

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 14, 2017

SCC-CLERK'S OFFICE  
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00161

*Ex Parte:* In the matter of Adopting  
New Rules Governing Corporate  
Governance Annual Disclosures

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules at Chapter 265 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Corporate Governance Annual Disclosures," which are recommended to be set out at 14 VAC 5-265-10 through 14 VAC 5-265-50.

The proposed new rules are necessary to implement the provisions of §§ 38.2-1334.11 through 38.2-1334.17 of the Code, which were enacted in Chapter 643 of the 2017 Acts of Assembly (HB 2102) and require each insurer domiciled in the Commonwealth of Virginia, or the insurance group of which the insurer is a member, to submit to the Commission a Corporate

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Governance Annual Disclosure. These new rules establish procedures for filing, and the required contents of, the Corporate Governance Annual Disclosure. The amendments to the Code are effective on January 1, 2018.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 265 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of January 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Corporate Governance Annual Disclosures," recommended to be set out at 14 VAC 5-265-10 through 14 VAC 5-265-50 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of proposed Chapter 265, shall file such comments or hearing request on or before September 21, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2017-00161.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before September 21, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) The Bureau forthwith shall give notice of the proposal by mailing a copy of this Order, together with the proposal, to all insurers domiciled in Virginia and to all interested persons.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Rules Governing Corporate Governance Annual Disclosures

CHAPTER 265

RULES GOVERNING CORPORATE GOVERNANCE ANNUAL DISCLOSURES

**14VAC5-265-10. Purpose and scope.**

The purpose of this chapter is to set forth rules and procedures for filing, and the required contents of, the Corporate Governance Annual Disclosure which the commission deems necessary to carry out the provisions of Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

**14VAC5-265-20. Definitions.**

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in § 38.2-1322 of the Code of Virginia.

"Insurer" means an insurance company as defined in § 38.2-100 of the Code of Virginia, except that "insurer" 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.

"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.

"The Act" means Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

**14VAC5-265-30. Filing procedures.**

A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Act shall, no later than June 1 of each calendar year, submit to the commission a CGAD that contains the information described in 14VAC5-265-40 of this chapter.

B. The CGAD must include a signature of the insurer's or insurance group's CEO 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 this chapter and is permitted to customize the CGAD to provide the most relevant information, appropriate to the nature, scale and complexity of the operations of the insurer or insurance group, that is necessary to permit the commission 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 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 subsection A of this section, and as outlined in § 38.2-1334.12 of the Act, 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 National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief insurance 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 (e.g., Own Risk and Solvency Assessment (ORSA) Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in 14VAC5-265-40. 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 commission.

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 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.

**14VAC5-265-40. 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, 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:

1. The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs (e.g., 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 (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of 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;

4. How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

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; and

d. Whether a board diversity policy is in place and if so, how it functions.

5. 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 (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, for example:

- 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 commission to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:
- a. The board's 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; or
  - 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 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, including a discussion of:

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 should allow the commission 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:

a. Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report filed pursuant to Article 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia;

b. Actuarial function;

c. Investment decision-making processes;

d. Reinsurance decision-making processes;

e. Business strategy/finance decision-making processes;

f. Compliance function;

g. Financial reporting/internal auditing; and

h. Market conduct decision-making processes.

**14VAC5-265-50. Severability clause.**

If any provision in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.