

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R094-17

November 9, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-7, NRS 679B.130, 692C.120 and section 8 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 65; §8, NRS 679B.130, 692C.120 and sections 8 and 9 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 65; §9, NRS 679B.130 and 692C.120.

A REGULATION relating to insurance; authorizing an insurer or insurance group to determine and customize the format of a corporate governance annual disclosure; requiring certain insurers to submit a copy of a corporate governance annual disclosure to certain regulatory officials; providing that a public document cross-referenced in a corporate governance annual disclosure remains public and that a private or confidential document cross-referenced in a corporate governance annual disclosure remains private or confidential; requiring an insurer or insurance group to submit an amended corporate governance annual disclosure filed in the immediately preceding calendar year under certain circumstances or a letter stating no changes were made to the corporate governance annual disclosure filed in the immediately preceding calendar year; requiring an insurer or insurance group to describe certain details regarding corporate governance and include certain information in a corporate governance annual disclosure; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations: (1) for the administration of the Nevada Insurance Code; (2) as required to ensure compliance by the Commissioner with any federal law or regulation relating to insurance; or (3) as are necessary to carry out the provisions governing insurance holding companies. (NRS 679B.130, 692C.120)

During the 2017 Legislative Session, the Legislature enacted Assembly Bill No. 35, which requires certain insurers or insurance groups to submit to the Commissioner a corporate governance annual disclosure that contains certain information. The bill additionally authorizes the Commissioner to adopt regulations to carry out the provisions relating to a corporate governance annual disclosure. (Sections 7 and 8 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at pages 64-65) **Sections 4-7** of this regulation set forth various provisions relating to a corporate governance annual disclosure. **Section 4** authorizes an insurer or insurance group

to: (1) determine the appropriate format of the corporate governance annual disclosure for providing certain information; and (2) customize the format of the corporate governance annual disclosure so that the insurer or insurance group may provide any additional information necessary for the Commissioner to understand the corporate governance of an insurer or insurance group. **Section 5** requires an insurer that is a member of an insurance group which submits a corporate governance annual disclosure to the insurance commissioner of the lead state for the insurance group to also, upon request, submit a copy of the corporate governance annual disclosure to the chief regulatory official of any other state where an insurer is, under the laws of that state, considered to be a domestic insurer of that state. **Section 6** provides that: (1) an insurer or insurance group may cross-reference other documents in the corporate governance annual disclosure; (2) if any documents which are cross-referenced in the corporate governance annual disclosure are otherwise public, the Commissioner will not deem such cross-referencing to affect the public nature of such documents; (3) if any documents which are cross-referenced in the corporate governance annual disclosure are otherwise private or confidential, the Commissioner will not deem such cross-referencing to affect the private or confidential nature of such documents; and (4) the insurer or insurance group shall clearly cross-reference the location of information cited in the corporate governance annual disclosure and attach the cross-referenced document. **Section 7** requires an insurer or insurance group to, not later than June 1 of each calendar year, submit: (1) an amended version of the corporate governance annual disclosure that was filed in the immediately preceding calendar year if any changes were made to the corporate governance annual disclosure that was filed in the immediately preceding calendar year; or (2) a letter stating that no changes were made to the corporate governance annual disclosure filed in the immediately preceding calendar year if no changes were made. **Section 7** further requires the amended version of the corporate governance annual disclosure or the letter submitted by an insurer or insurance group to be signed by the chief executive officer or corporate secretary of the insurer or insurance group. **Section 7** additionally requires the Commissioner to deem: (1) the requirement to file a corporate governance annual disclosure to be satisfied if an insurer or insurance group submits an amended version of the corporate governance annual disclosure or a letter; and (2) the amended version of the corporate governance annual disclosure or the letter to contain the information contained in the initial corporate governance annual disclosure, except where any amended version of the corporate governance annual disclosure or any letter subsequently submitted indicates any changes to the corporate governance annual disclosure.

Assembly Bill No. 35 further authorizes the Commissioner to adopt regulations that set forth instructions for how an insurer or insurance group is to prepare a corporate governance annual disclosure. (Section 9 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 65) **Section 8** of this regulation sets forth instructions that detail the information an insurer or insurance group is required to include in a corporate governance annual disclosure. **Section 8** requires an insurer or insurance group to be as descriptive as possible in the corporate governance annual disclosure and to describe the: (1) framework and structure of the corporate governance of the insurer or insurance group; (2) policies and practices of the board of directors of the insurer or insurance group and any committees of the board of directors; (3) policies and practices of the board of directors of the insurer or insurance group for directing and managing senior management; and (4) policies and practices by which the board of directors of the insurer or insurance group, any committee of the board of directors and senior management oversee the critical risk areas that impact the business activities of the insurer or insurance group. **Section 8**

further requires an insurer or insurance group to include certain information in the corporate governance annual disclosure to adequately provide such descriptions.

Section 1. Chapter 692C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 692C.010 and section 3 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Senior management” means each corporate officer responsible for reporting information to the board of directors of an insurer or insurance group at regular intervals, as determined by the board of directors in compliance with applicable state or federal law and regulations, or providing this information to shareholders or regulators in compliance with applicable state or federal law and regulations. The term includes, without limitation, the:*

- 1. Chief executive officer;*
- 2. Chief financial officer;*
- 3. Chief information officer;*
- 4. Chief legal officer or general counsel;*
- 5. Chief operating officer;*
- 6. Chief procurement officer;*
- 7. Chief revenue officer;*
- 8. Chief technology officer; and*
- 9. Chief visionary officer.*

Sec. 4. *Each insurer or insurance group may:*

- 1. Determine the appropriate format of the corporate governance annual disclosure for providing the information required by sections 2 to 8, inclusive, of this regulation and sections*

5 to 12, inclusive, of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at pages 63-68; and

2. Customize the format of the corporate governance annual disclosure to provide any additional information necessary for the Commissioner to understand the structure of and policies and practices used by the insurer or insurance group for corporate governance.

Sec. 5. If an insurer is a member of an insurance group and submits the corporate governance annual disclosure to the insurance commissioner of the lead state for the insurance group pursuant to subsection 1 of section 7 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 64, the insurer shall, upon request, also submit a copy of the corporate governance annual disclosure to the chief regulatory official of any state where an insurer that is a member of the insurance group is, under the laws of that state, considered to be a domestic insurer of that state.

Sec. 6. 1. An insurer or insurance group may cross-reference in a corporate governance annual disclosure other documents, including, without limitation:

(a) An ORSA Summary Report;

(b) A form which is substantially similar to the Form B-Insurance Holding Company System Annual Registration Statement of the National Association of Insurance Commissioners;

(c) A form which is substantially similar to the Form F-Enterprise Risk Report of the National Association of Insurance Commissioners; or

(d) Any documents, materials or reports required by other state, federal and international financial regulatory agencies.

2. If any documents that are otherwise public are cross-referenced in a corporate governance annual disclosure pursuant to section 10 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 65, the Commissioner will:

(a) Not deem such cross-referencing to affect the public nature of such documents that are cross-referenced; and

(b) Consider such documents that are cross-referenced to be public documents.

3. If any documents that are otherwise private or confidential are cross-referenced in a corporate governance annual disclosure pursuant to section 10 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 65, the Commissioner will:

(a) Not deem such cross-referencing to affect the private or confidential nature of such documents that are cross-referenced; and

(b) Consider such documents that are cross-referenced to be private or confidential documents not available for disclosure to the public.

4. The insurer or insurance group shall clearly cross-reference the location of the relevant information within the corporate governance annual disclosure and attach the cross-referenced document if the document is not already filed with or available to the Commissioner.

Sec. 7. 1. After an insurer or an insurance group has submitted an initial corporate governance annual disclosure pursuant to subsection 1 of section 7 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 64, the insurer or insurance group shall, not later than June 1 of each subsequent calendar year:

(a) If any changes were made to the corporate governance annual disclosure filed in the immediately preceding calendar year, submit an amended version of the corporate governance

annual disclosure filed in the immediately preceding calendar year that indicates any changes to the corporate governance annual disclosure filed in the immediately preceding calendar year; or

(b) If no changes were made to the corporate governance annual disclosure filed in the immediately preceding calendar year, submit a letter stating that no changes were made to the corporate governance annual disclosure filed in the immediately preceding calendar year.

2. An amended version of the corporate governance annual disclosure or a letter submitted by an insurer or insurance group pursuant to subsection 1 must include the signature of the chief executive officer or corporate secretary of the insurer or insurance group attesting that, to the best of that person's belief and knowledge, the insurer or insurance group has implemented and complied with the requirements set forth in subsection 2 of section 7 of Assembly Bill No. 35, chapter 12, Statutes of Nevada, at page 64.

3. The Commissioner will deem:

(a) The requirement to file a corporate governance annual disclosure pursuant to subsection 1 of section 7 of Assembly Bill No. 35, chapter 12, Statutes of Nevada, at page 64, as satisfied if an insurer or insurance group submits an amended version of the corporate governance annual disclosure or a letter pursuant to this section; and

(b) The amended version of the corporate governance annual disclosure or the letter submitted by an insurer or insurance group pursuant to this section to include the information provided in the initial corporate governance annual disclosure submitted by an insurer or an insurance group pursuant to subsection 1 of section 7 of Assembly Bill No. 35, chapter 12, Statutes of Nevada 2017, at page 64, except where any amended version of the corporate

governance annual disclosure or any letter subsequently submitted pursuant to this section indicates any changes to the corporate governance annual disclosure.

Sec. 8. 1. Each insurer or insurance group shall:

(a) Be as descriptive as possible in completing the corporate governance annual disclosure; and

(b) Include, without limitation, documents used in the corporate governance of the insurer or insurance group that demonstrate the strength of the framework and practices of the corporate governance of the insurer or insurance group.

2. For the purposes of describing the framework and structure of the corporate governance of an insurer or insurance group, the insurer or insurance group shall include, without limitation, in the corporate governance annual disclosure the following:

(a) An identification of the board of directors of the insurer or insurance group and any committee thereof that has the ultimate responsibility for overseeing the insurer or insurance group and an explanation of how such oversight occurs;

(b) The size and structure, including, without limitation, the structure of the leadership, of the board of directors and an explanation as to why the board of directors is of such size and structure;

(c) The duties of the board of directors and any committee thereof and whether the duties are governed by bylaws, charters, informal mandates or by some other method; and

(d) The roles of the chief executive officer and chairman of the board of directors.

3. For the purposes of describing the policies and practices of the board of directors of the insurer or insurance group and any committee thereof, the insurer or insurance group shall include, without limitation, in the corporate governance annual disclosure the following:

(a) The qualifications, expertise and experience of each member of the board of directors and an explanation of how such qualifications, expertise and experience assist in meeting the needs of the insurer or insurance group;

(b) An explanation of how the board of directors and any committee thereof maintain its independence;

(c) The number of meetings held by the board of directors and any committee thereof over the past year and information regarding the attendance of each member of the board of directors at such meetings;

(d) An explanation of how the insurer or insurance group identifies, nominates and elects a member of the board of directors and any committee thereof and:

(1) Whether the insurer or insurance group has established a committee to identify and select individuals for consideration as a member to the board of directors or any committee thereof;

(2) Whether term limits are placed on the members of the board of directors;

(3) The procedure for the election and reelection of a member of the board of directors; and

(4) Whether a policy promoting diversity on the board of directors and any committee thereof is in place and, if so, an explanation of how such a policy functions; and

(e) Information concerning any:

(1) Processes that are in place for the board of directors to evaluate its performance and the performance of any committee thereof; and

(2) Measures that the board of directors has recently taken to improve the performance of the board of directors and any committee thereof, including, without limitation, any training programs that the board of directors has put in place.

4. For the purposes of describing the policies and practices of the board of directors of the insurer or insurance group for directing and managing senior management, the insurer or insurance group shall include, without limitation, in the corporate governance annual disclosure the following:

(a) If the board of directors uses any suitability standard or other process to determine if each prospective member of senior management has the qualifications, expertise, experience and integrity required to fulfill his or her prospective position, the board of directors must identify:

(1) The specific positions for which suitability standards have been developed;
(2) A description of the suitability standards used; and
(3) Any changes that occur in the suitability standards for each member of senior management;

(b) The code of business conduct and ethics of the insurer or insurance group and an explanation of how such a code:

(1) Complies with any applicable federal or state laws and regulations; and
(2) Provides a method to report any behavior or conduct that is illegal or unethical;
(c) The plan of the insurer or insurance group for succession of the chief executive officer and the other members of senior management; and

(d) An explanation of how the insurer or insurance group ensures effective performance by senior management throughout the organization by using performance evaluations,

programs of compensation and corrective action. Such information must contain sufficient detail so that the Commissioner is able to understand how the insurer or insurance organization ensures that programs of compensation do not encourage or reward excessive risk-taking by senior management. The insurer or insurance group:

(1) Shall include a description of the general objectives of significant programs of compensation and the types of actions or results that the programs of compensation are designed to reward; and

(2) May include, without limitation:

(I) The role of the board of directors in overseeing programs of compensation and practices for senior management;

(II) The various elements of compensation provided by the programs of compensation of the insurer or insurance group and an explanation of how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(III) An explanation of how the programs of compensation of the insurer or insurance group are related to the performance of both the company and each member of senior management over a period of time;

(IV) Whether the programs of compensation contain risk adjustments and, if so, how such adjustments are incorporated into the programs of compensation of different members of senior management and other employees;

(V) Any provisions built into the programs of compensation to recover any awards or payments made to a member of senior management or another employee if the measure of performance upon which such awards or payments were calculated are restated or otherwise adjusted; and

(VI) Any other factors relevant in understanding how the insurer or insurance group monitors its programs of compensation and policies regarding such programs to determine whether the objectives for risk management of the insurer or insurance group are met by incentivizing its members of senior management and other employees.

5. For the purposes of describing the policies and practices by which the board of directors of the insurer or insurance group, any committee thereof and senior management oversee the critical risk areas that impact the business activities of the insurer or insurance group, each insurer or insurance group shall include, without limitation, in the corporate governance annual disclosure the following:

(a) An explanation of how the board of directors delegates the responsibilities of overseeing and managing critical risk areas among the board of the directors, any committees thereof and senior management;

(b) An explanation of how the insurer or insurance group keeps the board of directors informed of the:

(1) Strategic plans of the insurer or insurance group;

(2) Associated risks of those strategic plans; and

(3) What steps senior management is taking to monitor and manage those associated risks; and

(c) An explanation of how the insurer or insurance group organizes for each critical risk area the responsibility of reporting. Such information must contain sufficient detail so that the Commissioner can understand the frequency at which information on each critical risk area is reported to and reviewed by the board of directors and senior management. The insurer or

insurance group may include, without limitation, information on how the following critical risk areas of the insurer or insurance group are reported:

(1) Risk management processes or an ORSA Summary Report containing the information required pursuant to NRS 692C.351 to 692C.3548, inclusive;

(2) Actuarial function;

(3) Investment decision-making processes;

(4) Reinsurance decision-making processes;

(5) Business strategy and finance decision-making processes;

(6) Compliance function;

(7) Financial reporting and internal auditing; and

(8) Market regulation decision-making processes.

Sec. 9. NAC 692C.010 is hereby amended to read as follows:

692C.010 ~~[As used in this chapter, unless the context otherwise requires,]~~ “Commissioner”

means the Commissioner of Insurance.