**Chapter 705**

**Corporate Governance Annual Disclosure**

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**Section 1. Authority and Purpose**

The Superintendent of Insurance adopts this Rule pursuant to 24-A M.R.S. §§ 212 and 423-G(6), to set forth the required contents and filing procedures for the Corporate Governance Annual Disclosure (CGAD).

**Section 2. Definitions**

1. “Domestic insurance carrier” means an insurance company, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, or nonprofit health plan domiciled in this State.

2. “Filing entity” means a domestic insurance carrier filing a CGAD or a parent entity filing a group-level CGAD on behalf of a domestic insurance carrier.

3. “Insurance group” means the insurance carriers and affiliates included within a domestic insurance carrier’s insurance holding company system as defined in section 222, subsection 2, paragraph C.

4. “Intermediate holding company” means an entity, other than the ultimate controlling person, which exercises control over the management of an insurance group or intermediate insurance group.

5. “Intermediate insurance group” means a unit within an insurance group comprising some, but not all, of the insurance carriers within the group, which the group’s lead state regulator has found to be operationally autonomous and has authorized to file a CGAD separately from other legal entities and intermediate insurance groups within the group.

6. “Senior management” means all corporate officers responsible for reporting information to the Board of Directors (“Board”) at regular intervals or determining the information to be provided to shareholders or regulators. Senior management is presumed to include, without limitation, any executive with a “C-level” title such as 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”), or Chief Visionary Officer (“CVO”).

**Section 3. Filing Procedures**

1. Annually, no later than June 1, each domestic insurance carrier shall file a CGAD in accordance with 24-A M.R.S. §423‑G(2)(A).

A. Except as provided in Paragraph B, the CGAD shall be filed with the Superintendent in compliance with the provisions of this Section and shall contain all information required by Section 4 of this Rule. If a group-level CGAD is filed with the Superintendent, the filing entity shall also provide a copy of the CGAD on request to the chief insurance regulator of the domiciliary state of any insurance carrier within the group.

B. If the CGAD is prepared at the group level, this State is not the group’s lead state, and the Superintendent has determined that the lead state has corporate governance disclosure laws substantially similar to 24-A M.R.S. §423-G and this Rule, a CGAD filed with the lead state in compliance with its legal requirements is deemed to comply with this Rule, as long as the carrier, or the filing entity acting on the carrier’s behalf, provides a copy to the Superintendent on request.

2. The CGAD shall include a signed attestation by the filing entity’s chief executive officer or corporate secretary that to the best of his or her belief and knowledge, the filing entity has implemented the corporate governance practices described therein, and that a copy of the CGAD has been provided to the filing entity’s Board or the appropriate committee thereof.

3. The filing entity shall have discretion to customize the format for reporting the information required by this Rule, so as to provide the most relevant information necessary to permit the Superintendent to gain an understanding of the filing entity’s corporate governance structure, policies, and practices.

4. An insurance group, or a diversified holding company with a domestic insurance subsidiary, shall determine, based on how the group has structured its system of corporate governance, the level or levels of governance to be discussed in the CGAD and whether the CGAD is filed by each insurance carrier within the group, by the ultimate controlling parent, or by an intermediate holding company.

A. The filing entity is encouraged to make the CGAD disclosures at the level:

 (1) At which the insurance carrier’s or group’s risk appetite is determined;

(2) At which the earnings, capital, liquidity, operations, and reputation of the insurance carrier are overseen collectively and at which the supervision of those factors is coordinated and exercised; or

(3) At which legal liability for failure of general corporate governance duties would be placed.

B. The filing entity shall indicate which, if any, of the three criteria in Paragraph A were used to determine the level of reporting. If the filing entity did not use the criteria in Paragraph A, it shall describe the alternative criteria that it did use.

C. The filing entity shall explain any changes from the previous CGAD in the level of reporting or the criteria used to determine the level of reporting.

5. The filing entity may comply with this section by incorporating other existing documents into the CGAD by reference (*e.g.,* ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements) if the documents provide information that is comparable to the information required by Section 4. The filing entity shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed with or available to the Superintendent.

6. Each year following the initial filing of the CGAD, the insurance carrier or 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 in the previous year, the filing should so state.

**Section 4. Contents of Corporate Governance Annual Disclosure**

1. The filing entity 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. For purposes of this section, governance of the filing entity includes governance at any higher level within the holding company system that exercises direct or indirect operational control over the filing entity.

2. The CGAD shall describe the filing entity’s corporate governance framework and structure, including consideration of the following:

A. The Board and the committees that are ultimately responsible for overseeing the domestic insurance carrier and the level(s) at which that oversight occurs (*e.g.,* ultimate control level, intermediate holding company, legal entity). The filing entity shall describe and discuss the rationale for the current Board size and structure;

B. The duties of the Board and each of its significant committees and how they are governed (*e.g.,* bylaws, charters, informal mandates), and 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; and

C. If the filing entity is not the domestic insurance carrier, the relationship between the filing entity’s Board and senior management and the domestic insurance carrier’s board and senior management.

3. The filing entity shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

A. How the qualifications, expertise, and experience of each Board member meet the needs of the filing entity.

B. How an appropriate degree 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, and a record of director attendance.

D. How the filing entity identifies, nominates, and elects members to the Board and its committees. The discussion should include, for example:

(1) Whether a nominating committee is in place to identify and select candidates;

(2) Whether term limits are placed on directors;

(3) How the election and re-election processes function; and

(4) Whether there is a Board diversity policy, and if so, how it functions.

E. The processes for the Board to evaluate its performance and the performance of its committees, and any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).

4. The filing entity shall describe the policies and practices for directing senior management, including a description of the following factors:

A. Any suitability standards and other processes or practices to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

(1) The specific positions for which suitability standards have been developed and a description of the standards employed; and

(2) How the filing entity monitors and evaluates changes in an officer’s or key person’s suitability, and any such changes that the filing entity has identified.

B. The filing entity’s code of business conduct and ethics, including standards for:

(1) Compliance with laws, rules, and regulations; and

(2) Proactive reporting of any illegal or unethical behavior.

C. The filing entity’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 Superintendent 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:

(1) The Board’s role in overseeing management compensation programs and practices;

(2) The various elements of compensation awarded in the compensation programs and how the amount of each element of compensation paid is determined and calculated;

(3) How compensation programs are related to both company and individual performance over time;

(4) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(5) 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;

(6) Any other factors relevant in understanding how the filing entity monitors its compensation policies to determine whether its employee incentives are meeting its risk management objectives.

D. The filing entity’s plans for CEO and senior management succession.

5. The filing entity 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 insurance carrier’s business activities, including a discussion of:

A. How oversight and management responsibilities are delegated between the Board, its committees and senior management;

B. How the Board is kept informed of the insurance carrier’s strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;

C. How reporting responsibilities are organized for each critical risk area. The description should allow the Superintendent 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 insurance carrier:

(1) Risk management processes. If the filing entity conducts an Own Risk and Solvency Assessment (ORSA), it may incorporate by reference the ORSA Summary Report filed under 24-A M.R.S. §§ 222(8)(B-3) or 423-F, or the substantially similar law of another state;

(2) Actuarial function;

(3) Investment decision-making processes;

(4) Reinsurance decision-making processes;

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

(6) Compliance function;

(7) Financial reporting / internal auditing; and

(8) Market conduct decision-making processes.

**Section 5. Severability**

If any provision of this Rule, or the application thereof to any person or circumstance, is held invalid, that determination shall not affect other provisions or applications of this Rule that can be given effect without the invalid provision or application, and to that end the provisions of this Rule are severable.

**Section 6. Effective Date**

This rule is effective November 6, 2019 (filing 2019-193). The initial CGAD filings by domestic insurance carriers are due June 1, 2020.