

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 85 (18 **Del.C.** §311 & Ch. 85)

FINAL

REGULATORY IMPLEMENTING ORDER

307 Corporate Governance Annual Disclosure Regulation

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance gave notice in the *Delaware Register of Regulations* at 21 DE Reg. 394 (11/01/17) of proposed new Regulation 307 relating to Corporate Governance and Annual Disclosure. The Department's internal docket number for this regulatory project is 3575- 2017.

The proposed new regulation sets forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD) prescribed by the Corporate Governance Annual Disclosure Act (the CGAD Act). Through the CGAD Act, the Legislature amended Title 18 of the Delaware Code by adding a new Chapter 85 (see Senate Bill No. 40 as amended by Senate Amendment No. 1, approved on August 2, 2017, effective on January 1, 2018). The CGAD Act requires that the first filing of the CGAD be in 2018. The Department modeled its proposed new regulation on the NAIC model regulation, which may be viewed on the NAIC's website at <http://www.naic.org/store/free/MDL-306.pdf>.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 4:30 p.m. EST, the 4th day, December, 2017, which was thirty days from the date of publication.

During the comment period, the American Council of Life Insurers (ACLI) pointed out that at subsection 4.3 of the proposed regulation does not exactly track the Model Regulation. A copy of the comments are available from the Department.

It is the Department's intention that the rule track the Model Regulation while also comporting to Delaware's drafting norms. Revising the regulation to exactly track the Model Regulation is a technical error that can be addressed in this order without the need for re-proposal. See 29 **Del.C.** §10113(b)(4).

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt proposed new 18 **DE Admin. Code** 307 with a technical correction that will conform 18 **DE Admin. Code** 307 to the Model Regulation 306 as published by the NAIC, and as indicated in the attached version of the regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 307, with the correction of the technical error at subsection 4.3.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and Chapter 85, and 29 **Del.C.** Ch. 101 on December 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED.

The 15th day of December, 2017

Trinidad Navarro, Commissioner

307 Corporate Governance Annual Disclosure Regulation

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 **Del.C.** §311 and 18 **Del.C.** Chapter 85.

2.0 Purpose

The purpose of this regulation is to set forth the procedures for filing a Corporate Governance Annual Disclosure (CGAD), and the required contents of the CGAD deemed necessary by the Commissioner to carry out the provisions of the Corporate Governance Annual Disclosure Act, 18 **Del.C.** Chapter 85.

3.0 Definitions

"Board" means the Board of Directors of an insurer or an insurance group.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by an insurer or an insurance group made in accordance with the Corporate Governance Annual Disclosure Act, 18 **Del.C.** Chapter 85 and this regulation.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in the Insurance Holding Company System Registration Act, 18 **Del.C.** Chapter 50.

"Insurer" shall have the same meaning as set forth in 18 **Del.C.** §102(10), except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means National Association of Insurance Commissioners.

"Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, by way of example but not by limitation, the Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operations Officer (COO), Chief Procurement Officer (CPO), Chief Legal Officer (CLO), Chief Information Officer (CIO), Chief Technology Officer (CTO), Chief Revenue Officer (CRO), Chief Visionary Officer (CVO), or any other "C" level executive.

4.0 Filing Procedures

4.1 An insurer, or the insurance group of which the insurer is a member, that is required to file a CGAD under 18 **Del.C.** §8504, shall, no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in Section 5.0 of these regulations, according to the following:

4.1.1 The CGAD shall include the signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting that, to the best of that individual's belief and knowledge, the insurer or insurance group has implemented the corporate governance practices required under 18 **Del.C.** §8504 and this regulation, and that a copy of the CGAD has been provided to the insurer's or insurance group's Board or appropriate Board committee.

4.2 The insurer or insurance group may:

4.2.1 Determine the appropriate format in which to provide the information required by this regulation; and

4.2.2 Customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

4.3 ~~The~~ For purposes of completing the CGAD, the insurer or insurance group ~~shall~~ may choose to provide information on governance activities that conforms with the structure of the insurer's or insurance group's system of corporate governance, whether at the ultimate controlling parent level, an intermediate holding company level, or at the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

4.4 The insurer or insurance group is encouraged to make the CGAD disclosures at any of the following levels, and if the insurer or insurance group determines the level of reporting based on the criteria in subsections 4.4.2 or 4.4.3, it shall indicate the three dominant criteria that were used to determine the level of reporting and explain any subsequent changes in level of reporting:

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

4.4.2 The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or

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

4.5 Notwithstanding subsection 4.1.1, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

4.6 An insurer or insurance group may comply with this section by cross-referencing other existing documents such as ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, and foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in Section 5.0 of this regulation. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the Commissioner.

- 4.7 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 where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group in the prior year, the filing should so state.

5.0 Contents of Corporate Governance Annual Disclosure

- 5.1 The insurer or insurance group shall complete the CGAD with such specificity and shall include attachments or example documents that are used in the governance process, so as to provide the Commissioner with sufficient evidence with which to evaluate the strength of the insurer's or insurance group's governance framework and practices.
- 5.2 The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure, including a description of each of the following:
- 5.2.1 The Board and various Board committees that are ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (by way of example, but not by limitation, ultimate control level, intermediate holding company, or legal entity). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
- 5.2.2 The duties of the Board and each of its significant committees and how they are governed (by way of example, but not by limitation, bylaws, charters, and informal mandates), how the Board's leadership is structured, and the roles of the Chief Executive Officer (CEO) and Chairperson of the Board within the organization.
- 5.3 The insurer or insurance group shall describe the policies and practices of its most senior governing entity and that governing entity's significant committees, including a discussion of each of the following factors:
- 5.3.1 How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group;
- 5.3.2 How an appropriate amount of independence is maintained on the Board and its significant committees;
- 5.3.3 The number of meetings held by the Board and its significant committees over the reporting year, including information on director attendance;
- 5.3.4 How the insurer or insurance group identifies, nominates and elects members to the Board and its committees, including, by way of example but not limitation:
- 5.3.4.1 Whether a nomination committee is in place to identify and select individuals for consideration;
- 5.3.4.2 Whether term limits are placed on directors;
- 5.3.4.3 How the election and re-election processes function; and
- 5.3.4.4 Whether a Board diversity policy is in place and if so, how it functions; and
- 5.3.5 The processes in place for the Board to evaluate its performance and the performance of its committees, and any recent measures taken to improve performance, including a description of any relevant training provided to the Board or committee members.
- 5.4 The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:
- 5.4.1 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 fulfill their prospective roles, including:
- 5.4.1.1 Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
- 5.4.1.2 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;
- 5.4.2 The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, by way of example but not limitation:
- 5.4.2.1 Compliance with laws, rules, and regulations; and
- 5.4.2.2 Proactive reporting of any illegal or unethical behavior;
- 5.4.3 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 objectives of significant compensation programs and what the programs are designed to reward. 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. Elements to be discussed may include, by way of example but not limitation:
- 5.4.3.1 The Board's role in overseeing management compensation programs and practices;

- 5.4.3.2 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 calculates the amount of each element of compensation paid;
- 5.4.3.3 How compensation programs are related to both company and individual performance over time;
- 5.4.3.4 Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
- 5.4.3.5 Any clawback 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
- 5.4.3.6 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
- 5.4.4 The insurer's or insurance group's plans for CEO and Senior Management succession.
- 5.5 The insurer or insurance group shall describe the processes by which the Board, 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:
 - 5.5.1 How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
 - 5.5.2 How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks; and
 - 5.5.3 How reporting responsibilities are organized for each critical risk area. The description should allow the Commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, by way of example but not by limitation, the following critical risk areas of the insurer:
 - 5.5.3.1 Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);
 - 5.5.3.2 Actuarial function;
 - 5.5.3.3 Investment decision-making processes;
 - 5.5.3.4 Reinsurance decision-making processes;
 - 5.5.3.5 Business strategy and finance decision-making processes;
 - 5.5.3.6 Compliance function;
 - 5.5.3.7 Financial reporting and internal auditing; and
 - 5.5.3.8 Market conduct decision-making processes.

6.0 Severability Clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

21 DE Reg. 578 (01/01/18) (Final)