

## **R590. Insurance, Administration.**

### **R590-284. Corporate Governance Annual Disclosure Rule.**

#### **R590-284-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which authorizes rules to implement Title 31A, Insurance Code, and Section 31A-16b-104, which authorizes rules to implement Title 31A, Chapter 16b, Corporate Governance Annual Disclosure Act.

#### **R590-284-2. Purpose and Scope.**

(1) This rule sets forth the filing procedures and the content requirements for the Corporate Governance Annual Disclosure (CGAD) required by Title 31A, Chapter 16b, Corporate Governance Annual Disclosure Act.

(2) This rule applies to an insurer or insurance group domiciled in Utah.

#### **R590-284-3. Definitions.**

(1) The definitions in Section 31A-1-301 apply to this rule.

(2) "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 includes the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Procurement Officer, Chief Legal Officer, Chief Information Officer, Chief Technology Officer, Chief Revenue Officer, Chief Visionary Officer, or any other "C" level executive.

#### **R590-284-4. Filing Procedures.**

(1) An insurer or insurance group has discretion regarding the appropriate format for providing the information required by these regulations and may 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.

(2)(a) An insurer or insurance group may comply with this rule by referencing any other existing document, for example, an ORSA Summary Report, a Holding Company Form B or F Filing, a Securities and Exchange Commission Proxy Statement, or foreign regulatory reporting requirements, if the document provides information that is comparable to the information described in Section R590-284-5.

(b) An 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.

(3)(a) Each year following the initial filing of the CGAD, an insurer or insurance group shall file an amended version of the previously filed CGAD indicating where any change has been made.

(b) If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

#### **R590-284-5. Contents of the CGAD.**

(1) An insurer or insurance group shall be as descriptive as possible in completing the CGAD and should include any attachment or example document that is used in the governance process because these may provide a means to demonstrate the strengths of the insurer's or insurance group's governance framework and practices.

(2) The CGAD shall describe an insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(a) the insurer's board of directors (Board) and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level or levels at which that oversight occurs, for example, ultimate control level, intermediate holding company, or legal entity, and a description and discussion of the rationale for the current Board size and structure; and

(b) the duties of the Board and each of its significant committees and how they are governed, for example bylaws, charters, or informal mandates, as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

(3) An 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:

(a) how the qualifications, expertise, and experience of each Board member meet the needs of the insurer or insurance group;

(b) how an appropriate amount of independence is maintained on the Board and its significant committees;

(c) the number of meetings held by the Board and its significant committees over the past year, as well as information on director attendance;

(d) how the insurer or insurance group identifies, nominates, and elects members to the Board and its committees including, for example:

(i) whether a nomination committee is in place to identify and select individuals for consideration;

(ii) whether term limits are placed on directors;

(iii) how the election and re-election processes function; and

(iv) whether a Board diversity policy is in place and if so, how it functions; and

(e) 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.

(4) An insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

(a) any process or practice, for example, suitability standards, used to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

(i) identification of each specific position for which suitability standards have been developed and a description of the standards employed;

and

(ii) any change 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;

(b) the insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(i) compliance with laws, rules, and regulations; and

(ii) proactive reporting of any illegal or unethical behavior;

(c) 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:

(i) the general objectives of any significant compensation program;

- (ii) what each program is designed to reward; and
- (iii) how the organization ensures that a compensation program does not encourage and/or reward excessive risk taking, including a discussion of:
  - (A) the Board's role in overseeing management compensation programs and practices;
  - (B) the various elements of compensation awarded in each compensation program and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
  - (C) how each compensation program is related to both company and individual performance over time;
  - (D) whether each compensation program includes risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
  - (E) any clawback provision built into a compensation program to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
  - (F) any other factor 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; and
- (d) the insurer's or insurance group's plans for CEO and Senior Management succession.
- (5)(a) An insurer or insurance group shall describe any process by which the Board, its committees, and Senior Management ensure an appropriate amount of oversight to each critical risk area impacting the insurer's business activities, including a discussion of:
  - (i) how oversight and management responsibilities are delegated between the Board, its committees, and Senior Management;
  - (ii) how the Board is kept informed of the insurer's or insurance group's strategic plans, the associated risks, and steps that Senior Management may take to monitor and manage those risks; and
  - (iii) how reporting responsibilities are organized for each critical risk area.
- (b) 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.
- (c) The description may include, for example, the following critical risk areas of the insurer:
  - (A) risk management processes, such as an ORSA Summary Report pursuant to Title 31A, Chapter 16a, Risk Management and Own Risk and Solvency Assessment Act;
  - (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.

**R590-284-6. Severability.**

If any provision of this rule, R590-284, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: corporate governance disclosure**

**Date of Enactment or Last Substantive Amendment: February 9, 2021**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-16b-104**