

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
11 NYCRR 90
(INSURANCE REGULATION 215)**

CORPORATE GOVERNANCE

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 110, 301, 309, 316, 1202, 1209, 1215, 1218, 1501, 1504(c), and Articles 12, 15, 16, and 17 of the Insurance Law, do hereby promulgate a new Part 90 of Title 11 of the Official Compilation of Codes, Rules, and Regulations (Insurance Regulation 215), to take effect 30 days after publication of Notice of Adoption in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

Section 90.1 Definitions.

As used in this Part, the following terms shall have the meaning ascribed to them:

(a) *Article 16 system* means an authorized domestic insurer registered or required to register under Insurance Law article 16 and all of the insurer's subsidiaries.

(b) *Article 17 system* means a parent corporation registered or required to register under Insurance Law article 17 and all of the parent corporation's subsidiaries.

(c) *Corporate governance framework* means the structures, processes, information, and relationships used for the oversight, direction, control, and management of an insurer or system and for ensuring compliance with legal and regulatory requirements.

(d) *Holding company system* has the meaning set forth in Insurance Law section 1501(a)(6).

(e) *Insurer* means an insurer authorized to do an insurance business in this State, including a domestic corporation organized pursuant to Insurance Law article 43.

(f) *Key person* means any individual who may exercise discretion over, or have a material effect or significant influence on, an insurer's or system's business plans, operations, or funds.

(g) *Most senior governing entity* means the level at which:

- (1) the insurer's or system's risk appetite is determined;
- (2) 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
- (3) legal responsibility for failure to oversee or supervise general corporate governance duties is placed.

(h) *Senior management* means any corporate officer responsible for reporting information to the board of directors, or other governing body, at regular intervals, or to regulators, and shall include 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 compliance officer, chief auditor, or any other “C”-level executive.

(i) *System* means a holding company system, article 16 system, or article 17 system.

Section 90.2 Corporate governance framework.

An insurer shall adopt a corporate governance framework that shall be appropriate for the nature, scale, and complexity of the insurer. An insurer may satisfy this section if it is a member of a system and the system has a corporate governance framework.

Section 90.3 Corporate governance annual disclosure.

(a)(1) An insurer shall submit electronically to the superintendent by December 1, 2020 a corporate governance annual disclosure applicable to the insurer and the holding company system, article 16 system, or article 17 system of which it is a member. The insurer also shall submit to the superintendent one hard copy of the corporate governance annual disclosure in 2020. Starting in 2021, the insurer shall file by June 1 of each year an amended version of its previously submitted corporate governance annual disclosure indicating in the disclosure, using tracked changes, where the insurer made changes. The insurer also shall file a copy of the amended disclosure without any tracked changes shown. If the insurer did not make any changes, then the insurer shall file with the superintendent the corporate governance annual disclosure filed with the superintendent the previous year and shall state that the insurer did not make any changes. An insurer shall maintain and make available documentation and supporting information upon examination or upon the superintendent’s request.

(2) An insurer may comply with paragraph (1) of this subdivision by submitting to the superintendent the most recent and substantially similar corporate governance annual disclosure or disclosures provided by the insurer or another member of the insurer’s holding company system, article 16 system, or article 17 system to the head insurance regulator of another state or to a supervisor or regulator of a foreign jurisdiction, if the corporate governance disclosure or disclosures provide information that is comparable to the information described in this section. A report in a language other than English shall be accompanied by a certified translation of the report into English.

(3) An insurer shall make the corporate governance annual disclosure at the level at which: (i) the insurer’s or system’s risk appetite is determined; (ii) the insurer’s earnings, capital, liquidity, operations, and reputation are overseen collectively and at which the supervision of these factors is coordinated and exercised; or (iii) legal responsibility for failure of general corporate governance duties would be placed. The insurer shall indicate in the corporate governance annual disclosure which of the criteria set forth in subparagraphs (i) through (iii) of this paragraph were used to determine the level of disclosure and explain any subsequent changes in the level of disclosure.

(4) The corporate governance annual disclosure shall describe the corporate governance framework, including a description of:

(i) the board of directors, or other governing body, and various committees thereof, ultimately responsible for overseeing the insurer or system, and the level or levels at which that oversight occurs;

(ii) the rationale for the current size and structure of the board of directors or other governing body;

(iii) the duties of the board of directors, or other governing body, and of each of its significant committees, and the way in which they are governed;

(iv) the way in which the board of directors', or other governing body's, leadership is structured, including a discussion of the roles of chief executive officer and chairperson of the board of directors, or other governing body;

(v) the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(a) the way in which the qualifications, expertise, and experience of each member of the board of directors, or other governing body, meet the needs of the insurer or system;

(b) the way in which an appropriate amount of independence is maintained on the board of directors, or other governing body, and its significant committees;

(c) the number of meetings held by the board of directors, or other governing body, and its significant committees over the past year, as well as information about attendance at the meetings;

(d) the way in which the insurer or system identifies, nominates, and elects members to the board of directors, or other governing body, and its committees, including whether a nomination committee is in place to identify and select individuals for consideration, whether term limits are placed on members of the board of directors or other governing body, how the election and re-election processes function, whether there is a diversity policy in place and if so, the way in which the diversity policy functions;

(e) the processes in place for the board of directors, or other governing body, to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any training programs that have been put in place;

(f) the way in which the insurer or system ensures that members of the board of directors, or other governing body, comply with the duty to act in good faith and in a manner that the members believe to be in the best interests of the insurer or system;

(g) the way in which the insurer or system ensures that members of the board of directors, or other governing body, comply with the duty to discharge their duties with the care that a person in a like position reasonably would believe to be appropriate under similar circumstances;

(h) the reporting or information system or controls that the insurer or system has implemented to enable members of the board of directors, or other governing body, to carry out their duties; and

(i) the way in which the insurer or system, having implemented a reporting or information system or controls, ensures that the members of the board of directors, or other governing body, do not consciously fail to monitor or oversee the insurer's or system's operations thereby disabling itself from being informed of risks or problems requiring their attention;

(vi) the policies and practices for directing senior management, including a description of the following factors:

(a) any 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, identification of the specific positions for which suitability standards have been developed and a description of the standards employed, and any changes in an officer's or key person's suitability as outlined by the insurer's or system's standards and procedures to monitor and evaluate the changes;

(b) the insurer's or system's code of business conduct and ethics, the discussion of which considers compliance with laws, rules, and regulations, and proactive reporting of any illegal or unethical behavior;

(c) the insurer's or system'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 the way in which the insurer or system ensures that compensation programs do not encourage or reward excessive risk taking. Elements that shall be discussed include:

(1) the role of the board of directors, or other governing body, in overseeing management compensation programs and practices;

(2) the various elements of compensation awarded in the insurer's or system's compensation programs and the way in which the insurer or system determines and calculates the amount of each element of compensation paid;

(3) the way in which compensation programs are related to both business entity and individual performance over time;

(4) whether compensation programs include risk adjustments and the way in which those adjustments are incorporated into the programs for employees at different levels;

(5) any clawback provisions built into the programs to receive awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(6) any other factors relevant in understanding how the insurer or system monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and

(d) the insurer's or system's plans for senior management succession; and

(vii) the processes by which the board of directors, or other governing body, its committees, and senior management ensure an appropriate amount of oversight of the critical risk areas affecting the insurer's business activities, including a discussion of the way in which:

(a) oversight and management responsibilities are delegated between the board of directors, or other governing body, its committees, and senior management;

(b) the board of directors, or other governing body, is kept informed of the insurer's or system's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(c) reporting responsibilities are organized for each critical risk area. The description shall specify the frequency with which information on each critical risk area is reported to and reviewed by senior management and the board of directors, or other governing body. This description shall include the following critical risk areas:

- (1) risk management processes;
- (2) actuarial function;
- (3) investment decision-making processes;
- (4) reinsurance decision-making processes;
- (5) business strategy and financial decision-making processes;
- (6) compliance function;
- (7) financial reporting and internal auditing; and
- (8) market conduct decision-making processes.

(b) An insurer may comply with this section by referencing other existing documents in the corporate governance annual disclosure if the referenced documents provide information that is comparable to the information described in paragraph (3) of subdivision (a) of this section. The insurer shall clearly reference the location of the relevant document within the corporate governance annual disclosure and shall attach the referenced document if it has not been filed with the superintendent during the prior 12 months or is otherwise not available to the superintendent.

(c) A corporate governance annual disclosure shall include the signature of the chief executive officer or corporate secretary, attesting to the best of his or her knowledge and belief that the insurer or its system has implemented the corporate governance framework, and that a copy of the corporate governance annual disclosure has been provided to the insurer's or system's board of directors or the appropriate committee thereof, or if there is no board of directors, then to the insurer's or system's governing body.

Section 90.4 Exemptions from electronic filing requirements.

(a) An insurer required to make an electronic filing pursuant to this Part may apply to the superintendent for an exemption from the requirement that the filing be electronic by submitting a written request to the superintendent for approval at least 30 days before the insurer is due to submit to the superintendent the particular filing that is the subject of the request.

(b) The request for an exemption shall:

(1) set forth the insurer's NAIC number;

(2) identify the specific filing as to which the insurer is applying for the exemption;

(3) specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request; and

(4) specify whether the request for an exemption extends to future filings, in addition to the specific filing identified in paragraph (2) of this subdivision.

(c) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.

(d) The insurer shall be exempt from the electronic filing requirement upon the superintendent's written determination so exempting the insurer, where the determination specifies the basis upon which the superintendent is granting or denying the request and to which filings the exemption applies.

(e) If the superintendent approves an insurer's request for an exemption from the electronic filing requirement, then the insurer shall make a physical filing in a form acceptable to the superintendent.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the new Part 90 to Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 215), entitled “Corporate Governance,” signed by me on July 31, 2020, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 110, 301, 309, 316, 1202, 1209, 1215, 1218, 1501, 1504(c), and Articles 12, 15, 16, and 17 of the Insurance Law, to take effect 30 days after the date of publication of the Notice of Adoption in the New York State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on March 18, 2020. No other publication or prior notice is required by statute.

Linda A. Lacewell
Superintendent of Financial Services

Date: July 31, 2020