

**MARKET CONDUCT EXAMINATION**  
**OF**  
**SIRIUS AMERICA INSURANCE COMPANY**  
**AS OF**  
**AUGUST 25, 2005**

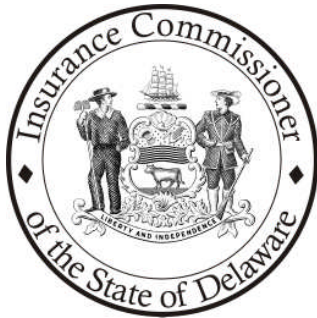
I, Matthew Denn, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON MARKET CONDUCT EXAMINATION, made as of SEPTEMBER 1, 2006 of the

**SIRIUS AMERICA INSURANCE COMPANY  
(nka Delos Insurance Company)**

is a true and correct copy of the document filed with this Department.

ATTEST BY: Antoinette Handy

DATE: 15 JULY 2008



*In Witness Whereof,* I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THIS DEPARTMENT AT THE CITY OF DOVER, THIS 15TH DAY OF JULY 2008.

Matthew Denn  
Insurance Commissioner

**REPORT ON MARKET CONDUCT EXAMINATION**

OF THE

**SIRIUS AMERICA INSURANCE COMPANY  
(nka Delos Insurance Company)**

AS OF

**AUGUST 25, 2005**

The above captioned Report was completed by examiners of the Delaware Insurance Department.

Consideration has duly been given to the comments, conclusions, and recommendations of the examiners regarding the status of the Company as reflected in the Report.

This Report is hereby accepted, adopted, and filed as an official record of this Department.



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MATTHEW DENN  
INSURANCE COMMISSIONER

DATED this 15TH day of JULY, 2008.

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## **SALUTATION**

February 20, 2008

Honorable Matthew Denn  
Insurance Commissioner  
State of Delaware  
841 Silver Lake Boulevard  
Dover, Delaware 19904

Dear Commissioner Denn:

In compliance with the instructions contained in Certificate of Examination Authority Number 05.735, and pursuant to statutory provisions including 18 Del. C. §318-322, a market conduct examination has been conducted of the affairs and practices of:

### **Sirius America Insurance Company**

hereinafter referred to as the "Company" or as "Sirius" or "Sirius America." Sirius Insurance Company is incorporated under the laws of the State of Delaware. This examination reviewed the operations of Sirius. The on-site phase of the examination was conducted at the following location:

120 West 45<sup>th</sup> St. 36<sup>th</sup> Floor New York, NY 10036

The examination is as of August 25, 2005.

Examination work was also conducted off-site and at the offices of the Delaware Department of Insurance, hereinafter referred to as the "Department" or as "DDOI."

The report of examination thereon is respectfully submitted.

## **SCOPE OF EXAMINATION**

The basic business areas that are subject to a Delaware Market Conduct Examination vary depending on the type of insurer. For all insurers, these areas include:

- Company Operations/Management
- Complaint Handling
- Marketing and Sales
- Producer Licensing
- Policyholder Service
- Underwriting and Rating
- Claims

Each business area has standards that can be examined and measured, typically utilizing sampling methodologies.

This examination is a Delaware Baseline Market Conduct Examination. It is comprised of two components. The first is a review of the Company's countrywide complaint patterns. This is not a pass/fail test. Rather, this review is aimed at determining if there is a detectable pattern to the complaints the Company has received from all sources.

The second component is an analysis of the management of the various business areas subject to market conduct examination through a review of the written procedures of the Company. This review includes an analysis of how the Company communicates its instructions and intentions to its lower echelons, how it measures and monitors the results of those communications and how it reacts to and modifies its communications based on the resulting findings of its measurement and monitoring activities. The examiners also determine whether this process is dynamic resulting in enhanced compliance activities. Because of the predictive value of this form of analysis, focus is then directed on those areas where review indicators suggest that the process used by management may not be achieving appropriate levels of statutory and regulatory compliance.

All business areas noted above are addressed, to some extent, by one or more of the procedures reviewed, thus providing a comprehensive view of the Company and its component operations.

This examination report is a report by test rather than a report by exception. This means that all areas tested are described and results indicated. Substantial departure from the norm may result in a supplemental review focused on the area so noted.

## **HISTORY AND PROFILE**

Sirius America Insurance Company and its immediate parent, Folksamerica Reinsurance Company, are members of White Mountains Insurance Group, Ltd. Folksamerica acquired the Company in April 2004. Prior to that, the Company and its former parent, Sirius International Insurance Corporation, Stockholm, Sweden, were members of the insurance business of the ABB Group, Switzerland.

The Company was incorporated by Sirius Insurance Company, Limited, Stockholm, Sweden under the laws of Delaware as Sirius Reinsurance Corporation on November 18, 1977 and began business on January 1, 1978. The present title was adopted on September 23, 1997. Capital paid-up is \$4,200,000, which consists of 42,000 shares, par value of \$100 per share. The company has 50,000 authorized shares.

In June 1999, ABB Ltd., of Zurich, Switzerland, was created and became the ultimate Group holding company. In July 2002, Sirius International Insurance Corporation of Sweden ("Sirius International"), a subsidiary of ABB Ltd., purchased the stock of Sirius America.

On April 16, 2004, White Mountains Insurance Group, Ltd. ("White Mountains") acquired from ABB Ltd. the Sirius Insurance Group and its subsidiaries, Sirius International, Sirius America and Scandinavian Reinsurance Company, Ltd.

All outstanding capital stock of the Company is owned by Folksamerica Reinsurance Company, which is owned and controlled through various subsidiaries by White Mountains. White Mountains is a Bermuda-based, publicly traded, financial services holding company.

Since 2000, the Company's focus has been on business produced by program managers with targeted classes of business. These include intermediate-tail specialty commercial lines, commercial auto, group stop loss and other specialty lines. Prior to 2000, the majority of the Company's business represented reinsurance assumed from Gerling Global Reinsurance Corporation of America (formerly Constitution Reinsurance Corporation) under various quota share reinsurance agreements, which have since been commuted.

The Company is licensed to write direct insurance and reinsurance in 51 jurisdictions. Business is underwritten through a limited number of program managers with the focus on opportunities that leverage program managers' underwriting expertise and servicing capabilities. The Company's niche is to focus on programs that write a single line of business in one or multiple states or multiple lines of business in a single state.

Over half of the Company's business is ceded to reinsurers. However, the Company participates, at various levels of retention, in each program that it underwrites.



## **METHODOLOGY**

This examination is based on the Standards and Tests for a Market Conduct Examination of a Property and Casualty Insurer found in Chapter VIII of the Delaware Market Conduct Examiners' Handbook. This chapter is derived from applicable Delaware Statutes, Rules, and Regulations as referenced herein and the *NAIC Market Conduct Examiners' Handbook*.

The types of review used in this examination fall into three general categories: generic, sample, and electronic.

A "Generic" review is conducted through an analysis of general data gathered by the examiner, or provided by the examinee in response to queries by the examiner.

A "Sample" review is conducted through direct review of a random sample of files using sampling methodology described in the Delaware Market Conduct Examiners' Handbook and the *NAIC Market Conduct Examiners' Handbook*. The sampling techniques used are based on a 95% confidence level. This means that there is a 95% confidence level that the error percentages shown in the various standards so tested are representative of the entire set of records from which it was drawn.

An "Electronic" review is conducted through use of a computer program or routine applied to a download of computer records of the examinee. This type of review typically evaluates 100% of the records of a particular type.

The complaints pattern review is conducted using all three methodologies described above. The non-complaint procedures are reviewed using a "Generic" analysis methodology.

The Introduction to the Review of Procedures section of this report describes the basis for the analysis methodology. Each procedure reviewed is described and the result of the review is provided under the appropriate procedure. Each procedure is supported by 18 Del. C. §318(a) and 18 Del. C. §508(b). In some cases, there is additional specific statutory support. However, these have not been enumerated. The reference source for each procedure found in the *NAIC Market Conduct Examiners' Handbook (NAIC MCEH Reference)* is noted.

Each procedure is accompanied by the examiners' "Observations." In some cases a "Recommendation" for corrective action is made. Reference, Observations and Recommendations are reported with the appropriate Standard.

## A. COMPANY OPERATIONS/MANAGEMENT

*Comments:* As stated above, this examination report is not designed to be a pass/fail report except for the following two criteria. Standards A7 and A9 read as follows:

- 1 “The Company is licensed for the lines of business that are being written.”
- 2 “The Company cooperates on a timely basis with examiners performing the examination.”

### Standard A 07

*NAIC Market Conduct Examiners’ Handbook - Chapter VIII. §A, Standard 7.*  
**The Company is licensed for the lines of business that are being written.**  
18 Del. C. §318(a), §505(b), §508(b).

*Comments:* The review methodology for this standard is generic. This standard has a direct insurance statutory requirement. This standard is intended to ensure that the Company’s operations are in conformance with the Company’s certificate of authority.

*Results:* **Pass**

*Observations:* The Company is licensed for the lines of business being written.

*Recommendations:* None

### Standard A 09

*NAIC Market Conduct Examiners’ Handbook - Chapter VIII. §A, Standard 9.*  
**The Company cooperates on a timely basis with examiners performing the examinations.**  
18 Del. C. §318(a), §320(c), §508(b), §520(b)3.

*Comment:* The review for this standard is by “generic” methodology. This standard has a direct insurance statutory requirement. This standard is aimed at ensuring that the company is cooperating with the state in the completion of an open and cogent review of the company’s operations. Cooperation with examiners in the conduct of an examination is not only required by statute, it is conducive to completing the examination in a timely fashion and minimizing cost.

*Results:* **Pass**

*Observations:* During the course of the examination the Company was provided with fifty (50) Information Requests (IR) as well as five (5) memoranda. The Company’s communication with the examiner was responsive.

It should be noted that the resources of this small insurer were being taxed by other regulatory requirements involving periodic financial examinations contemporaneous with this market conduct review.

*Recommendations:* None

## **B. COMPLAINTS/GRIEVANCES**

*Comments:* Evaluation of the Standards in this business area is based on the Company's response to various information requests (IR items) and complaint files at the Company. 18 Del. C. §2304(17) requires all insurers to maintain complaint-handling procedures. Companies are also required to maintain a complete record of all the complaints, which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint. For purposes of this subsection and in accordance with 18 Del. C. §2304(17), a "complaint" shall mean any written communication primarily expressing a grievance.

*Observations:* The Company did not initially provide the examiner with a written complaint handling procedure. However, the complaint handling process was outlined in response to the examiner's inquiries. Additionally, the Company provided a database with two hundred four (204) logged complaints. This data represented all complaints recorded by Sirius during the examination period. The examiner found that thirty-two (32) of the complaints were actually follow-up correspondence on previously recorded complaints, thus only one hundred seventy-two (172) were deemed to be separate complaint events. The examiner selected a sample of fifty (50) files from the population of one hundred seventy-two (172) for detailed review.

The examiner found that all files selected in the sample were complaints originating from state departments of insurance (DOI). The sample did not contain any complaints submitted directly from consumers. The examiner observed that eight (8) of the reviewed files contained evidence that a direct consumer complaint had been filed with the Company prior to the DOI complaint. The Company's position is that all complaints are logged, whether the correspondence is from a regulatory authority or an individual policyholder. The Company's experience is that it has not received an appreciable amount of complaints directly from the policyholders because it writes very little direct business. The Company admitted that there may have been a few instances where they have consolidated complaints when they received the same complaint from multiple sources, such as the DOI and a policyholder. It is recommended that the Company ensure that they are recording all complaints received directly from consumers and that every complaint received is recorded separately in accordance with 18 Del.C. §2304(17). The Company may not consolidate the same complaint from multiple sources into one complaint; and a separate complaint file must be maintained for each complainant. The Company has agreed to correct this practice going forward, and maintain a separate complaint file for each complainant.

The examiners' reviewed the Program Managers Agreements (PMA) and the Claim Managers Agreements (CMA) which are the contracts between Sirius and Program Managers and Claim Managers. These agreements contained similar language relating to complaints. The examiner observed from these documents that the Program Manager (PM) or the Claims Manager (CM) was instructed to notify the Sirius Home Office of complaints originating from regulators only and lacked language that required notification of the Company regarding direct consumer

complaints. It is recommended that contracts with PMs and CMs be amended to require them to notify the Sirius Home Office when a complaint is received, regardless of the source of the complaint.

The data from the entire population of one hundred seventy-two (172) complaints was reviewed in order to assess the characteristics of those complaints. The examiner determined that sixty-two (62) of the one hundred seventy-two (172) complaints or thirty-six percent (36%) related to claim denials. This was the leading category. Following claim denials, the examiner observed that thirty-seven (37) of one hundred seventy-two (172) or twenty-two percent (22%) of complaints related to policy cancellations.

#### NAIC Complaint File Standards

The complaint files selected for detailed review were evaluated for adherence with NAIC. The standards affected are referenced in the 2004 *NAIC Market Conduct Examiners Handbook*. The detailed review of the complaint process is noted here in lieu of Procedure 11. The summary of the examiners observations include the following:

Standard B-2 - Was statement provided that complaint can be filed with DOI? This standard was not scored because it is not required in all states. Exceptions were noted in some of the reviewed files. However, the examiner recognizes that contact information is not required in all states and does not apply to all products. For this reason, this standard was not quantitatively scored.

Standard B-3 - Were all issues addressed? Was disposition complete? Exceptions were noted in ten (10) of forty-five (45) applicable files or twenty-two (22%).

The review of the complaint files involves the testing of whether all issues raised in the complaint were addressed in the Company's response and whether the disposition was complete in the Company's file as presented to the examiner. The review, in this standard, was objective and did not necessarily address whether the Company (or the DOI) made the right decision in settling the complaint. The examiner counted the issues presented in the complaint and reviewed the response in order to see if each had been addressed (mentioned). The examiner assumed that the complete file had been provided in response to the interrogatories found in the coordinator's handbook.

The Company disputed the examiner's findings of failures relating to "all issues" being addressed. The Company stated that the Program and Claims Managers handle all complaints and retain all supporting documentation regarding the complaint and the disposition. The Company also maintains a portion of the complaint files on-site, but that the files maintained off-site are files contractually under the control of the Company. The Company believes that the handling of the complaint files is in compliance with Delaware statutes.

The examiner was not informed, prior to reviewing the sample files, that it was the Company's practice to maintain only portions of their complaint files at the Home Office. The examiner scored the reviewed files for the various standards tested according to the

Company's file. Complaint files may have been scored as failed for lacking documentation that, if present in a complete file, would have met the standard's requirements. All files were reviewed and scored as they were provided to the examiner. In order to assess the completeness of complaint file maintained by PM/CMs the examiner visited two offices to review complaint files. Neither office maintained complaint files, although one of the offices visited was one level away from the consumer and would probably not have received any complaints from consumers. The other office should have been in direct contact with consumers and maintained complaint files. Since this limited review indicated that complete complaint file were not being maintained by all PM/CMs the testing of complaint files were based on the file provided by the Company without assuming complete files were maintained elsewhere.

Standard B-4 - Was response complete and timely? Exceptions were noted in seventeen (17) of forty-six (46) applicable files or thirty-seven (37%).

The Company stated that timeliness is calculated from the date the DOI request is received at SAIC. However, the due date of the required response is often listed from the date of the DOI letter (as in the case of letters from the NYDOI). Timeliness should be calculated from the date the complaint is received by SAIC, the PM or CM. It is noted that receipt by the PM or CM is considered to be received by SAIC, since they are responsible for responding to complaints they receive. The examiner determined that seventeen (17) files were not responded to timely. The Company disputed all but three (3) of these based on the date the complaint was received by SAIC. It is recommended that the Company use the date a complaint is received by SAIC, a PM or CM as the beginning date for measuring the timeliness of their response on complaints.

Standard B-5 - Was file documentation adequate? Exceptions were noted in thirty (30) of forty-seven (47) applicable files or sixty-four (64%). The Company's response to the examiner's complaint file assessment relating to this standard was as follows:

“SAIC considers documentation complete when we receive a copy of the response from the claim/underwriting dept. of the respective program to the DOI and/or complainant. Any follow-up request by the DOI is also maintained in the file and is also monitored for timeliness.”

“The Program/Claim Administrators maintain the complete files of consumer and DOI complaints. If SAIC needs a complete file to review, it is provided by the claim/underwriting manager of that program.”

The Company disputed all of the examiner's standard failure scores relating to adequate documentation in the reviewed complaint files. The Company stated that the complete files could be located at the Program/Claim Managers' locations. In response to this the examiner visited two PM/CM offices. One of the offices did not maintain any complaint files and the

other was several steps removed from the transaction with the policyholder, and unknown as a party to whom the policyholder could complain. Since the Company response did not provide missing documentation to complete the files reviewed and the attempt to review complaint files at the PM/CM offices indicated they are not maintaining complete complaint files the examination “failures” appear to be accurate. The only exception to this finding is one file that was mistakenly included in the sample but was not a SAIC complaint.

The examiner observed that complaint files are not audited by the Company and there is no procedure in place at Sirius to ensure that complete documentation is maintained by the PM or CM. Therefore, there is no assurance that complaint files are maintained in their entirety in either location.

As a result of discussions between the Company and the examiner, the Company has agreed to a number of changes in the way it processes, maintains records and monitors customer complaints. It will involve several layers of review that are detailed below:

1. The internal claims or underwriting manager of the Company, during on-site operational reviews, will randomly select complaint files for review.
2. The Underwriting Department and the Claims Department, during on-site reviews will also select complaint files at random for review.
3. The Legal Department will continue to review all incoming complaints, including performing complaint trend analysis. They will also review all responses for substance. On an ad hoc basis, the Company will follow-up with the Program or Claims Manager directly if the Company sees possible ongoing or repetitive complaints.
4. This procedure will provide that, at least three departments will be conducting separate individual reviews on the quality, completeness and timeliness of the responses.

*Recommendations:* It is recommended that the Company continue to pursue the noted changes in the complaint handling processes and to develop and maintain a formal written complaint handling procedure. The Company should direct its PMs and CMs in their complaint handling procedures, ensuring compliance with 18 Del. C. §2304(17).

## **REVIEW OF PROCEDURES**

The management of well-run companies generally requires the establishment of some processes that are similar in structure. These processes generally take the form of written procedures. While these procedures vary in effectiveness from company to company, the absence of them or the ineffective application of them is often reflected in the failure of the various Standards that would be reviewed during a market conduct examination. The processes at issue usually include:

1. a planning function where direction, policy, objectives and goals are formulated;
2. an execution or implementation of the planning function elements;

3. a measurement function that considers the results of the planning and execution;
4. a reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of its operations

The absence of written or established procedures that provide direction for company staff in its various operational areas tends to produce inconsistent application of the intended process. The same is generally true for the absence of a means to measure the results of the application of procedures and to determine that the process is performing as intended.

The reviews in this section of the report are not pass/fail measurements. Rather, they are intended to reflect those management strengths and weaknesses that have a bearing on regulatory compliance issues.

### **Procedure 01 – Audit Procedure (Internal and External)**

*Observations:* Sirius America’s operations are audited on two levels. The first level of audit is performed by Sirius’ parent company. The Internal Audit Group at Folksamerica Reinsurance Company conducts these audits. The Internal Audit Group performs operational audits throughout the White Mountains Group. Folksamerica has its own procedures for its review of Sirius America’s business. The annual audits include reviews of the Home Office Underwriting, Claims and Accounting departments. Folksamerica also conducts field audits of the various Program Managers and Claims Managers. These audits provide an independent level of review conducted by Folksamerica, in accordance with their established procedures.

On an internal level, the Company’s Home Office staff performs its own review of the business of the PMs and CMs.

The Underwriting Department conducts periodic underwriting reviews of the operations related to the production of business at the PMs. The Claims Department conducts similar periodic on-site reviews of the Claims Managers. Additionally, the Company has an Internal Audit Manager who may review either PMs or CMs based upon the needs of a Program. Findings from the audits conducted by the Home Office staff are summarized in trip reports, which are submitted to the President and other Sirius executives representing the Audit Committee.

The examiner reviewed all of the audit reports by Folksamerica conducted during the examination period on the Sirius Home Office departments and those conducted at the PMs and CMs. It was determined through a review of various internal audit reports that little or no review was done in the area of complaint recording, handling or resolution as previously noted in this report, please see “Complaints/Grievances B-5” for further discussion.

*Recommendations:* None

### **Procedure 02 – Assertion of Privilege Procedure**

*Observations:* The Company responded to the examiner’s inquiries relating to procedures for

assertion of privilege by stating that Sirius America does not have a formal written procedure. However, it is the Company's policy to have information that may be subject to protection reviewed by the Legal Department. The Company's attorney accomplishes this process.

When a request is received for information that was determined to have privileged status, the Company will then conduct a further review in order to evaluate whether such assertions of privilege should be waived. In so doing, it appears that management exercises oversight and control of the process. This review is done on a case-by-case basis.

*Recommendations:* None

### **Procedure 03 – Company records, central recovery and backup procedure**

*Observations:* The Company has written procedures for protecting the integrity of computer information. These procedures are found in the Company's Computer Operations Manual. The manual contains a description of the network environment, firewalls, and back-up procedures for electronic data. Details of these controls, safeguards and procedures were also recently provided to Delaware examiners who conducted the Sirius America Information Systems review.

Recommendations: None

### **Procedure 04 – Computer Security Procedure**

*Observations:* The Company has up to date written procedures for providing security for computer hardware and data.

The procedures include the requirement for new employees to read and sign the computer security information document, which is maintained in the Human Resources Department. The procedures, located in the Company's Computer Operations Manual include security of the computer room as well as the software and data at the Home Office. The procedures provide detail for firewalls, anti-virus software and the backup schedules for the Company's data. Tape back-up procedures include the secure location of the tapes. The personnel with responsibility for security and access to the stored data are also identified in the procedure document. The number of employees with remote access to their desktop computers is limited and protected both by password and encryption.

*Recommendations:* None

### **Procedure 05 – Anti Fraud Procedure**

*Observations:* The Company does not have a formal written anti-fraud procedure. However, the Company described the anti-fraud initiatives that are in place. The Company asserted that these initiatives are reasonably calculated to detect, prosecute and prevent fraudulent insurance acts.



In addition to the Company's internal procedures, Sirius also requires that PMs and CMs are in compliance with anti-fraud statutes through their agreements with the Company. Managers are required to immediately forward to the Company's attention any suspicious activity while they pursue investigations within their Special Investigations Units.

*Recommendations:* It is recommended that the Company develop a formal written anti-fraud procedure that includes the duties of the various parties to the claim or underwriting transaction. These written procedures should include a list of requirements from the various state fraud bureaus that require notification of suspected fraudulent activity.

### **Procedure 06 – Disaster Recovery Procedure**

*Observations:* The Company maintains an up to date Disaster Recovery (DR) procedure document. The stated purpose for this document is to outline the business continuity plan for Sirius America Insurance Company in the event of facility unavailability.

The examiner observed that the plan addresses notification of staff, interim office facilities for available staff, communications services including telephone, fax and e-mail and mission critical business applications with associated systems requirements.

The plan also addresses the possibility that existing facilities may become permanently unavailable.

*Recommendations:* None

### **Procedure 07 – MGA Oversight and Control Procedure**

*Observations:* The Company has no formal written procedure for oversight of the Managing General Agents (MGA), General Agents (GA) and Third Party Administrators (TPA) who produce business for and adjudicate claims on behalf of Sirius America. However, there are extensive processes in place including the periodic audits performed by Sirius' parent company, Folksamerica, as well as those audits of the PMs and CMs conducted under the supervision of the various heads of the Claims, Underwriting and Accounting Departments. Please see Procedure 01 – Audit Procedures (Internal and External) for further discussion.

The examiner noted that all MGAs had independent financial audits on file, in compliance with 18 Del.C. §1805. Additionally, the MGAs under contract to place business with Sirius America have written contracts between both parties, which properly set forth the responsibilities of each party in compliance with 18Del.C. §1804.

Since most of the Sirius America business is produced at and claims paid from the remote locations of the PMs and CMs, much of the Company's Home Office activities involve active supervision and oversight functions. Before each PM and CM contract with Sirius they must

meet strict criteria. Acceptance is based on a thorough review of the historical business written and claims payment abilities. The examiner reviewed all PMAs and CMAs as well as audit reports for each entity. Oversight is performed on a regular published schedule both by Folksamerica as well as by Sirius America.

Although the Company does not have a formalized written procedure for oversight of MGA-GA-TPA it appears that the Company exercises sufficient oversight and control of those entities under contract.

*Recommendations:* None

### **Procedure 08 – Vendor Oversight and Control Procedure**

*Observations:* The Company does not have a formal written procedure for the oversight and control of outside vendors. In lieu of a summary of the process used for the supervision of vendors, the Company provided the following narrative, paraphrased below:

Outside of the program management and claims management relationship, the Company contracts with vendors for specific services. The oversight of vendors is the responsibility of the particular Department head in need of the service provided. Department heads work closely with the vendor to ensure the contracted services are satisfactory to the Company. This is generally a collaborative effort, where the service providers understand that they will be retained only if they perform well.

The Company contends that this interaction provides sufficient oversight to determine the quality of the performance of the vendor. However, there was no evidence that the Company or the contracting department performed vendor audits. Contracts with active vendors were not provided to the examiner.

*Recommendations:* It is recommended that the Company develop a formal written vendor oversight procedure that includes the duties of the various parties involved in the task required of the vendor. These written procedures should include the oversight functions required by the contracting department to ensure that the vendor is performing as intended. The Company has indicated that they are in the process of complying with this recommendation.

### **Procedure 09 – Customer and Consumer privacy protection Procedure**

*Observations:* The Company has no formal written procedures that govern its privacy protection practices. However, the Company provided the examiner with a summary of the process and a description of its policies relating to privacy protection.

The Company stated that it is in compliance with Title V of the Gramm Leach Bliley Act as well as privacy standards for the protection of non-public customer information. In order to comply with these regulations, the Company established and implemented a privacy policy which

provides notices to customers describing these policies.

The Company stated that their consumer privacy notice procedures include the Company's review of all programs (PM) to determine which programs are writing personal lines business that would require the issuance of privacy notices.

*Recommendations:* It is recommended that the Company produce a formal written procedure in order to memorialize the privacy related processes currently in place. These procedures should describe the oversight structure for the various programs affected by the procedure as well as the Home Office personnel responsible for implementation of the procedure.

### **Procedure 10 – Insurance Information Management Procedure**

*Observations:* The Company provided no formal written procedure governing Information Management. However, a summary of the processes and activities was described to the examiner.

*Recommendations:* None

### **Procedure 11 – Complaint Handling Procedure**

*Observations:* See observations under Section B, Complaints/Grievances.

*Recommendations:* Please see recommendations following observations in section B.

### **Procedure 13 – Advertising, sales and marketing Procedure**

*Observations:* The Company has no formal written procedure for the approval of advertising. The Company stated that it has not created any advertising materials except for a pamphlet from A.M. Best describing the Company. The Company stated that it is aware of its compliance responsibilities and has executed the required certificates of compliance where appropriate.

*Recommendations:* None

### **Procedure 14 – Agent produced advertising Procedure**

*Observations:* The Company has no formal written procedure for the approval of agent produced advertising. The Company stated that agents appointed by Sirius through the Program Managers are not authorized to advertise on behalf of the Company. There is, therefore no need for a procedure governing agent produced advertising.

*Recommendations:* None

### **Procedure 15 – Producer Training Procedure**

*Observations:* The Company stated that, as a program based insurer, the Company does not directly appoint, employ or train producers. The Company stated that it has no specific producer training materials for review by the examiners. However, the Company stated that they could request the training materials used by the Program Managers who may have developed such materials for their agents. The examiner did not request this material from the PMs.

*Recommendations:* None

### **Procedure 20 – Producer Selection, Appointment and Termination Procedure**

*Observations:* The Programs through which the Company markets its products use various distribution channels. Some programs utilize brokers while others may appoint agents as their production source. Those Programs that appoint agents are required to coordinate those appointments through Sirius America.

The Company contracts the services of a vendor to assist in the creation and maintenance of the Company's agent appointment records, the appointments and any required background investigations, license renewals and terminations. The vendor maintains an up-to-date database through which the Company is provided a periodic listing of all appointments.

*Recommendations:* It is recommended that the Company develop formal written licensing and appointment procedures. The procedures should include the specific duties of the vendor to the Company. These written procedures should include the requirements of the various state insurance departments including required notifications. These procedures should be developed in order to ensure that the Company is providing oversight of the activities of the vendor.

### **Procedure 21 – Producer Defalcation Procedure**

*Observations:* The Company does not have a procedure that deals with agent defalcation. Defalcation is defined as theft or conversion to personal use, money or property lawfully in possession or custody of a person holding a position of trust (e.g. an employee, agent or trustee) of the rightful owner. The Company informed the examiners that compensation is only paid to the Program Managers and not the producers of the Company. This is an insufficient response and does not address the possibility that others, acting on behalf of the Company, could convert premium payments for personal use.

*Recommendations:* It is recommended that the Company develop formal written producer defalcation procedures for use both by the Company and the PMs. These procedures should be developed in compliance with the specific applicable state statutes that govern fraud and embezzlement.

## **Procedure 22 – Prevention of use of persons with felony conviction Procedure**

*Observations:* The Company has no formal written procedure governing the prevention of persons with felony convictions from representing Sirius America in the sale of their products.

The Company explained that PMs have the authority to recruit or contract with agents and brokers. However, the Company also requires that the Program Manager assure the Company that these producers have the appropriate authority as required by law or regulation for the business written.

The PM is required to sign an indemnification and hold harmless clause as part of their Agreement with the Company. This clause is intended to protect the Company for any losses suffered because of the actions (or omissions) of the Program Manager.

The examiner observed that, although the indemnification clause may provide additional incentive to the PM to ensure that only acceptable candidates are selected and appointed, this attempt at oversight appears to be passive in its nature and may not fulfill the statutory requirements imposed by the various states as well as federal statute Title 18 USC §§1033 and 1034. Additionally, there appears to be no procedure for the Company to audit the activities of the vendor charged with the responsibilities. These activities include ensuring that the Company does not appoint unsuitable agents.

*Recommendations:* It is recommended that the Company establish a formal written procedure involving the appointment of persons with felony convictions. This procedure should include specific actions that provide for oversight of both the PM and the licensing vendor.

## **Procedure 23 – Policyholder Service Procedure**

*Observations:* The Company has no formal written procedure governing policyholder service. Services are provided to policyholders through the various Program Managers for each book of business written. These services include notice billing, delays in response or no response. Premium refunds as well as response to coverage questions are also provided by the PM. All claim related services are provided by the CM.

The Company maintains oversight relating to policyholder services by working with each PM or CM on an individual Program level. The Company addresses issues with personnel from the appropriate Home Office department. Specific areas of PM and CM performance relating to policyholder services are addressed in the periodic audits performed by the Company.

*Recommendations:* None

#### **Procedure 24 – Premium Billing Procedure**

*Observations:* The Company has no formal written procedure governing premium billing. The Company stated, however that it provides proper mailing of premium notices and billing notices through its Program Managers. The Company stated also that issues regarding the mailing of billing notices will be handled by the Home Office Underwriting Department. Complex issues may also be referred to Internal Audit or the Legal/Compliance Department depending upon the nature of the issue.

*Recommendations:* None

#### **Procedure 25 – Correspondence routing Procedure**

*Observations:* The Company has no formal written procedure governing correspondence routing. However, the Company provided a summary of the processes used by employees to properly direct correspondence by mail. No exceptions were noted during the review of the Company's correspondence routing.

*Recommendations:* It is recommended that the Company establish a formal written procedure governing the routing and distribution of all forms of correspondence received by the Company including the correspondence received by the PMs and CMs. These procedures should include specific directions for handling time sensitive correspondence such as department of insurance requests.

#### **Procedure 26 – Policy Issuance Procedure**

*Observations:* The Company has no formal written procedure governing policy issuance. However, the Company provided a summary of activities and responsibilities relating to the issuance of policies on their behalf.

The Company stated that policy issuance and other policyholder requests are handled through the Program Managers. To ensure timely issuance and delivery of policies, the PMs use various automated systems, which are tailored to each individual program.

*Recommendations:* None

#### **Procedure 28 – Insured Requested Claim History Procedure**

*Observations:* The Company has no formal written procedure governing insured requests for claims history. Producers often submit claims history requests with commercial insurers when seeking competitive quotes for the existing coverage. This is contrasted with claims history requests for other types of coverage which are usually initiated by the insured. The Company provided a summary of actions and processes relating to requests for claim histories.

The Company stated that the Company provides claims history and loss information through its Claims and Program Managers. When there is a request for information that is received directly by the Company, it is reviewed to determine which Program the request is for. The request is then forwarded to the appropriate Claims Manager. The producer or the insured usually make such requests for information made directly to the Claims Manager or the Program Manager.

*Recommendations:* None

### **Procedure 30 – Premium Determination and Quotation Procedure**

*Observations:* The Company has no formal written procedure governing premium quotation. Because Sirius America is a program insurer, the premium determination and quotation procedure will vary by Program due to the different characteristics of the lines of business written by them. However, the Company provided a summary of the activities of both the Home Office underwriters as well as the underwriters at the PMs.

In almost all cases the PM initially quotes the premium. The quote is done according to Company guidelines. Additionally, the premiums are quoted in compliance with the rules, rates and forms as filed with the appropriate regulatory authority. Policy files contain a rating worksheet and other rating guidelines in use by the PM. The Company approves the worksheet format prior to contracting with the PM.

*Recommendations:* None

### **Procedure 31 – Policyholder Disclosures Procedure**

*Observations:* The Company has no formal written procedure governing the inclusion of policyholder disclosures. However, the Company provided a summary of the activities of both the Home Office Underwriting Department as well as the PMs.

The Company stated that the requirements for disclosures vary according to the line of business, jurisdiction and the type of product offered. Disclosures required in policy forms are reviewed and approved by the applicable states insurance department's rules, rates and policy committees. See Procedure-33 Rate and Form Filing.

The submission to a state is a combined effort of the Company and the PM. The Company stated that they remain actively involved in the process, and that no rules, rates or forms are utilized until both the Company and the State have approved them.

*Recommendation:* None

### **Procedure 32 – Underwriting and Selection Procedure**

*Observations:* In the review of the PMAs, the examiner found the Company's underwriting and selection guidelines and procedures are included in those agreements with Sirius America. Underwriting and selection criteria are addressed in detail prior to finalizing the PMA. Interviews were conducted on-site with Program Managers, as well as direct conversations with the Company's senior officers in the Home Office Underwriting Department, as part of the review of the Company's underwriting and selection procedures, General underwriting and selection guidelines are included within the PMA.

The guidelines and procedures to implement them are also provided to the PM staff underwriters. Additionally, where it is required by jurisdiction or product, the guidelines are filed for approval with the appropriate state insurance departments.

Changes to the guidelines are required to be approved by the Company. Changes are filed where required with regulatory authorities.

*Recommendations:* None

### **Procedure 33 – Rate and Form Filing Procedure**

*Observations:* The Company has no formal written procedure governing the filing of rates and forms. However, the Company provided a summary of the actions and processes used in its rate and form filing activities.

The Company stated that, depending on the circumstances, the Home Office may use a number of methods to file policy forms and endorsements with the appropriate regulatory authorities.

The Company first reviews the necessary forms and endorsements before commencing a new Program. In this process, appropriate forms and jurisdictions are identified, and the Company makes a choice among several options for filing.

*Recommendations:* None

### **Procedure 34 – Termination Procedure**

*Observations:* The examiner discussed the termination practices of the Company with on-site program managers and during interviews of Home Office underwriting executives. The Company does not have a formal written procedure. However, the Company provided a summary of the actions and practices relating to policy terminations.

Due to the diversity of products sold and differing requirements for cancellation imposed by regulators, the Company requires the PMs to maintain compliant processes and notices for terminations, rescissions and non-renewal of policies.



The Company issues notices of cancellation, non-renewal and rescission through its program managers. The substance of the notices and the timing of the mailing of notices are based upon the line of business and the jurisdiction requirements that apply to the PM.

*Recommendations:* None

### **Procedure 35 – Underwriting File Documentation Procedure**

*Observations:* The examiner discussed the Company’s underwriting file documentation practices with on-site Program Managers and during interviews of Home Office underwriting executives. The Company does not have formal written procedures for file documentation. However, it appeared that everyone involved in the underwriting process had a clear understanding of the documentation required to be maintained in the files. The Company provided a summary of the actions and practices relating to underwriting file documentation.

The Company stated that the underwriting files are maintained on-site at the location of the PM. The Program Managers typically maintain automated systems for policy information. However, a hard copy of the file is maintained as well. Pursuant to the PMA, the policy files belong to the Company and are available for review, as required. The PM is also required to maintain the files for the required statutory length of time. It is understood that in the event a Program is terminated on a cut-off basis, the files are the property of the Company and would therefore be transferred to and maintained by the Company.

*Recommendations:* None

### **Procedure 36 – Underwriting Training Procedure**

*Observations:* The examiner discussed underwriter-training practices with on-site Program Managers and during interviews of Home Office underwriting executives. The Company does not have a formal written procedure for training underwriters. However, the Company provided a summary of the actions and practices relating to ongoing training.

Because the Company underwrites Programs with the assistance of the PM, it is necessary that the Program Managers utilize the underwriting guidelines, as defined by the Company, in their PMA. However, the individual PMs utilize and employ a staff of underwriters in the production of business. The training of underwriters of the Program Managers will vary depending upon the line of the business and the training structure of the PM.

*Recommendations:* None

### **Procedure 40 – Staff Training Procedure**

*Observations:* The examiner discussed staff training practices with on-site Program Managers and

during interviews of various Home Office executives including the Chief Compliance Officer. The Company does not have a formal written procedure for staff training. However, as an indication that on-going training is provided to the Home Office and the PM/CM staffs, the Company referred the examiner to responses provided to other procedure inquiries. These include Procedure-23 relating to policyholder service, Procedure-24 relating to premium billing, Procedure-25 relating to correspondence routing and Procedure-28 relating to insureds' claim history. The examiner observed a high level of competence displayed in his extensive contacts and correspondence with all members of the Home Office staff.

*Recommendations:* None

#### **Procedure 42 – Adjuster Training Procedure**

*Observations:* The examiner discussed claim adjuster training practices on-site at one MGA and during an interview with the Company's Chief Claims Officer. The Company does not have a formal written procedure for staff training. However, the Company informed the examiner of the level of claims handling expertise possessed by the claims supervisors who are assigned to each of the active and run-off programs that are managed by the Home Office Claims Department. The examiner was informed that the Company's claims personnel had no fewer than 15 years of experience in the claim fields for which they were responsible. The Chief Claims Officer also outlined the various industry sponsored claims training conferences and seminars that these specialists were scheduled to attend in the course of the year.

Because the Company settles claims with the assistance of Third Party Administrators (TPA) or Managing General Agents (MGA) who are under contract with Sirius America as Claim Managers (CM), it is necessary that the CM utilize the claim settlement guidelines, as defined by the Company, in their Claims Management Agreement (CMA). However, the individual CMs utilize and employ a staff of claims adjudicators in the settlement of the Company's claims. The training of claims adjusters will vary depending upon the line of the business and the training structure of the CM

Although there is no formalized training procedure in place at Sirius America, it appears that training and claims settlement competence are regarded as a significant factor in the reviews of the MGAs and TPAs that settle the Company's claims. The CMA also requires the CM to comply with all licensing and training requirements imposed by the various regulatory authorities.

*Recommendations:* None

#### **Procedure 43 – Claim Handling Procedure**

*Observations:* The examiner observed that the Company's claim settlement guidelines and procedures are made part of the CMA agreements with Sirius America. Claim settlement criteria are addressed in detail prior to adoption of the CMA. However, the Company has no formal written procedure governing the handling of claims.

Sirius America engages services of various CMs on a program-by-program basis. This is done to ensure that the particular needs of each Program are addressed. The examiner observed that the Company works closely with the CMs. All CMAs are subject to periodic reviews that include analysis of claims volume and profitability. There are ongoing reviews of statistical data, loss runs, and specific claims information as conducted by the underwriting, accounting and legal staff. Recommendations for coverage denials from the CMs are reviewed by the Home Office Claims Department.

*Recommendations:* None

#### **Procedure 44 – Internal Claim Audit Procedure**

*Observations:* The Company has an active claim audit procedure. Annual audits of the Sirius America Claim Department and the Claim Managers contracted by the Company are performed by the Folksamerica Audit Department. These audits by the parent company represent the current internal audit program. Prior to 2004, Sirius America was owned by a different parent company (ABB).

The frequency of on-site review of a CM by the dedicated Home Office Claims Manager is dependant upon the size of the Program, the frequency of claims, and the complexity of the coverage involved. The examiner observed that there was an average of twice yearly reviews of each CM.

*Recommendation:* None

#### **Procedure 45 – Claim File Documentation Procedure**

*Observations:* The examiner discussed the Company's claim file documentation practices with on-site claim managers and during interviews of Home Office claim executives. The Company does not have formal written procedures for file documentation. However, it appeared that there was a clear understanding by everyone involved in the claim settlement process of what was required to be maintained in the files. The Company provided a summary of the actions and practices relating to claim file documentation.

The Company stated that the CM maintains the original claim file documentation. The Company's Claim Department maintains 'shadow files' of larger claims at the Home Office. Pursuant to the CMA, the claim files belong to the Company and are available for review as required. Files are also required to be maintained by the CM for the required statutory length of time subject to the Company's right to maintain the files in the event a Program is terminated on a cut-off basis.

To monitor the adequacy of the documentation, the Home Office Claims Department conducts audits on-site at the CM (See Procedure-01 Internal Audit and Procedure 44 Internal Claim Audit).

*Recommendations:* None

#### **Procedure 46 – Subrogation and Deductible Reimbursement Procedure**

*Observations:* The Company has no formal written procedure governing subrogation and deductible reimbursement procedure. Due to the diversity of the insurance products involved and differing requirements for deductible reimbursement that may be imposed by regulators, the Company requires the CMs to maintain subrogation and deductible reimbursement processes and notices.

*Recommendations:* None

#### **Procedure 47 – Reserve Establishment Procedure**

*Observations:* The Company has no formal written procedure governing reserve establishment. The Company stated that, the CMs consult with the Company's claims staff when setting reserves. Reserves are established in accordance with policy limits, terms and conditions.

*Recommendations:* None

### **SUMMARY**

**Sirius America Insurance Company (Sirius)** is a Delaware domiciled company. The examination was a limited scope market conduct examination of the following business areas: Company Operations/Management, Complaint Handling, Marketing and Sales, Producer Licensing, Policyholder Service, Underwriting and Rating, and Claims.

Significant issues arising during the course of the examination included:

1. Lack of written procedures for complaint handling. (B-3, B-4,B-5)
2. Lack of written anti fraud procedure. (P-05)
3. Lack of written vendor oversight procedure. (P-08)
4. Lack of written consumer privacy procedure. (P-09)
5. Lack of written producer selection and termination procedure. (P-20)
6. Lack of written producer defalcation procedure. (P-21)
7. Lack of written procedure for prevention of use of persons with felony conviction. (P-22)
8. Lack of written correspondence routing procedure. (P-25) (P-08)

Recommendations have been made to address the areas of concern noted during the examination. These are summarized below.

## **RECOMMENDATIONS**

### **Recommendations B-3 through B-5**

It is recommended that the Company continue to pursue the noted changes in the complaint handling processes and to develop and maintain a formal written complaint handling procedure. The Company should direct its PMs and CMs in their complaint handling procedures, ensuring compliance with 18 Del. C. §2304(17).

### **Recommendation P-05, Anti Fraud Procedure**

It is recommended that the Company develop a formal written anti-fraud procedure that includes the duties of the various parties to the claim or underwriting transaction. These written procedures should include a list of requirements from the various state fraud bureaus that require notification of suspected fraudulent activity.

### **Recommendation P-08, Vendor Oversight Procedure**

It is recommended that the Company develop a formal written vendor oversight procedure that includes the duties of the various parties involved in the task required of the vendor. These written procedures should include the oversight functions required by the contracting department to ensure that the vendor is performing as intended. The Company has indicated that they are in the process of complying with this recommendation.

### **Recommendation P-09, Customer and Consumer privacy protection Procedure**

It is recommended that the Company produce a formal written procedure in order to memorialize the privacy related processes currently in place. These procedures should describe the oversight structure for the various programs affected by the procedure as well as the Home Office personnel responsible for implementation of the procedure.

### **Recommendation P-20, Producer Selection, Appointment and Termination**

It is recommended that the Company develop formal written licensing and appointment procedures. The procedures should include the specific duties of the vendor to the Company. These written procedures should include the requirements of the various state insurance departments including required notifications. These procedures should be developed in order to ensure that the Company is providing oversight of the activities of the vendor.

### **Recommendation P-21, Producer Defalcation**

It is recommended that the Company develop formal written producer defalcation procedures for use both by the Company and the PMs. These procedures should be developed in compliance with the specific applicable state statutes that govern fraud and embezzlement.

### **Recommendation P-22, Prevention of use of persons with felony conviction Procedure**

It is recommended that the Company establish a formal written procedure involving the appointment of persons with felony convictions. This procedure should include specific actions that provide for oversight of both the PM and the licensing vendor.

**Recommendation P-25, Correspondence Routing Procedure**

It is recommended that the Company establish a formal written procedure governing the routing and distribution of all forms of correspondence received by the Company including the correspondence received by the PMs and CMs. These procedures should include specific directions for handling time sensitive correspondence such as department of insurance requests.

**CONCLUSION**

The examination was conducted by Roger L. Fournier and is respectfully submitted,



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