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Section 1. Authority

These regulations are promulgated pursuant to the authority granted by Sections [insert applicable sections] and [insert applicable section] of the Insurance Law.

Section 2. Purpose

The purpose of these regulations is to set forth the procedures for filing and the required contents of nature and general content of the Corporate Governance Annual Filing—Disclosure (CGAD) requirements, which deemed necessary by the [Commissioner] deems necessary, to carry out the provisions of [insert reference to corporate governance annual filing act]. It is the [Commissioner's] intent that the Corporate Governance Annual Filing (CGAF) 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.

Section 3. 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.

Section 4. Filing Requirement

A. An insurer, or the insurance group of which the insurer is a member [hereafter, “Insurer”], required to file a CGAD by the [insert reference to corporate governance annual filing act], shall, no later than June 1 of each calendar year, submit to the commissioner a CGAF that contains the information described in Section 6 of these regulations.

B. The filing CGAD must include a signature of the insurer’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 CGAD has been provided to the insurer’s board of directors or the appropriate committee thereof. The insurer shall be as descriptive as possible, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

BC. The insurer shall have discretion regarding the appropriate format for providing the information required by this section these regulations and shall be permitted to customize the communication CGAD to provide the most relevant information necessary to permit the...
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[Commissioner] to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer.

Section 5. Level for Completion of Filing; Redundancy; Subsequent Filings

DA. For purposes of completing this filing, an insurer may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level. In determining the level at which details on the insurer's governance structure should be provided, consideration should be given to the primary level at which decisions are made, oversight is provided and governance accountability is assessed in relation to the insurance activities of the insurer. [or, in the alternative: In determining the level at which an organization should report, priority should be given to those levels at which the organization determines its risk appetite or that level which, for the reporting entity, the most senior supervision is exercised over the earnings, capital, liquidity, and operations and reputation of the entity, or that level at which legal liability for failure of general corporate governance duties would be placed.]

EB. As outlined in Section 3 of Model #... if the annual filing CGAD is completed at the holding company or ultimate parent company level, 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, copies of the annual filing CGAD must also be provided to the chief regulatory official/commissioners of any state in which the holding company group has a domestic insurance entity upon request.

FC. In completing the CGAF, the insurer may, instead of filing information that duplicates information provided to the Commissioner or other regulators, reference other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) to the regulator that provides the information requested in various sections of the annual filing. In these cases, the insurer shall clearly reference the location of the relevant information within the annual filing CGAD and attach the referenced document if it is not already filed or available to the regulator.

GD. In recognition of the fact that the corporate governance framework and practices of an insurer may not vary significantly from year-to-year, and to facilitate regulatory review, each year following the initial filing of the CGAD, the insurer shall file an amended version of the previously filed CGADF indicating clearly where changes have been made. If no significant changes were made in the information or activities reported by the insurer, the filing should so state.

Section 6. Contents of Corporate Governance Annual Filing

A. The insurer shall describe the insurer's corporate governance framework and structure, including the following factors:

(1) Identification of the Board of Directors and the various committees ultimately responsible for governing the insurer and the level(s) at which oversight occurs (e.g., ultimate controlling parent, intermediate holding company, legal entity, etc.). The insurer shall describe and provide and the rationale for the current Board of Directors' size and structure.
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(2) Specification of the duties of the Board of Directors and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as

(3) A description of how the Board of Director’s leadership is structured, including a discussion of the roles of Chief Executive Officer and Chairman of the Board of Directors within the organization.

(4) An explanation of how the corporate governance and structure facilitates each director and the Board of Directors as a whole acting:

   (1) in good faith;
   (2) in a manner the director or board of directors reasonably believes to be in the best interests of the corporation.

B. The insurer shall describe the policies and practices of its Board of Directors and significant committees, including the following factors:

(1) The standards for selection of members of the Board of Directors including qualifications, expertise and experience of each board member including integrity, accountability, informed judgment, financial literacy, mature confidence, and high performance standards.

(2) How the Board of Directors as a whole possesses all of the following core competencies, with each candidate contributing knowledge, experience, and skills in at least one of the following domains:
   a. accounting or finance;
   b. business judgment;
   c. industry knowledge;
   d. management;
   e. leadership; and
   f. vision and strategy.

(3) A clear articulation of Board of Director responsibilities including basic duties and responsibilities with respect to requirements for attendance at board meetings and advance review of meeting materials;

(4) How the Board of Directors:
   a. oversees the conduct of the corporation’s business to evaluate whether the business is being properly managed;
   b. reviews and, where appropriate, approves the corporation’s financial objectives and major corporate plans and actions;
   c. reviews and, where appropriate, approves major changes to, and determinations of other major questions of choice respecting, the appropriate auditing and accounting principles and practices to be used in the preparation of the corporation’s financial statements and its risk management policies;
   d. selects, regularly evaluates, fixes the compensation of, and, where appropriate, replaces the principal senior executives;
   e. oversees the effectiveness of the corporation’s internal controls;
   f. provides arrangements for providing adequate and timely information to members of the Board of Directors; and
   g. performs such other functions as are prescribed by law, or assigned to the Board of Directors by the insurer under a standard of the corporation.

Comment [PA8]: This language would likely be struck in PA due to its vagueness.
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(5) Whether the insurer has established, and reviews at least annually, corporate governance principles that address, at a minimum, include:

a. Board of Directors leadership,
b. qualifications for directors,
c. director independence,
d. director responsibilities,
e. the structure and functioning of board committees and, where appropriate, charters for those committees,
f. Board of Directors access to management and advisers,
g. director compensation,
h. director orientation and continuing education, and
i. management succession.

(6) How the insurer maintains an appropriate amount of the independence is maintained on the of its Board of Directors and its significant committees.

(7) The number of meetings held by the Board of Directors and its significant committees over the past year as well as information and a record of director attendance.

(8) How the insurer identifies, nominates and elects members to the Board of Directors and its committees. The discussion may include but is not limited to:

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.
d. Whether a Board of Directors diversity policy is in place and how it functions.

(9) The processes in place for the Board of Directors to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board of Directors or committee training programs that have been put in place) including whether independent directors create and control the methods and criteria for evaluating individual directors.

(10) How these factors assist the Board of Directors and management in performing their responsibilities for governance and oversight of the insurer’s corporate governance, transparency, competency and commitment, accountability and objectivity, independent board leadership, the insurer’s ethics, integrity, and responsibility, attention to information and strategy, and policyholder and stakeholder communications.

C. The insurer shall describe the policies and practices for directing Senior Management including a description of the following factors:

(1) Any processes or practices it has put in place (i.e., 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 a description of:
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(a) Any identification of the specific positions that it has developed for which suitability standards have been developed and provide a description of the standards employed.

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

(2) The insurer's code of business conduct and ethics for Senior Management that addresses, at a minimum:

(a) conflicts of interest, corporate opportunities, and fair dealing;
(b) confidentiality and protection and proper use of company assets;
(c) compliance with laws, rules, and regulations; and
(d) proactive reporting of any illegal or unethical behavior.

(3) The insurer's processes for performance evaluation, compensation and corrective action to ensure an effective level of senior management throughout the organization, including a description of the general objectives of each of the organization's significant compensation programs and what the programs are designed to reward. The description should include sufficient level of detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, but are not limited to:

(a) The Board of Directors' role in overseeing management compensation programs and practices.
(b) The various elements of compensation awarded in the insurer's compensation programs and how the insurer determines and calculates the amount of each element of compensation paid;
(c) How compensation programs are related to both company and individual performance over time;
(d) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
(e) 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;
(f) Any other factors relevant in understanding how the insurer monitors its compensation policies to determine whether its risk management objectives are being met with respect to incentivizing its employees.

(4) The filing should describe how the Board of Directors oversees the insurer's succession plans for Senior Management including plans for developing senior management personnel and plans for CEO and senior management succession. This description should include:

(a) whether the Board of Directors reviews the succession plans at least annually;
(b) whether the Board of Directors, or a committee, is charged with primary responsibility for the implementation and monitoring of the suitability and performance of the CEO and senior management;
(c) the person or persons charged with organizing the Board of Directors' evaluation of the CEO or other members of senior management; and
(d) whether independent directors create and control the methods and criteria for evaluating the CEO, the Board of Directors as a whole, and individual directors.
D. The insurer shall describe the processes by which the Board of Directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities, including a description of how:

(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 risks;

(3) How the Board of Directors approves the insurer's risk profile;

(4) How the Board of Directors is assured that the strategic plans conform to that risk profile;

(5) How reporting responsibilities are organized for each critical risk area, including the names, positions, and reporting lines of all persons charged with formulating, implementing, and monitoring all risk reporting or risk control systems in critical risk areas. The description should be provided at a sufficient level of detail to 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 of Directors. This description may include, but is not limited to, the following critical risk areas of the insurer:

a. Risk management processes (ORSA Summary Report filers may reference this filing).

b. Actuarial functions.

c. Investment decision-making processes.

d. Reinsurance decision-making processes.

e. Business strategy/finance decision-making processes.

f. Compliance function.

g. Financial reporting/auditing processes.

h. Market conduct decision-making process.