

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE CORPORATE)
GOVERNANCE ANNUAL DISCLOSURE) ORDER
REQUIRED TO BE FILED PURSUANT TO)
P.L. 2019, c. 350)

This matter having been opened by the Commissioner of the Department of Banking and Insurance (“Commissioner”) pursuant to N.J.S.A. 17:1-15, P.L. 2019, c. 350, and all powers expressed or implied therein; and

IT APPEARING that P.L. 2019, c. 350 (“the Act”), enacted on January 13, 2020, and effective January 1, 2020, sets forth requirements to, among other things, provide the Commissioner a summary of an insurer’s or an insurance group’s corporate governance structure, policies and practices to permit the Commissioner to gain and maintain an understanding of the insurer’s corporate governance framework; and

IT FURTHER APPEARING that the Act, which requires the the filing of a corporate governance annual disclosure (“CGAD”), is based on the Corporate Governance Annual Disclosure Model Act adopted by the National Association of Insurance Commissioners (“NAIC”); and

IT FURTHER APPEARING that the procedures for the filing of the CGAD are set forth in the Corporate Governance Annual Disclosure Model Regulation also adopted by the NAIC; and

IT FURTHER APPEARING that both the Model Act and the Model Regulation are required to be enacted and adopted by states for a state insurance department to maintain accreditation by the NAIC beginning January 1, 2020; and


IT FURTHER APPEARING that the Department intends to propose new rules to implement P.L. 2020, c. 350, which will track the applicable NAIC model regulation; and

IT FURTHER APPEARING that given that the enabling statute was enacted January 13, 2020, is effective January 1, 2020, and also that New Jersey's statutory timeframes for proposing and adopting rules, is such that the required implementing rules will not be effective within the NAIC's requisite timeframe; and

IT FURTHER APPEARING that in order to ensure compliance with NAIC accreditation standards and to provide required guidance and standards at this time to insurers and other entities required to file the CGAD consistent with the national standards adopted by the NAIC, pending the proposal and adoption of implementing rules, the Department believes that it is reasonable and appropriate to set forth by Order the required standards and procedures for filing the CGAD reflecting the requirements established by the NAIC;

NOW, THEREFORE IT IS on this 23rd day of January, 2020, ORDERED that:

1. All insurers required to file a CGAD pursuant to P.L. 2020, c. 350 shall comply with the requirements set forth in the Appendix to this ORDER, attached hereto and made a part hereof; and
2. Failure to comply with the terms of the ORDER shall result in the imposition of penalties as authorized by law.



Marlene Caride
Commissioner

APPENDIX

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Section 1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the Commissioner to carry out the provisions of P.L. 2019, c. 350.

This subchapter shall apply to all insurers and any entity subject to P.L. 2019, c. 350.

Section 2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in N.J.S.A. 17:27A-1 et seq.

“Insurer” shall have the same meaning as set forth in N.J.S.A. 17:27A-1, and shall include any insurer or entity subject to rehabilitation or liquidation pursuant to N.J.S.A. 17:30C-1 et seq. and N.J.S.A. 17B:32-31 et seq., including licensed organized delivery systems and reciprocal insurance exchanges.

“NAIC” means the 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, for example and without 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.

Section 3 Filing procedures

(a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by P.L. 2019, c. 350, shall, no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in Section 4 herein.

(b) The CGAD shall 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 the corporate governance practices and that a copy of the CGAD has been provided to the insurer’s or insurance group’s Board of Directors (hereafter “Board”) or the appropriate committee thereof.

(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 the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(d) For purposes of completing the CGAD, the insurer or insurance group 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, depending upon

how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or 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 the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) Notwithstanding (a) above, and as outlined in Section 5 of P.L. 2019, c. 350, if the CGAD is completed at the insurance group level, then it shall be filed with the lead state, or group-wide supervisor as defined by N.J.S.A. 17:27A-5.2, if applicable, for the insurance group, in accordance with the laws of that state, 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 shall also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(f) An insurer or insurance group may comply with this section by referencing other existing documents (for example, ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in Section 4 herein. 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 regulator.

(g) 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 any changes have been made to such filed CGAD. If no changes were made in the information or activities reported by the insurer or insurance group, the filing shall so state.

Section 4 Contents of Corporate Governance Annual Disclosure

(a) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, as these documents may provide a means to demonstrate the strengths of their 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 and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (for example, ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and

2. The duties of the Board and each of its significant committees and how they are governed (for example, bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) 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 meet 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 held by the Board and its significant committees over the past year as well as information on director attendance; and

4. How the insurer or insurance group identifies, nominates and elects members to the Board and its committees. The discussion shall include, but not be limited to, the following:

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

ii. Whether term limits are placed on directors;

iii. How the election and re-election processes function;

iv. Whether a Board diversity policy is in place, and if so, how it functions; and

v. 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 (that is, 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:

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

ii. 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. A discussion of insurer's or insurance group's code of business conduct and ethics, which discussion shall include, but not be limited to, the following:

i. Compliance with laws, rules, and regulations; and

ii. 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 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 and/or reward excessive risk taking. Examples of the elements to be discussed include, but are not limited to, the following:

i. The Board'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 calculates the amount of each element of compensation paid;

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

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

v. 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

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 CEO and Senior Management succession.

(e) 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, which shall include a discussion of the following:

1. How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;

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;

3. How reporting responsibilities are organized for each critical risk area. The description shall be sufficient 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. This description may include, for example, the following critical risk areas of the insurer:

- i. Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to N.J.S.A. 17:23-27 et seq.);
- ii. Actuarial function;
- iii. Investment decision-making processes;
- iv. Reinsurance decision-making processes;
- v. Business strategy/finance decision-making processes;
- vi. Compliance function;
- vii. Financial reporting/internal auditing; and
- viii. Market conduct decision-making processes.

Section 5 Severability

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

Section 6 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as authorized by law.

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