Comments Received in Response to the Corporate Governance (E) Working Group’s 12/18/13 Exposure of the Corporate Governance Annual Filing Model Act
1/31/14 Interested Party Comment Letter and Related Proposals
January 31, 2014

Commissioner Susan L. Donegan, Chair, Corporate Governance Working Group
National Association of Insurance Commissioners
Attn: Mr. Bruce Jensen, Risk-Focused Surveillance Policy Manager
Via e-mail: bjensen@naic.org

Re: Corporate Governance Annual Filing Model Act and Guidance Manual Exposure

Dear Commissioner Donegan:

The undersigned interested parties appreciate the opportunity to comment on the Corporate Governance (E) Working Group’s draft Corporate Governance Annual Filing Model Act and Guidance Manual as exposed during the Working Group’s December 16th meeting at the Fall National Meeting and as posted on the NAIC website. While we appreciate the Working Group’s continued collaboration with interested parties, we continue to have specific concerns regarding the current draft documents.

Interested parties generally agree with the approach taken by the Working Group in the Model Act. To that end, we include our proposed revisions in a track changes version of the previously exposed version of the Model, which is attached to this letter. We have reiterated several points from our previous proposal, including specific language related to the removal of redundant and unnecessary filings that result from the creation of the Corporate Governance Annual Filing. We also include language to further clarify that any information already provided in other filings can simply be cross-referenced in the Annual Filing and that the Annual Filing is strictly for informational purposes only. The other major revision includes language regarding the Annual Filing after the first one is made in 2016, assuming an effective date of January 1, 2016.

Interested parties continue to disagree with the use of a Guidance Manual that specifies the information that is required to be included in the Annual Filing, particularly when the requested information is the result of actions required of an insurer by state corporate law, not state insurance laws. While the Working Group has asserted that it needs the flexibility to change the Annual Filing requirements provided by a Guidance Manual, interested parties have concerns in this instance with the delegation of state regulatory authority that is inherent in the use of a Guidance Manual. We have attached to this letter a Corporate Governance Annual Filing Model Regulation as an alternative to a Guidance Manual, which should provide a balance of flexibility and regulatory certainty for the regulated interested parties. The use of a Guidance Manual rather than a Model Regulation would allow for changes to the Annual Filing requirements to be made without following the proper state legislative and regulatory processes and creates a lack of certainty regarding the information that is required to be included in the Annual Filing. Given the reasons stated above, interested parties would be unable to support the development, adoption or use of a Guidance Manual for this purpose.
We thank you for your consideration and response to our concerns. The interested parties, as noted below, agree with the comments contained in this letter.

Enclosures: Corporate Governance Annual Filing Model Act with proposed revisions  
Corporate Governance Annual Filing Model Regulation

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Section 1. Purpose and Scope.

The purpose of this Act is to provide the requirements for completing a Corporate Governance Annual Filing with the Insurance Commissioner of this state, and to remove filing requirements that have become redundant and unnecessary because of this Corporate Governance Annual Filing.

A. The purpose of this Act is to:

1. Provide the Insurance Commissioner a summary of an insurer or insurance group’s corporate governance structure, policies and practices to permit the Insurance Commissioner to gain and maintain an understanding of the insurer's corporate governance framework.

2. Outline the requirements for completing a corporate governance annual filing with the Insurance Commissioner.

3. Provide for the confidential treatment of the corporate governance annual filing and related information that will contain confidential and sensitive information related to an insurer or insurance group’s internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage. In no event shall the Corporate Governance Annual Filing be subject to public disclosure without the prior written consent of the insurer to which it applies.

B. The Corporate Governance Annual Filing made pursuant to this Act is informational only. Nothing in this act shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. The Corporate Governance Annual Filing Guidance Manual contains provides general guidance to insurers regarding the types of information to be filed under each category identified under Section 4B of this act. Notwithstanding the foregoing, nothing in this act shall be construed to limit the Commissioner's authority, or the rights or obligations of third parties, under [INSERT EXAMINATION CITATION], unless specifically provided herein.

C. The requirements of this Act shall apply to all insurers domiciled in this state.

Section 2. Definitions.

A. “Commissioner.” The Insurance Commissioner of the State.
B. “Corporate Governance Annual Filing (CGAF).” A Corporate Governance Annual Filing shall mean a confidential report filed by the insurer or insurance group made in accordance with the requirements of this Act.

C. “Corporate Governance Annual Filing Guidance Manual.” The term “Corporate Governance Annual Filing Guidance Manual” shall mean the current version of the Corporate Governance Annual Filing Guidance Manual developed and adopted by the National Association of Insurance Commissioners (NAIC). A change in the Corporate Governance Annual Filing Guidance Manual may be initiated only prior to or in conjunction with the NAIC’s Spring National Meeting each year and must be subject to a 45-day public comment period, prior to being considered for adoption at the subsequent NAIC Summer National Meeting. Approval requires a supermajority (75% or more) of the members of the Corporate Governance Working Group.

D. “Insurance group.” For the purpose of this Act, the term “insurance group” shall mean those insurers and affiliates included within an insurance holding company system as defined in [insert state law equivalent to the model Insurance Holding Company System Regulatory Act.]

E. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, 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.

F. “ORSA Summary Report.” The term “ORSA Summary Report” shall mean the report filed in accordance with [insert applicable ORSA statute reference.]

F. “Self-Audit.” As used herein, self-audit means the assessment detection of a violation of compliance with laws or regulations by the insurer through either an internal compliance program reasonably designed to detect and prevent violations or an internal investigation.

Section 3. Filing Requirement.

A. An insurer, or the insurance group of which the insurer is a member, that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more, shall, no later than June 1 of each calendar year, submit to the Commissioner a Corporate Governance Annual Filing (CGAF) that contains the information described in Section 4B below and as outlined in the [insert reference to NAIC Corporate Governance Annual Filing Model Regulation]. Notwithstanding any request from the Commissioner, if the insurer is a member of an insurance group, the insurer-insurance group shall submit the report required by this Section to the Commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

B. The CGAF must include a signature of the insurer or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the filing-CGAF has been provided to the insurer’s board of directors or the appropriate committee thereof.

C. An insurer not required to submit a corporate governance annual filing-CGAF under this subsection shall do so upon the Commissioner’s request.
D. For the purposes of completing this filing, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

E. The review of the CGAF and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in paragraph A of this section.

F. 1. For a CGAF made on or after January 1, 2017, insurers or insurance groups shall only be required to provide a detailed description of material changes made from the prior year’s CGAF.

2. Notwithstanding paragraph F1 of this subsection, for insurers or insurance groups for which this State is the lead state, as determined by the procedures within the most recent Financial Analysis Handbook adopted by the NAIC:
   a. In conjunction with a financial examination conducted in accordance with [insert reference to appropriate financial examination statute/regulation], the Commissioner may require the insurer or insurance group to complete a full CGAF in place of a detailed description of material changes made from the prior year’s CGAF as indicated in the notice of such examination.
   b. If the insurer or insurer group has been informed that the CGAF described in subparagraph F2a of this section will be required, then the insurer or insurance group is not required to complete the description of material changes described in subparagraph E1 of this section in the same calendar year.

G. Insurers or insurance groups providing information substantially similar to the information required by this Act in other documents provided to the Commissioner, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to this Department shall not be required to duplicate that information in the CGAF, but shall only be required to cross reference the document in which the information is included.

Section 4. Contents of Corporate Governance Annual Filing.

A. The insurer or insurance group shall have discretion regarding the appropriate format of the CGAF and shall be permitted to customize the communication 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. An insurer or insurance group may provide the information required by submitting copies of the reports and other filings provided to other state, national or international insurance, financial or securities regulators that contain the information, or substantially similar information, required by this Act.

B. Notwithstanding subsection A of this section, the CGAF shall be prepared consistent with the [insert reference to NAIC Corporate Governance Annual Filing Model Regulation]Corporate Governance Annual Filing Guidance Manual. Documentation and supporting information shall be maintained and made available upon examination or upon
request of the commissioner. The content of the filing CGAF shall address all of the following topics:

1. Description of Corporate Governance Framework
2. Description of Board of Directors’ and Committee Policies and Practices
3. Description of Management Policies and Practices and

C. The review of the CGAF, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

Section 5. Filings Not Required

A. Insurers or insurance groups that are subject to a CGAF requirement in this state or in the insurance group’s lead state shall not be required to make the following filings, or provide the following information for examination in this state:

1. Any financial examination requests relating to information outlined in the most recent Exhibit M of the Financial Condition Examiners Handbook adopted by the NAIC.

2. The following information required by the general interrogatories contained in the Annual and Quarterly Statutory Statements:
   a. “Has the reporting entity established an Audit Committee in compliance with the domiciliary state insurance laws?”
   b. “Has the reporting entity an established procedure for disclosure to its board of directors or trustees of any material interest or affiliation on the part of any of its officers, directors, trustees or responsible employees that is in conflict with the official duties of such person?”
   c. “Does the reporting entity keep a complete permanent record of the proceedings of its board of directors and all subordinate committees thereof?”
   d. “Are the senior officers...of the reporting entity subject to a code of ethics, which includes: (a) honest and ethical conduct; (b) full, fair, accurate, timely and understandable disclosure; (c) compliance, (d) prompt internal reporting of violations; and (e) accountability for adherence to the code?”
   e. “Has the code of ethics for managers been amended?”
   f. “Have any provisions of the code of ethics been waived for any of the specified officers?”
   g. “Is the purchase or sale of all investments of the reporting entity passed upon either by the board of directors or a subordinate committee thereof?”

3. The Annual Statement Supplemental Compensation Exhibit.
CORPORATE GOVERNANCE ANNUAL FILING MODEL ACT

Section 56. Confidentiality.

A. Documents, materials or other information including the CGAF, in the possession of or control of the Department of Insurance that are obtained by, created by or disclosed to the Commissioner or any other person under this Act, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties, except the Commissioner is not authorized to use any documents, material, or other information created by an insurer in a self-audit. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

B. Neither the Commissioner nor any person who received documents, materials or other Governance-related information, through examination or otherwise, while acting under the authority of the Commissioner, or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the Commissioner's regulatory duties, the Commissioner:

1. May, upon request, share documents, materials or other Governance-related information including the confidential and privileged documents, materials or information subject to Subsection A, including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the [insert cross-reference to appropriate section of Insurance Holding Company System Regulatory Act, as amended], and with the NAIC, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the governance-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

2. May receive documents, materials or other Governance-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in the [insert cross-reference to appropriate section of Insurance Holding Company System Regulatory Act, as amended], and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.
D. The sharing of information and documents by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other Governance-related information shall occur as a result of disclosure of such Governance-related information or documents to the Commissioner under this section or as a result of sharing as authorized in this Act.

F. If the provisions of this Section 6 are held invalid, then this Act shall be of no force or effect and no Corporate Governance Annual Filing shall be required.

Section 67. NAIC and Third-party Consultants

A. The Commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the CGAF and related Information or the insurer's compliance with this Act.

B. Any persons retained under subsection A shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

C. The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the Commissioner.

D. As part of the retention process, a third-party consultant shall verify to the Commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this Act.

E. A retention written agreement with the NAIC and a third party consultant shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this Act:

1. Specific procedures and protocols for maintaining the confidentiality and security of CGAF-related information shared with the NAIC or a third-party consultant pursuant to this Act.

2. Procedures and protocols for sharing by the NAIC only CGAF-related information with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing, including a written acknowledgment of the recipient's intent and legal authority to maintain the confidentiality and privileged status of the CGAF-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality.

3. A provision specifying that ownership of the CGAF-related information shared with the NAIC or a third-party consultant remains with the Department of Insurance and the NAIC's or third-party consultant's the use of the information is subject to the direction of the Commissioner;
4. A provision that prohibits the NAIC or a third-party consultant from storing of the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

5. A provision requiring the NAIC or third-party consultant to provide prompt notice to the Commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer’s CGAF-related information; and

6. A requirement that the NAIC or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Act.

Section 78. Sanctions.

Any insurer failing, without just cause, to timely file the CGAF as required in this Act shall be required, after notice and hearing, to pay a penalty of $[insert amount] for each day’s delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 89. Severability-Clause.

Except as provided in Section 6F, if any provision of this Act other than Section 67, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act, with the exception of Section 67, are severable.

Section 910. Effective Date.

The requirements of this Act shall become effective on January 1, 2016. The first filing of the CGAF shall be in 2016.
Industry proposal:
CORPORATE GOVERNANCE ANNUAL FILING MODEL REGULATION

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Section 1. Authority

These regulations are promulgated pursuant to the authority granted by Sections [insert applicable sections] of the [insert reference to appropriate state Insurance Code.]

Section 2. Purpose

A. The purpose of these regulations is to set forth the nature and general content of the Corporate Governance Annual Filing requirements, which the [Commissioner] deems necessary to carry out the provisions of [insert reference to corporate governance annual filing act]. The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.

B. The [Commissioner] recognizes that the Legislature finds and declares that the Corporate Governance Annual Filing will contain confidential and sensitive information related to an insurer or insurance group’s internal operations. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is therefore the [Commissioner’s] intent that the Corporate Governance Annual Filing shall be a confidential document filed with this office and that it will be shared only as stated herein and to assist the [Commissioner] in the performance of his or her duties, and that in no event shall the Corporate Governance Annual Filing be subject to public disclosure without the prior written consent of the insurer to which it applies.

Section 3. Corporate Governance Annual Filing requirement

A. Upon the [Commissioner’s] request an insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the Commissioner a Corporate Governance Annual Filing that contains the information outlined in Section 4 of this Regulation.

B. Notwithstanding any request from the [Commissioner], if the insurer is a member of an insurance group, the insurer shall submit the report required by this Regulation to the [Commissioner] of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.
C. An insurer will be deemed in compliance with this Regulation if the insurer provides the most recent and substantially similar report that has been provided by the insurer, or by another member of an insurance group of which the insurer is a member, to the Commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information required by this Regulation. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

Section 4. Contents of Corporate Governance Annual Filing.

A. 1. In order to give the [Commissioner] a summary of the corporate governance structure, policies and practices in place within the insurer or insurance group's operations and to permit the [Commissioner] to gain and maintain an understanding of the insurer's corporate governance framework, the insurer or insurance group shall provide the descriptions outlined in subsection B of this Section.

2. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this section and shall be permitted to customize the communication 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.

3. For purposes of providing the information required to be included in the Corporate Governance Annual Filing, the insurer or insurance group may provide this information by reference to the reports and other filings provided to other state, national or international insurance, financial or securities regulators that contain the information, or substantially similar information required pursuant to this Regulation, and may include those reports or other filings in the Corporate Governance Annual Filing.

B. The Corporate Governance Annual Filing shall contain a description of:

1. The insurer or insurance group’s corporate governance framework. This shall include a description of:

   (a) The insurer’s or insurance group’s corporate governance structure, policies and practices, including a description of the Board of Directors and various committees of the Board of Directors ultimately responsible for governing the insurer or insurance group and, in the case of insurance groups, the level at which that oversight occurs. The insurer or insurance group may describe and provide a rationale for the Board size and structure; and

   (b) The duties of the Board of Directors and each of its standing committees and how those committees are governed. The insurer or insurance group may describe how the Board’s leadership is structured.

2. The Board of Directors and committee policies and practices. This description shall include:

   (a) The Board of Directors and standing committees. The insurer or insurance group shall describe how the qualifications, expertise and experience of the collective members of the Board meet the needs of the organization. In addition, the insurer or insurance group shall describe any independence requirements that apply to members of the Board of Directors.
(b) Information regarding the number of meetings held by the Board and its standing committees over the past year as well as information on director attendance.

(c) The process the insurer or insurance group uses to identify, nominate and elect members to the Board and its committees. The description may include a discussion of the following, if applicable:

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

(ii) Whether term limits are placed on directors; and

(iii) How the election process functions.

(d) Whether the Board evaluates its performance and the performance of its committees and if so, how such evaluation is conducted.

3. Management policies and practices. This description shall include a discussion of the following:

(a) Whether the insurer or insurance group has put in place any policies, practices or processes to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles.

(b) The general objective of each of the insurer’s or insurance group’s significant compensation programs and what the programs are designed to reward. Elements that may, but are not required, to be included are the following:

(i) The Board’s role in overseeing management compensation programs and practices;

(ii) The various elements of compensation awarded in the organization’s compensation programs and how the organization determines the amount of each element of compensation paid;

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

(iv) 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

(v) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are being met with respect to incentivizing employees.

C. For insurers that do not directly, or through their insurance group, otherwise file an ORSA Summary Report with their lead state regulators, the Corporate Governance Annual Filing shall contain a description of management and oversight of critical risk areas, which shall include a description of the process by which oversight and management responsibilities are delegated between the Board, its committee and senior management, and how reporting responsibilities, and appropriate levels of oversight are organized for each critical risk area. This description may include, but is not limited to, the insurer’s or insurance group’s:
1. Risk management processes;
2. Actuarial function;
3. Investment decision making processes;
4. Reinsurance decision making processes;
5. Business strategy and finance decision making processes;
6. Market conduct decision making process; and
7. Financial reporting and internal audit processes.

D. 1. For Corporate Governance Annual Filings made on or after (INSERT DATE ONE YEAR AFTER EFFECTIVE DATE), insurers or insurance groups shall only be required to provide a detailed description of material changes made from the prior year’s Corporate Governance Annual Filing.

2. Notwithstanding paragraph D.1. of this subsection, for insurers or insurance groups for which this State is the lead state, as determined by the procedures within the most recent Financial Analysis Handbook adopted by the NAIC:

   (a) In conjunction with a financial examination conducted in accordance with [insert reference to appropriate financial examination statute/regulation], the [Commissioner] may require the insurer or insurance group to complete a full Corporate Governance Annual Filing in place of a detailed description of material changes made from the prior year’s Corporate Governance Annual Filing as indicated in the notice of such examination.

   (b) Those insurers or insurance groups that have been informed that the Corporate Governance Annual Filing described in subparagraph D.2(a) of this section will be required, shall not be required to complete the description of material changes described in subparagraph D.1 of this section in the same calendar year.

E. Insurers or insurance groups providing information substantially similar to the information required by this section in other documents provided to the [Commissioner], including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to this Department shall not be required to duplicate that information in this Corporate Governance Annual Filing, but shall only be required to cross reference the document in which the information is included.

Section 5. Severability

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.
Section 6. Nullification

If the provisions of section [insert confidentiality provision of corporate governance annual filing act] are held invalid, then these regulations shall be of no force or effect and no Corporate Governance Annual Filing shall be required.
CA Comments on Model Act
CORPORATE GOVERNANCE ANNUAL FILING MODEL ACT

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Section 9. Effective Date.

Section 1. Purpose and Scope.
The purpose of this Act is to provide the requirements for completing a Corporate Governance Annual Filing with the Insurance Commissioner of this state.

A. The purpose of this Act is to:
   1. Provide the Insurance Commissioner a summary of an insurer or insurance group’s corporate governance structure, policies and practices to permit the Insurance Commissioner to gain and maintain an understanding of the insurer's corporate governance framework.
   2. Outline the requirements for completing a corporate governance annual filing with the Insurance Commissioner.
   3. Provide for the confidential treatment of the corporate governance annual filing and related information that will contain confidential and sensitive information related to an insurer or insurance group’s internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

B. Nothing in this act shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. The Corporate Governance Annual Filing Guidance Manual provides general guidance to insurers regarding the types of information to be filed under each category identified under Section 4B of this act. Notwithstanding the foregoing, nothing in this act shall be construed to limit the Commissioner’s authority, or the rights or obligations of third parties, under [INSERT EXAMINATION CITATION]

C. The requirements of this Act shall apply to all insurers domiciled in this state.

Section 2. Definitions.

A. “Commissioner.” The Insurance Commissioner of the State.

B. “Corporate Governance Annual Filing (CGAF).” A Corporate Governance Annual Filing shall mean a confidential report filed by the insurer or insurance group made in accordance with the requirements of this Act.

C. “Corporate Governance Annual Filing Guidance Manual.” The term “Corporate Governance Annual Filing Guidance Manual” shall mean the current version of the Corporate Governance Annual Filing Guidance Manual developed and adopted by the National
CORPORATE GOVERNANCE ANNUAL FILING MODEL ACT

Association of Insurance Commissioners (NAIC). A change in the Corporate Governance Annual Filing Guidance Manual may be initiated only prior to or in conjunction with the NAIC’s Spring National Meeting each year and must be subject to a 45-day public comment period, prior to being considered for adoption at the subsequent NAIC Summer National Meeting. Approval requires a supermajority (75% or more) of the members of the Corporate Governance Working Group. This manual is only intended to provide guidance in filing the CGAF regarding the specific sections as outlined in Section 4B of this act.

D. “Insurance group.” For the purpose of this Act, the term “insurance group” shall mean those insurers and affiliates included within an insurance holding company system as defined in [insert state law equivalent to the model Insurance Holding Company System Regulatory Act.]

E. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, 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.

F. “ORSA Summary Report.” The term “ORSA Summary Report” shall mean the report filed in accordance with [insert applicable ORSA statute reference.]

Section 3. Filing Requirement.

A. An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the Commissioner a Corporate Governance Annual Filing (CGAF) that contains the information described in Section 4B below. Notwithstanding any request from the Commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report required by this Section to the Commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

B. The CGAF must include a signature of the insurer or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the filing has been provided to the insurer’s board of directors or the appropriate committee thereof.

C. An insurer not required to submit a corporate governance annual filing under this subsection shall do so upon the Commissioner’s request.

D. For the purposes of completing this filing, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

E. The review of the CGAF and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in paragraph A of this section.

Section 4. Contents of Corporate Governance Annual Filing.
PA Comments on Model Act
Section 1. Purpose and Scope.

The purpose of this Act is to provide the requirements for completing a Corporate Governance Annual Disclosure Filing with the Insurance Commissioner of this state.

A. The purpose of this Act is to:

1. Provide the Insurance Commissioner a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the Insurance Commissioner to gain and maintain an understanding of the insurer's corporate governance framework.

2. Outline the requirements for completing a corporate governance annual disclosure filing with the Insurance Commissioner.

3. Provide for the confidential treatment of the corporate governance annual disclosure filing and related information that will contain confidential and sensitive information related to an insurer or insurance group’s internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

B. Nothing in this act shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. The Corporate Governance Annual Disclosure Filing Guidance Manual provides general guidance to insurers regarding the types of information to be filed under each category identified under Section 4B of this act. Notwithstanding the foregoing, nothing in this act shall be construed to limit the Commissioner's authority, or the rights or obligations of third parties, under [INSERT EXAMINATION CITATION]

C. The requirements of this Act shall apply to all insurers domiciled in this state.

Section 2. Definitions.

A. "Commissioner." The Insurance Commissioner of the State.

B. "Corporate Governance Annual Disclosure Filing (CGAF).” A Corporate Governance Annual Disclosure Filing shall mean a confidential report filed by the insurer or insurance group made in accordance with the requirements of this Act.

CORPORATE GOVERNANCE ANNUAL DISCLOSURE FILING MODEL ACT

adopted by the National Association of Insurance Commissioners (NAIC). A change in the Corporate Governance Annual Disclosure Filing Guidance Manual may be initiated only prior to or in conjunction with the NAIC’s Spring National Meeting each year and must be subject to a 45-day public comment period, prior to being considered for adoption at the subsequent NAIC Summer National Meeting. Approval requires a supermajority (75% or more) of the members of the Corporate Governance Working Group.

D. “Insurance group.” For the purpose of this Act, the term “insurance group” shall mean those insurers and affiliates included within an insurance holding company system as defined in [insert state law equivalent to the model Insurance Holding Company System Regulatory Act.]

E. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, 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.

F. “ORSA Summary Report.” The term “ORSA Summary Report” shall mean the report filed in accordance with [insert applicable ORSA statute reference.]

Section 3. Filing Requirement.

A. An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the Commissioner a Corporate Governance Annual Disclosure Filing (CGAF) that contains the information described in Section 4B below. Notwithstanding any request from the Commissioner made pursuant to subsection C, if the insurer is a member of an insurance group, the insurer shall submit the report required by this Section to the Commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

B. The CGAF must include a signature of the insurer or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the filing has been provided to the insurer’s board of directors or the appropriate committee thereof.

C. An insurer not required to submit a corporate governance annual disclosure filing under this subsection shall do so upon the Commissioner's request.

D. For the purposes of completing this filing, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

E. The review of the CGAF and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in paragraph A of this section.

Section 4. Contents of Corporate Governance Annual Disclosure Filing.
A. The insurer or insurance group shall have discretion regarding the appropriate format of the CGAF and shall be permitted to customize the communication 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. An insurer or insurance group may provide the information required by submitting copies of the reports and other filings provided to other state, national or international insurance, financial or securities regulators that contain the information, or substantially similar information, required by this Act.

B. Notwithstanding subsection A of this section, the CGAF shall be prepared consistent with the Corporate Governance Annual Disclosure Filing Guidance Manual. Documentation and supporting information shall be maintained and made available upon examination or upon request of the commissioner. The content of the filing shall address all of the following topics:

1. Description of Corporate Governance Framework
2. Description of Board of Directors' and Committee Policies and Practices
3. Description of Management Policies and Practices and

C. The review of the CGAF, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

Section 5. Confidentiality.

A. Documents, materials or other information including the CGAF, in the possession of or control of the Department of Insurance that are obtained by, created by or disclosed to the Commissioner or any other person under this Act, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer except as provided in subsection (C)(1) below.

B. Neither the Commissioner nor any person who received documents, materials or other Governance-related information, through examination or otherwise, while acting under the authority of the Commissioner, or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the Commissioner's regulatory duties, the Commissioner:

1. May, upon request, share documents, materials or other Governance-related information including the confidential and privileged documents, materials or information subject to subsection A, including proprietary and trade secret

Comment [J5]: We will still have an issue in PA as to whether the sharing of documents with other regulators and third party consultants constitutes making the documents public – in other words, whether the insurer needs to consent to third party consultants in the first instance. We strongly urge the NAIC to address this issue here and in C(1) below. Otherwise, these sections can be read to require consent before regulator-to-regulator and 3rd party consultant sharing.
documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the [insert cross-reference to appropriate section of Insurance Holding Company System Regulatory Act, as amended], and with the NAIC, and with third party consultants pursuant to Section 6, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the governance-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

2. May receive documents, materials or other Governance-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of this state or other foreign or domestic jurisdictions, including members of any supervisory college as defined in the [insert cross-reference to appropriate section of Insurance Holding Company System Regulatory Act, as amended], and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

D. The sharing of information and documents by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other Governance-related information shall occur as a result of disclosure of such Governance-related information or documents to the Commissioner under this section or as a result of sharing as authorized in this Act.

Section 6. Third-party Consultants

A. The Commissioner may retain, at the insurer’s expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the CGAF and related Information or the insurer’s compliance with this Act.

B. Any persons retained under subsection A shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

C. Third-party consultants shall be subject to the same confidentiality standards and requirements as the Commissioner.

D. As part of the retention process, a third-party consultant shall verify to the Commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this Act.

E. A retention agreement with a third party consultant shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this act:
1. Specific procedures and protocols for maintaining the confidentiality and security of CGAF-related information.

2. Procedures and protocols for sharing CGAF-related information with other state regulators from states in which the insurance group has domiciled insurers, including a written acknowledgment of the recipient’s intent and legal authority to maintain the confidentiality and privileged status of the CGAF-related documents.

3. A provision specifying that ownership of the CGAF-related information remains with the Department of Insurance and the use of the information is subject to the direction of the Commissioner;

4. A provision that prohibits the storing of the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

5. A provision requiring the NAIC or third-party consultant to provide prompt notice to the Commissioner and to regarding any subpoena, request for disclosure, or request for production of the insurer's CGAF-related information; and

6. A requirement that the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Act.

Section 7. Sanctions.

Any insurer failing, without just cause, to timely file the CGAF as required in this Act shall be required, after notice and hearing, to pay a penalty of $[insert amount] for each day’s delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 8. Severability Clause.

If any provision of this Act other than Section 6, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act, with the exception of Section 6, are severable.

Section 9. Effective Date.

The requirements of this Act shall become effective on January 1, 2016. The first filing of the CGAF shall be in 2016.
Motil Consulting Comment Letter
Subject: Comments Regarding the Corporate Governance Annual Filing (CGAF)

Dear Mr. Jenson,

Please accept the following comments for the Corporate Governance Working Group’s (CGWG) consideration as regards the CGAF, which will be a filing requirement in 2016.

I would suggest that the CGWG designate a two-year period, beginning in 2014, for a CGAF Feedback Pilot Project. The project’s purpose would be to ensure that a comprehensive and accurate report filing is provided by the insurers in 2016 which meets the regulators’ needs and expectations. This project would be moved forward by a CGWG sub-group and operate in a manner similar to the ORSA Feedback Pilot Project sub-group, which is currently in place.

There is a compelling reason for the CGAF Feedback Pilot Project. The CGAF filing is required (see guidance manual) to be presented to the insurer’s (or insurers’) decision making Board for that Board’s review and approval, prior to the filing’s release and submission to the appropriate regulator. Thus the report is essentially the Board’s report. As such, the report needs to be spot on correct, accurate and sufficient to meet the regulator’s requirements. Moreover, as the CGAF is an important report and becomes an integral companion to the ORSA Summary Report, I would respectfully submit that a feedback pilot project is appropriate for the CGAF report as it is for the ORSA Summary Report.

I wish to commend the CGWG’s efforts and deliberations in the development of the Corporate Governance Model Law, Guidance Manual, and Annual Filing and for fostering a best practices environment for Boards of Directors of insurers. I am happy to respond to any questions you may have.

Sincerely,

Michael F Motil CFE, CIE, CPA
President
Motil Consulting Inc.
Columbus, Ohio
614-202-3236