

Proposed Rule
LSA Document #19-317

DIGEST

Adds [760 IAC 1-81](#) to set forth the procedures for filing and the required contents of the corporate governance annual disclosure deemed necessary by the commissioner to carry out the provisions of [IC 27-1-4.1](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[760 IAC 1-81](#)

SECTION 1. [760 IAC 1-81](#) IS ADDED TO READ AS FOLLOWS:

Rule 81. Corporate Governance Annual Disclosure

[760 IAC 1-81-1](#) Definitions

Authority: [IC 27-1-4.1-15](#)

Affected: [IC 27-1-4.1](#); [IC 27-1-23.5-7](#)

Sec. 1. The definitions set forth in [IC 27-1-4.1](#) and the following definitions apply throughout this rule:

- (1) "Commissioner" means the commissioner of the department of insurance.
- (2) "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group under [IC 27-1-4.1](#).
- (3) "NAIC" means the National Association of Insurance Commissioners.
- (4) "ORSA summary report" has the meaning set forth in [IC 27-1-23.5-7](#).
- (5) "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 following:
 - (A) Chief executive officer.
 - (B) Chief financial officer.
 - (C) Chief operations officer.
 - (D) Chief procurement officer.
 - (E) Chief legal officer.
 - (F) Chief information officer.
 - (G) Chief technology officer.
 - (H) Chief revenue officer.
 - (I) Chief visionary officer.
 - (J) Any other "C" level executive.

(Department of Insurance; [760 IAC 1-81-1](#))

[760 IAC 1-81-2](#) Filing procedures

Authority: [IC 27-1-4.1-15](#)

Affected: [IC 27-1-4.1-6](#)

Sec. 2. (a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by [IC 27-1-4.1](#), shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in section 3 of this rule.

(b) The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented 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 or the appropriate committee thereof.

(c) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this rule 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:

- (1) the ultimate controlling parent level;
- (2) an intermediate holding company level; or
- (3) the individual legal entity level;

depending upon how the insurer or insurance group has structured its system of corporate governance.

(e) The insurer or insurance group is encouraged to make the CGAD disclosures at the levels of reporting at which:

- (1) the insurer's or insurance group's risk appetite is determined;
- (2) 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
- (3) 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 (3) criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(f) Notwithstanding subsection (a), and as outlined in [IC 27-1-4.1-6](#), 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.

(g) An insurer or insurance group may comply with subsections (d) and (e) by referencing other existing documents, including:

- (1) an ORSA summary report;
- (2) a Form B statement described in [760 IAC 1-15.1-5](#);
- (3) a Form F statement described in [760 IAC 1-15.1-7.2](#);
- (4) Securities and Exchange Commission proxy statements; and
- (5) foreign regulatory reporting requirements;

if the documents provide information that is comparable to the information described in section 3 of this rule. 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.

(h) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

(Department of Insurance; [760 IAC 1-81-2](#))

[760 IAC 1-81-3](#) Contents of corporate governance annual disclosure

Authority: [IC 27-1-4.1-15](#)

Affected: [IC 27-1-4.1-15](#)

Sec. 3. (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, since these 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 items:

- (1) The board of directors and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the levels at which that oversight occurs, including, but not limited to:
 - (A) the ultimate control level;
 - (B) the intermediate holding company level; or
 - (C) the legal entity level.
- (2) The rationale for the current size and structure of the board of directors.
- (3) The duties of the board of directors and each of its significant committees and a description and discussion of the following:
 - (A) How the board of directors and committees are governed (e.g., bylaws, charters, and informal mandates).
 - (B) How the board of directors' leadership is structured.
 - (C) The roles of chief executive officer and chairman of the board within the organization.

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

- (1) How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group.
- (2) How an appropriate amount of independence is maintained on the board of directors and its significant committees.
- (3) The number of meetings held by the board of directors and its significant committees over the past year as well as information on director attendance.
- (4) How the insurer or insurance group identifies, nominates, and elects members to the board of directors and its committees, including, but 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 reelection processes function; and
 - (D) whether a board of directors diversity policy is in place and if so, how it functions.
- (5) The processes in place for the board of directors to:
 - (A) evaluate its performance; and
 - (B) evaluate 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.

(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 (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) identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
 - (B) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
- (2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers:
 - (A) compliance with laws, rules, and regulations; and
 - (B) proactive reporting of any illegal or unethical behavior.
- (3) The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general 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 the following:
 - (A) The board of directors' role in overseeing management compensation programs and practices.
 - (B) 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.
 - (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 or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for chief executive officer and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board of directors, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

- (1) how oversight and management responsibilities are delegated between the board of directors, its committees, and senior management;
- (2) how the board of directors is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and
- (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 of directors. This description may include the following critical risk areas of the insurer:

- (A) Risk management processes.
- (B) Actuarial function.
- (C) Investment decision-making processes.
- (D) Reinsurance decision-making processes.
- (E) Business strategy and finance decision-making processes.
- (F) Compliance function.
- (G) Financial reporting and internal auditing.
- (H) Market conduct decision-making processes.

(Department of Insurance; [760 IAC 1-81-3](#))

[760 IAC 1-81-4](#) Severability

Authority: [IC 27-1-4.1-15](#)

Affected: [IC 27-1-4.1-15](#)

Sec. 4. If:

- (1) any section or portion of a section of this rule; or
- (2) its applicability to any person or circumstance;

is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

(Department of Insurance; [760 IAC 1-81-4](#))

[Notice of Public Hearing](#)

Posted: 03/11/2020 by Legislative Services Agency

An [html](#) version of this document.