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PA Legislature Introduces Corporate Governance Annual Disclosure Statute to Be Effective in 2018 – What All Insurers Need to Know & Should Be Doing Now

SUMMARY

On October 3, 2017, the Pennsylvania legislature introduced legislation (HB 1848) to adopt a Pennsylvania-specific version of the NAIC Corporate Governance Annual Disclosure Model Act (“CGAD”) that would require insurers to make an annual filing beginning in 2018 on their corporate governance framework, policies and practices – joining 20 other states that have introduced or adopted CGAD. Although the PA CGAD filing would not be due until June 1, 2018, insurers should be preparing now to comply with this significant new annual filing requirement. Below are four critical things to know about this upcoming filing requirement and a list of things you should be doing now.

WHAT YOU SHOULD KNOW

- 1. Applicability:** There are no exemptions from the CGAD filing requirement -- CGAD applies to all insurers – regardless of size and type -- even small insurers, fraternal and standalone mutuals that may be exempt from other requirements (like ORSA, Enterprise Risk Reporting and the internal audit function requirements).
- 2. A CGAD Filing is Not a “Respond-to-a-Questionnaire” Filing:** Unlike other filing requirements (e.g. Forms B, D & F) that provide a specific form/format for providing required information, the CGAD is intended to be a “tell-your-story-in-your-words” filing where you provide detailed narrative and documentation under four key topical areas:
 - Governance framework & structure
 - Policies & practices of the Board & Board committees
 - Policies & practices for directing senior management
 - Oversight of critical risk areas
- 3. A CGAD Filing is More than Just Providing Copies of/Information from Your Governance Documents:** The CGAD also must report on actual practices and your rationale for and the suitability of those practices *for your operations*.

4. A CGAD Filing Should Not Be a “One Size Fits All” Filing: A governance framework, practices and policies that may be appropriate and suitable for one insurer/insurer group based upon its operations and risks may not be for another.

5. What Regulators Will/May Do With the CGAD Filing: The proposed CGAD legislation provides that the regulator will review the CGAD filing to gain and maintain an understanding of the corporate governance framework of the insurer/insurer group. However, the regulator also may (1) request additional information; (2) examine the insurer/insurer group and may retain *at the expense of the insurer/insurer group* 3rd party consultants (including attorneys, accountants and other experts) as necessary to assist the regulator in reviewing the CGAD filing and determining compliance with the CGAD requirements; and (3) under provisions of the Standards to Define Insurers Deemed to Be in Hazardous Condition regulation, issue an order to correct deficiencies in corporate governance practices and to adopt and utilize practices acceptable to the regulator.

- Is your governance structure appropriate for your needs and objectives?
- Do your governance documents accurately say what you want them to say?
- Are your actual practices in accordance with your governance documents?
- Are your governance structure, documents, policies and practices effective and suitable for your operations and risks?

Change takes time! If you have not recently analyzed the appropriateness and effectiveness of your governance structure and practices, *the time to do so is now* and not when the filing deadline is imminent. While the analysis will assist in preparing for the CGAD filing, it will also allow for proactive implementation of procedures that are more closely aligned to “best practices” principles and standards identified by the NAIC as part of its deliberations on CGAD.

For questions on the proposed PA CGAD requirement or assistance in analyzing your governance structure and practices, feel free to contact Fran Roggenbaum at 717.257.7526 or fran.roggenbaum@saul.com.

WHAT YOU SHOULD BE DOING NOW

Learn about all that you must report on in the CGAD filing and ask the following questions:

- Could you provide now rational, logical and meaningful information on all of the CGAD inquiries?

This Alert was written by Frances R. Roggenbaum, a member of the firm's Insurance Practice. Frances can be reached at 717.257.7526 or fran.roggenbaum@saul.com. This publication has been prepared by the Insurance Practice for information purposes only.

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