BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-11-129

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, C.R.S., as well as § 10-3-1106, C.R.S.

The Commissioner has reviewed and considered the MCE Report dated December 17, 2010, ("Report"), 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 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 workers' compensation insurer in the State of Colorado.

2. In accordance with §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S., on December 17, 2010, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.

3. In conducting the examination, 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 December 17, 2010. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which was timely filed with the Division, under oath, on December 17, 2010. The Report was subsequently timely transmitted to Respondent on February 11, 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 March 4, 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 March 4, 2011 response to the verified written market conduct examination report.

8. The examination 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 examination was not conducted as an informal investigation of consumer complaints.

10. This examination 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. The Commissioner has modified the Report to reflect it was authored on December 17, 2010. The language under sampling methodology has been modified. The language identifying the errors at issue A1 has been modified. The language F1 has also been modified.

12. 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.

13. 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

examination report nor 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.

14. A copy of the December 17, 2010 Report is attached to the Final Agency Order and is incorporated herein. The December 17, 2010 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 March 4, 2011. The Commissioner hereby orders Respondent to cure the violations set forth below in the time frame and manner set forth below.

15. Issue A1 concerns the following: Failure, in some instances, to maintain records required for market conduct purposes. This failure constitutes a violation of §§ 8-41-202 and 10-4-413, 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 procedures to ensure that all records required for market conduct purposes are retained and can be provided within the required time period, as is mandated by Colorado insurance law.

16. Issue F1 concerns the following: Failure to file its method for determining payroll for use in an estimated audit. This failure constitutes a violation of §10-4-401, 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 filed its estimated audit payroll procedures with the Division as required by Colorado insurance law.

17. Issue G1 concerns the following: Failure, in some instances, to provide Cost Containment Certification Forms to verify insureds had been informed about the possible premium dividend available if a business entity's risk management program was certified by the Colorado Cost Containment Board. This failure constitutes a violation of Colorado Insurance Regulation 5-1-11. 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 business entity indicates on a form developed by the insurer that the business entity is aware of the possible premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board, and that this form is retained in the insured business entity's underwriting file as required by Colorado insurance law.

18. Issue G2 concerns the following: Failure, in some instances, to provide Designated Medical Provider Forms to verify insureds had been informed about the premium differential for selecting a designated medical provider. This failure constitutes a violation Colorado Insurance Regulation 5-1-11. 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 it requires each insured business entity to indicate on a form developed by the insurer, that the business entity is aware of the premium differential for selecting a designated medical provider, and that this form is retained in the insured's underwriting file as required by Colorado insurance law.

19. The issues and violations described in paragraphs 15 through 18 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 Seventy-six thousand and no/100 dollars ($76,000.00) for the cited violations of Colorado law. The $76,000.00 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 Eighty-three thousand five hundred and no/100 dollars ($83,500.00). 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.

20. 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 December 17, 2010, and this Final Agency Order dated April 13, 2011, which incorporates the Report.

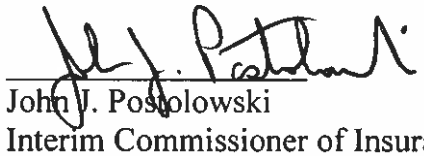
21. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. 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.

22. 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.

23. 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.

24. 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 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 December 17, 2010, 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 this13th day of April, 2011.



John J. Postolowski
Interim Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of April, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-129 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