

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE**

**CHAPTER 0780-01-35
CORPORATE GOVERNANCE ANNUAL DISCLOSURE**

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0780-01-35-.01 AUTHORITY.

This chapter is promulgated pursuant to the authority granted by T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.02 PURPOSE.

The purpose of this chapter 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 the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.03 DEFINITIONS.

- (1) “Commissioner” means the Commissioner of the Tennessee Department of Commerce & Insurance.
- (2) “Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in T.C.A. Title 56, chapter 11, part 1.
- (3) “Insurer” shall have the same meaning as “insurance company” as set forth in § 56-1-102, 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.
- (4) “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.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.04 FILING PROCEDURES.

- (1) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8, shall submit to the Commissioner a CGAD in accordance with the following:
 - (a) All insurers or insurance groups, except those that fall within the scope of subparagraph (b), shall file a CGAD that contains the information described in Rule 0780-01-35-.05.
 - (b) An insurer or insurer group who meets the requirements of 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-906(c)), shall file a CGAD that contains the information described in Rule 0780-01-35-.06. For the purposes of this Rule, “nominal compensation” is defined as where 75% of the voting directors on the insurer or insurance group’s Board receive direct compensation of \$10,000 or less per year and indirect compensation and benefits of \$50,000 or less per year, exclusive of per diem and lodging travel expenses.
- (2) The CGAD must include a signature of the insurer’s or insurance group’s CEO or corporate secretary attesting to the best of the 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 (hereinafter “Board”) or the appropriate committee thereof.
- (3) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations 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.
- (4) For the 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:
 - (a) At the level at which the insurer’s or insurance group’s risk appetite is determined;
 - (b) 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
 - (c) At the level at which legal liability for the 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 the level of reporting.
- (5) Notwithstanding paragraph (1) of this rule, and as outlined in 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-904), 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.

(Rule 0780-01-35-.04, continued)

- (6) An insurer or insurance group may comply with this chapter 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 Rule 0780-01-35-.05 or Rule 0780-01-35-.06, as applicable. 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 with or available to the Commissioner.
- (7) 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.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.05 CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE.

- (1) 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.
- (2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
 - (a) 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., the 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
 - (b) 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.
- (3) 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:
 - (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. The discussion should include, for example:
 1. Whether a nomination committee is in place to identify and select individuals for consideration;

(Rule 0780-01-35-.05, continued)

2. Whether term limits are placed on directors;
 3. How the election and re-election processes function; and
 4. Whether a Board diversity policy is in place and, if so, how it functions.
- (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 that have been put in place).
- (4) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:
- (a) 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:
1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
 2. 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.
- (b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
1. Compliance with laws, rules, and regulations; and
 2. 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 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:
1. The Board's role in overseeing management compensation programs and practices;
 2. 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;
 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; and

(Rule 0780-01-35-.05, continued)

6. 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.
- (d) The insurer's or insurance group's plans for CEO and Senior Management succession.
- (5) 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:
 - (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 insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks; and
 - (c) 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:
 1. Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report filed pursuant to T.C.A. Title 56, Chapter 11, Part 2);
 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.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.06 CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE FOR CERTAIN NONPROFIT AND QUALIFIED INSURERS.

- (1) The CGAD should describe the insurer or insurance group's corporate governance framework and structure and include an overview and description of the Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occur and the role of the chairman of the Board within the organization. The CGAD description of the Board should include biographical information for each Board member.
- (2) The CGAD should include a narrative and description of the policies and practices of the Board, including discussion of the duties of any advisors utilized by the Board, and a

(Rule 0780-01-35-.06, continued)

description of the processes in place for the Board to evaluate its performance and the performance of its committees.

- (3) The CGAD should include a description of the interaction between the Board and senior management, which include:
 - (a) A description of the role of the CEO and other senior management that makes periodic reports to the Board;
 - (b) A description of how the Board reviews significant financial management decisions by senior management; and
 - (c) A description of how the Board provides periodic feedback and instruction to senior management.
- (4) The CGAD should include a description of the processes by which the Board ensures an appropriate amount of oversight to critical risk areas impacting the insurer's business activities, including a discussion of:
 - (a) Risk management processes;
 - (b) Actuarial information;
 - (c) Investment decision-making processes;
 - (d) Reinsurance decision-making processes;
 - (e) Business strategy;
 - (f) Compliance function;
 - (g) Financial reporting/internal auditing; and
 - (h) Market conduct decision-making processes.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.

0780-01-35-.07 SEVERABILITY.

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

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8. **Administrative History:** Original rules filed August 20, 2018; effective November 18, 2018.