

40-1-52. Corporate governance annual disclosure; reporting forms and instructions. The Kansas insurance department's "policy and procedure providing corporate governance annual disclosure filing instructions," dated September 9, 2020, is hereby adopted by reference.

(Authorized by and implementing K.S.A. 2019 Supp. 40-2,203; effective P-\_\_\_\_\_.)

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SEP 14 2020

DIVISION OF THE BUDGET

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SEP 15 2020

DEPT. OF ADMINISTRATION

***POLICY AND PROCEDURE  
PROVIDING  
CORPORATE GOVERNANCE ANNUAL  
DISCLOSURE FILING INSTRUCTIONS***

***Prepared by  
The Kansas Insurance Department***

***September 9, 2020***

**Policy and Procedure Providing  
Corporate Governance Annual Disclosure Filing Instructions September 9, 2020**

*This Policy and Procedure is an adaptation of the National Association of Insurance Commissioners' Corporate Governance Annual Disclosure Model Regulation, as amended 1<sup>st</sup> quarter 2015.*

**Section 1. Authority**

This regulation is promulgated pursuant to the authority granted by K.S.A. 2019 Supp. 40-2,203, and amendments thereto.

**Section 2. Purpose**

The purpose of this regulation 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 K.S.A. 2019 Supp. 40-2,203, and amendments thereto.

**Section 3. Definitions.**

- A. "Commissioner." The commissioner of insurance for the state of Kansas.
- B. "Insurance group." For the purpose of this regulation, the term "insurance group" shall mean those insurers and affiliates included within an insurance holding company system as defined in K.S.A. 40-3302, and amendments thereto.
- C. "Insurer." The term "insurer" means the same as set forth in K.S.A. 40-3302, except that it 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.
- D. "Senior Management." The term "senior management" shall mean 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 4. Filing Procedures**

- A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD pursuant to K.S.A. 2019 Supp. 40-2,203, and amendments thereto, shall, no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in Section 5 of this regulation.
- 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 ("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 regulation 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 Subsection A of this section, and as outlined in K.S.A. 2019 Supp. 40-2,203(c), and amendments thereto, 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.
- F. An insurer or insurance group may comply with this section by referencing 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.) if the documents provide information that is comparable to the information described in Section 5. 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 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.

**Section 5. 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(s) 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 chief executive officer (CEO) and chair 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.
- (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.
  - (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 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, 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;
- (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 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:
  - (a) Risk management processes or reference to an ORSA summary report;
  - (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.

**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

Kansas Insurance Department

Agency

Justin McFarland

Agency Contact

785-296-7847

Contact Phone Number

40-1-52

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

The proposed K.A.R. 40-1-52 adopts the Kansas Insurance Department's Policy and Procedure Providing Corporate Governance Annual Disclosure Filing Instructions, dated September 9, 2020 ("CGAD Model Regulation"). The policy and procedure is an adaptation of the National Association of Insurance Commissioner's ("NAIC") model regulation 306 pertaining to the Corporate Governance Annual Disclosure.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

The regulation is not mandated by the federal government, but it is an NAIC accreditation requirement.

All contiguous states have adopted a regulation similar to proposed K.A.R. 40-1-52. A map of states that have adopted the NAIC model regulation can be found at [https://content.naic.org/sites/default/files/inline-files/smi\\_map\\_final\\_200728.pdf](https://content.naic.org/sites/default/files/inline-files/smi_map_final_200728.pdf). A copy of a map showing implementation of the CGAD Model Regulation is attached.

**III. Agency analysis specifically addressing following:**

**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

The regulation will enhance business activities and growth by providing guidance to completion of the Corporate Governance Annual Disclosure, a document that assists in risk focused regulation of insurers.

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- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The regulation will have no economic effect on insurers as it does not impose any new filings. Rather, the regulation provides filing instructions.

The amendment will have no effect on other business sectors, public utility ratepayers, individuals or local governments.

- C. Businesses that would be directly affected by the proposed rule and regulation;**

The only businesses affected by the amendment are insurers already required to file the corporate governance annual disclosure pursuant to K.S.A. 2019 Supp. 40-2,203.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The benefits are clearer instructions for insurers in completing the corporate governance annual disclosure. The regulation itself results in no cost.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

N/A

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES  NO

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

N/A

**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.**

YES  NO

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- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

The CGAD Model Regulation was developed through the NAIC, a national organization that utilizes lengthy deliberative processes including public comment periods, before adopting model regulations for states to adopt for accreditation.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

N/A

