

NAIC Corporate Governance Disclosure Model Act

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Bill Goddard

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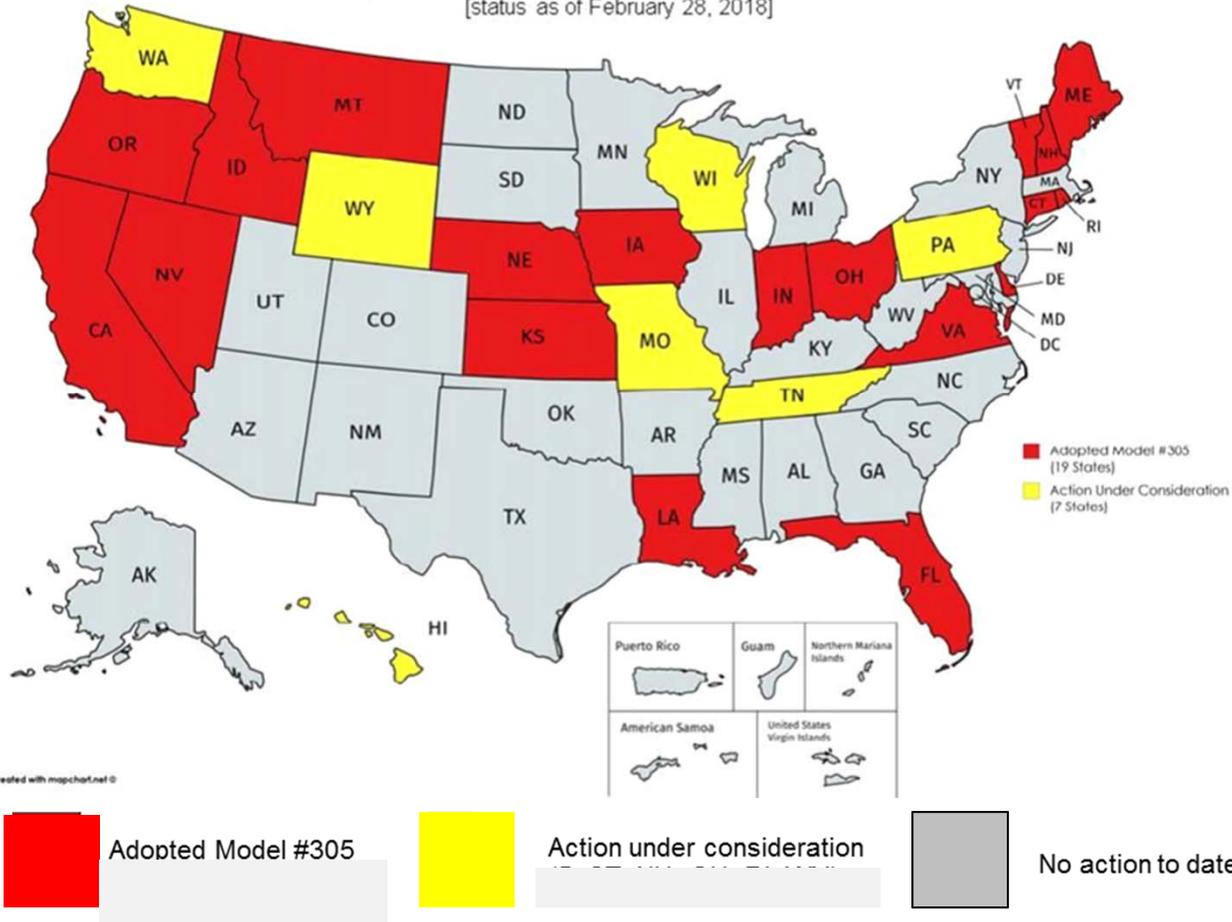
NAIC Corporate Governance Annual Disclosure Model Act

Coming to a state near you

- The Corporate Governance Annual Disclosure Model Act and Model Regulation are being rolled out rapidly
- Model Act adopted in 19 states with six more under consideration as of February 28, 2018
 - CA, CT, DE, FL, IN, IA, ID, KS, LA, ME, MT, NE, NH, NV, OH, OR, RI, VA, and VT have enacted
 - HI, MO, PA, TN, WA, WI, and WY are close
- Accreditation Standard in 2020

NAIC Corporate Governance Annual Disclosure Model Act

[status as of February 28, 2018]



Disclosure Process

- Purpose of Act is to “Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group’s internal operations and proprietary and trade secret information.”
- Act allows Commissioner to “upon request, share documents, materials or other Governance-related information including the confidential and privileged documents, materials or information . . ., including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college . . ., with the NAIC, and with third party consultants pursuant to Section 7.”
- Section 7 provides that the Commissioner “may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the CGAD.”

Disclosure Process

- “The CGAD must include a signature of the insurer or insurance group’s chief executive officer or corporate secretary.”
- “An insurer not required to submit a CGAD under this subsection shall do so upon the Commissioner’s request.”
- Insurer can make disclosure at one of three levels: ultimate controlling parent, intermediate holding company, or individual insurer, but
- “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.”

Disclosure Discretion

- Act appears to provide discretion: “The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD shall contain the material information necessary to permit the Commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices.”
- Regulation does the work: “the CGAD shall be prepared consistent with the Corporate Governance Annual Disclosure Model Regulation.”

Required Disclosures

- Policies and practices of the most senior governing entity and significant committees thereof
 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; and
 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).

Required Disclosures

- Policies and practices for directing senior management
 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;
 2. The insurer's or insurance group's code of business conduct and ethics;
 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; and
 4. The insurer's or insurance group's plans for CEO and senior management succession.

Required Disclosures

- Ensure an appropriate amount of oversight to critical risk areas affecting the insurer's business
 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; and
 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.

Cross Reference Other Filings

Reference (and attach) other filings:

- ORSA Summary Report
- Insurance Holding Company Registration Statement (Form B)
- Form F Enterprise Risk Report
- SEC Proxy Statements (14A)

Approaches to Response

Ways to address CGAD:

- Single, comprehensive report with lead state
- Expand SEC Proxy and 10-K disclosure
- Domiciliary insurer only
- Request relief from non-lead state
- Do nothing until Model Act is adopted

Proposed Disclosure Requirements: Fed

- Consolidated Group approach
- Two groups of regulatees: SLHCs and SIFIs
- Insurers with Savings & Loan subs
 - “Building Block” approach to capital with each subsidiary reporting on its own basis of accounting and then aggregated
 - Review of management practices that are not consistent with safety-and-soundness or consumer compliance risk management principles

Proposed Disclosure Requirements: Fed

- Systemically important institutions
 - Consolidated capital approach
 - Risk Committee, Chief Risk Officer
 - Review of internal controls and corporate governance
 - Cash flow projections
 - Contingency planning
 - Collateral and liquidity monitoring

Goals of Disclosure

- Solvency preservation
 - Understanding financial risk and its relationship to capital
 - Giving regulators the tools needed to evaluate solvency
- Consumer protection
 - Disclosing some risks to consumers

Flex points

- Risk perception
- Group v. Entity
- Systemic risks
- Effectiveness of controls
- Effectiveness of corporate governance
- How much information

Ethical Focus

- Existing thinking
 - Materiality
- Where do we go from here?
 - Does a risk increase the insurer's risk of insolvency on current surplus?
 - Are corporate governance procedures adequate to measure and mitigate risks?
 - Are regulators getting the information they need to evaluate solvency?
 - Will we have disclosure or dialog?

Discussion / Q & A



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William D. Goddard



242 Trumbull Street
Hartford, CT 06103
T: (860) 275-0117
wgoddard@daypitney.com

Practice Areas:

- Bankruptcy and Restructuring
- Insurance and Reinsurance
- Insurance and Reinsurance Disputes
- Insurance Regulation and Transactions

Education:

- University of Connecticut School of Law, J.D.
- Dartmouth College, M.B.A.
- Dartmouth College, B.A.

Admissions:

- State of Connecticut
- State of New York
- U.S. District Court, District of Connecticut
- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. Court of Appeals for the Second Circuit

Bill Goddard concentrates on insurance, reinsurance and insurance insolvency matters. His practice includes representing creditors, regulators and insurance companies in solving complex problems of financial distress; statutory interpretation; and coverage. Bill is also experienced in insurance mergers and acquisitions as well as Native American gaming.

Prior to attending law school, Bill was an investment banker at JP Morgan & Co. and at Marsh & McLennan Securities Corporation, focusing on mergers and acquisitions within the insurance industry. He also provided financial advice to companies experiencing financial distress. His representative transactions included the conservation of a national workers' compensation carrier, the sale of a specialty casualty insurance company in runoff, the restructuring of a specialty workers' compensation carrier and the purchase of a minority interest in an Internet employee benefits platform. Bill also co-founded, developed and sold a broadcasting company consisting of 19 radio stations located in New York and New England.

Bill is the author of several law journal articles on insurance regulation and insolvency. He co-teaches courses in Insurance Litigation and Insurance Solvency each year at the University of Connecticut School of Law. He is a member of the Society of Financial Examiners (Associate) and the International Association of Insurance Receivers. Prior to entering practice, Bill served as a law clerk to the Hon. Jon O. Newman, United States Court of Appeals for the Second Circuit.

Representative Matters

- Represented ad hoc creditors' committees in the FGIC and Ambac insolvencies
- Represented regulators in the ACA Financial Guaranty insolvency
- Represented financial guarantor creditors in a very large Connecticut Native American gaming insolvency
- Represented U.S. insurance company in simultaneous U.S. federal and state proceedings and a Bermuda insolvency proceeding involving reinsurance collateral
- Regularly assist creditors in interpreting professional liability policies in bankruptcy situations
- Advised a large life insurance company on the regulatory aspects of its acquisition of a California dental insurer
- Assisted multiple clients with multi-state producer licensing matters