

TITLE 31 MARYLAND INSURANCE ADMINISTRATION SUBTITLE 04 INSURERS

CHAPTER 23 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Authority: Insurance Article, §§4-501 and 4-509, Annotated Code of Maryland

.01 Applicability.

This chapter is applicable to a person subject to the filing requirements of the Maryland Insurance Corporate Governance Annual Disclosure Act under Title 4, Subtitle 5 of the Insurance Article, Annotated Code of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Commissioner" has the meaning stated in Insurance Article, §1-101(k), Annotated Code of Maryland.

(2) "Corporate Governance Annual Disclosure" or "CGAD" has the meaning stated in Insurance Article, §4-501(b), Annotated Code of Maryland.

(3) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in Insurance Article, §7-101(f), Annotated Code of Maryland.

(4) "Insurer" has the meaning stated in Insurance Article, §4-501(d), Annotated Code of Maryland.

(5) "Own Risk and Solvency Assessment" or "ORSA" has the meaning stated in Insurance Article, §32-101, Annotated Code of Maryland

(6) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders and regulators. Senior management may include:

(a) The Chief Executive Officer;

(b) The Chief Financial Officer;

(c) The Chief Operations Officer;

(d) The Chief Procurement Officer;

(e) The Chief Legal Officer;

(f) The Chief Information Officer;

(g) The Chief Technology Officer;

(h) The Chief Revenue Officer;

(i) The Chief Visionary Officer; or

(j) Any other "C" level executive.

.03 Filing Procedures

A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD under Title 4, Subtitle 5 of the Insurance Article, Annotated Code of Maryland, shall no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in Regulation .04 of this chapter.

B. The CGAD must include a signature of the insurer's or insurance group's Chief Executive Officer or Corporate Secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented that corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors or its appropriate committee.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of:

(1) The corporate governance structure;

(2) Policies; and

(3) Practices utilized by the insurer or insurance group.

D. Completing the CGAD.

(1) Depending on how an insurer or the insurance group of which the insurer is a member has structured its corporate governance system, the insurer or insurance group submitting a CGAD to the Commissioner may provide information regarding its corporate governance structure at:

(a) The ultimate controlling parent level;

(b) An intermediate holding company level; or

(c) The individual legal entity level.

(2) In determining the level for which information will be provided under §D(1) of this regulation, the insurer or insurance group may consider the following criteria:

(a) The level at which the insurer's or insurance group's risk appetite is determined;

(b) The level at which factors, such as earnings, capital, liquidity, operations, and reputation of the insurer, are overseen collectively, and at which level the supervision of those factors is coordinated and exercised; or

(c) The level at which legal liability for failure of general corporate governance duties would be placed.

(3) If the insurer or insurance group determines the level of reporting based on the criteria in §D(2) of this regulation, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

E. Notwithstanding §A of this regulation, and as outlined in Insurance Article, §4-503 Annotated Code of Maryland, if the CGAD is completed at the insurance group level:

(1) It shall file with the lead state of the group as determined by the procedures outline in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners; and

(2) Upon request of the chief regulatory official of any state in which the insurance group has a domestic insurer, a copy of the CGAD must also be provided to that state.

F. An insurer or insurance group may comply with this regulation by referencing other existing documents if the documents provide information that is comparable to the information described in Regulation .04, if the insurer or insurance group:

(1) Clearly reference the location of the relevant information within the CGAD; and

(2) Attach the referenced document if it not already filed or available to the regulator.

G. Examples of other existing documents that may be referenced in the CGAD may include:

(a) An ORSA summary report;

(b) Holding company Form B or F Filings;

(c) Securities and Exchange Commission Proxy Statements;

(d) Foreign regulatory reporting requirements; or

(e) Other similar documents acceptable to the Commissioner.

H. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating:

(1) Where changes have been made in the information or activities reported by the insurer or insurance group; or

(2) If no changes have been made in the information or activities previously reported, the amended version shall state that no changes have been made.

.04 Contents of Corporate Governance Annual Disclosure.

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD. This means that attachments or example documents may be included if they are used in the governance process since these may provide a means to demonstrate the strengths of insurer's or insurance group's governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(1) The Board of Directors and its various committees responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs;

(2) The rationale for the current Board size and structure;

(3) The duties of the Board and each of its significant committees;

(4) How the Board and significant committees are governed which may include documents such as bylaws, charters, informal mandates;

(5) How the Board's leadership is structured; and

(6) A discussion of the roles of Chief Executive Officer and Chairman of the Board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof including a discussion of the following factors:

(1) How the qualifications, expertise, and experience of each board member meets the needs of the insurer or insurance group;

(2) How an appropriate amount of independence is maintained on the Board and its significant committees;

(3) The number of meetings are held by the Board and its significant committees over the past year as well as information on director attendance;

(4) How the insurer or insurance group identifies, nominates, and elects members to the Board and its committees, including the following information:

(a) Whether a nomination committee is in place to identify and select individuals for consideration;

(b) Whether term limits are placed on directors;

(c) How the election and re-election processes function; and

(d) Whether a Board diversity policy is in place and if so, how it functions; and

(5) The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any Board or committee training programs that have been put in place.

D. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices, such as suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfil their prospective roles, including:

(a) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(b) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(a) Compliance with laws, rules, and regulations; and

(b) Proactive reporting of any illegal or unethical behavior;

(3) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objective of significant compensation programs and what the programs are designed to reward.

(a) The description shall include sufficient detail to allow the Commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking.

(b) Elements to be discussed may include, for example:

(i) The Board of Director's role in overseeing management compensation programs and practices;

(ii) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculated the amount of each element of compensation paid;

(iii) How compensation programs are related to both company and individual performance over time;

(iv) Whether the compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(v) Any claw back provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(vi) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and

(4) The insurer's or insurance group's plans for Chief Executive Officer and senior management succession.

E. The insurer or insurance group shall describe the process by which the Board of Directors, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the Board of Directors, its committees, and senior management;

(2) How the Board of Directors is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risk; and

(3) A description of how reporting responsibilities are organized to allow the Commissioner to understand the frequency at which information is reported to and reviewed by senior management and the Board in the following critical risk areas of the insurer:

(a) Risk management processes, including reference to an insurer's ORSA Summary Report pursuant to §32-105, if applicable;

(b) Actuarial function;

(c) Investment decision-making processes;

(d) Reinsurance decision-making processes;

(e) Business strategy or finance decision-making processes;

(f) Compliance function;

(g) Financial reporting or internal auditing; and

(h) Market conduct decision-making processes.