conduct purposes are maintained and can be provided within the timeframes as required by Colorado insurance law.

19. Issue E1 concerns the following: Failure, in some instances, to limit cancellation of a private passenger automobile policy to reasons that are allowable under Colorado insurance laws. This failure constitutes a violation of § 10-4-602, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its contract provision pertaining to termination or reduction of coverage resulting from false statements to only apply if the false statement was made knowingly, as required by Colorado insurance law. The Respondent shall provide the Division with a copy of the corrected form that shall actually be utilized on all policies issued or renewed by the Company on or after August 7, 2011. The Division shall consider this submission as acceptable written evidence that the Company has corrected the form.

20. Issue E2 concerns the following: Failure to provide accurate information in a form regarding the location of additional information on Farmers' website. This failure constitutes a violation of § 10-3-1104, C.R.S. No later than sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to ensure that its website references are accurate and not misleading in accordance with Colorado insurance law. The Respondent shall provide the Division with a copy of the corrected form that shall actually be utilized on all policies issued or renewed by the Company on or after August 7, 2011. The Division shall consider this submission as acceptable written evidence that the Company has corrected the form.

21. Issue E3 concerns the following: Failure to provide correct information regarding medical payments coverage in an automobile policy endorsement form. This failure constitutes a violation of §§ 10-4-633, and 10-4-635, C.R.S. No later than Sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its practices and procedures to ensure that all private passenger automobile forms issued by Respondent contain language that complies with Colorado insurance law. The Respondent shall provide the Division with a copy of the corrected form that shall actually be utilized on all policies issued or renewed by the Company on or after August 7, 2011. The Division shall consider this submission as acceptable written evidence that the Company has corrected the form.

22. Issue E4 concerns the following: Certifying, in the annual forms certification filing, forms that were not in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-633, C.R.S. and Colorado Insurance Regulations 5-2-12 and 5-2-16. No later than sixty (60) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its forms and its forms certification procedures to ensure that its current issued forms are certified and in compliance with Colorado insurance law. The Respondent shall provide the Division with a copy of the corrected forms that shall actually be utilized on all policies issued or renewed by the Company on or after August 7, 2011. The Division shall consider this submission as acceptable written evidence that the Company has corrected the forms.

23. Issue E5 concerns the following: Failure, in some instances, to include forms in use during the examination period on the annual certification of forms list or on a new form certification filing in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-633, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that its current issued forms are certified in compliance with Colorado insurance law.

24. Issue F1 concerns the following: Failure, in some instances, to apply rating factors based on Respondent's filed rates, as required by Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-4-404, C.R.S., and Colorado Insurance Regulation 5-1-10. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its rate filings to include the tables and factors currently in use for compliance with Colorado insurance law.

25. Issue F2 concerns the following: Failure to use a procedure to rate uninsured motorist coverage that ensures all similarly situated individuals are treated the same in compliance with Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-4-404, C.R.S., and Colorado Insurance Regulation 5-1-10. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its rating practices to ensure that all uninsured motorist coverage is rated in a manner that is not unfairly discriminatory and complies with Colorado insurance law.

26. Issue G1 concerns the following: Failure, in some instances, to have applications signed and/or signed timely in compliance with Respondent's guidelines, and failure to retain those documents in compliance with Colorado insurance law. This failure constitutes a violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the

date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting practices and procedures to ensure that all applicants are treated fairly by acquiring and retaining applications in compliance with its underwriting guidelines and Colorado insurance law.

27. Issue G2 concerns the following: Failure, in some instances, to obtain signed medical payments rejections prior to issuing automobile insurance coverage without medical payments coverage as required by Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-4-635, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its practices and procedures to ensure that it does not issue a policy without medical payments coverage until it has obtained a signed and dated rejection form from the applicant prior to issuance of the policy and that it retains the rejection form with the policy record as required by Colorado insurance law.

28. Issue G3 concerns the following: Failure to include notice of the right of the insured to replace coverage through an assigned risk plan in notices of premium increase upon renewal in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its premium increase notices to ensure that such notices include notice of the right to replace insurance through an assigned risk plan in compliance with Colorado insurance law.

29. Issue G4 concerns the following: Failure to include correct instructions in the underwriting guidelines regarding premium increases at renewal due to violations by including driver violations that occurred more than thirty-six (36) months prior to the renewal date. This failure constitutes a violation of Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting manual to ensure that renewal premiums are increased based only upon accidents and moving violations that occurred within the thirty-six (36) months immediately preceding the date of renewal in compliance with Colorado insurance law.

30. Issue G5 concerns the following: Failure, in some instances, to provide correct notification of the right to protest premium increase upon renewal in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-629, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting procedures to ensure that only one policy is referenced when offering to exclude a driver in its premium increase notices and that a separate

notice is sent on each policy in the household in compliance with Colorado insurance law and the prior agreement reached between Respondent and the Division.

31. Issue G6 concerns the following: Failure, in some instances, to provide correct premium increase notices at renewal and/or failing to provide a notice of premium increase at renewal in compliance with Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting procedures to ensure premium increase notices will be provided and include correct information as required by Colorado insurance law.

32. Issue H1 concerns the following: Failure, in some instances, to provide correct notification of the right to protest a cancellation or nonrenewal in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-629, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that premium increase notices are issued for cancellations or nonrenewals applicable to only one policy per notice in compliance with Colorado insurance law and the prior agreement reached between the Respondent and the Division.

33. Issue H2 concerns the following: Failure, in some instances, to provide cancellation/nonrenewal notices with the right to protest notification when required and/or provide accurate notices, and failure to offer driver exclusions in compliance with Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that cancellation/nonrenewal notices are issued in compliance with Colorado insurance law.

34. Issue H3 concerns the following: Failure, in some instances, to provide cancellation/nonrenewal notices that are in compliance with Colorado insurance law. This failure constitutes a violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its underwriting procedures and cancellation and nonrenewal forms to ensure that cancellation and nonrenewal notices include all required information and are issued in compliance with Colorado insurance law.

35. Issue J1 concerns the following: Failure, in some instances, to send a written explanation within thirty (30) calendar days after receipt of an unclean claim

giving a full explanation of what additional information was needed to resolve the claim. This failure constitutes a violation of § 10-4-642, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that the insurer shall, within thirty (30) calendar days after receipt of the claim determined to be unclean, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim in compliance with Colorado insurance law.

36. Issue J2 concerns the following: Failure in some instances, to pay, deny, or settle claims within the time frame required by Colorado insurance law. This failure constitutes a violation of § 10-4-642, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that each unclean medical payments claim shall be paid, denied or settled within ninety (90) days in compliance with Colorado insurance law.

37. The issues and violations described in paragraphs 15 through 36 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of two hundred forty-eight thousand and no/100 dollars ($248,000.00) for the cited violations of Colorado law. The $248,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of $7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of two hundred fifty-five thousand five hundred and no/100 dollars ($ 255,500.00). This penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order. This surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program.

38. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Report dated April 8, 2011, and this Final Agency Order dated June 8, 2011, which incorporates the Report.

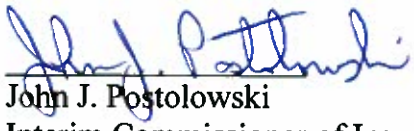
39. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law.

40. Copies of the Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.

41. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.

42. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated April 8, 2011, are hereby adopted and filed and made an official record of this office, and the within Final Agency Order incorporating the Report is hereby approved and effective this8th day of June, 2011.



John J. Postolowski
Interim Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of June, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-155 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FARMERS INSURANCE EXCHANGE,** in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Frank Woudstra, President
Farmers Insurance Exchange
PO Box 2478 Terminal Annex
Los Angeles, CA 90051

Eleanor Patterson
Market Regulation Administrator
Division of Insurance