

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

INSURANCE

HOLDING COMPANIES

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These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of insurance and financial services by sections 210 and 1361 of the insurance code of 1956, 1956 PA 218, MCL 500.210 and 500.1361, and Executive Reorganization Order No. 2013-1, MCL 550.991)

R 500.71, R 500.72, R 500.73, R 500.74, R 500.75, R 500.76, R 500.77, R 500.78, R 500.79, R 500.80, R 500.81, R 500.82, R 500.83, R 500.84, R 500.85, R 500.86, R 500.87, R 500.88, R 500.89, R 500.90, and R 500.91 are added to the Michigan Administrative Code, as follows:

R 500.71 Definitions.

Rule 1. (1) As used in these rules:

(a) “Act” means the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(b) “Chapter 13” means chapter 13 of the act, MCL 500.1301 to 500.1379.

(c) “Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and another individual performing functions corresponding to those performed by the individuals described in this subdivision without regard to title.

(d) “Ultimate controlling person” means the person that is not controlled by another person.

(2) A term defined in the act has the same meaning when used in these rules, unless a more specific definition of a term is provided under chapter 13, in which case the term defined in chapter 13 has the same meaning when used in these rules. A term not defined in the act has meaning according to industry usage when used in these rules.

R 500.72 Purpose.

Rule 2. These rules set forth requirements and procedures that the director considers necessary to carry out chapter 13. These rules are necessary and appropriate in the public interest and for the protection of the policyholders in this state.

R 500.73 Severability.

Rule 3. If a provision of these rules, or the application of these rules to a person or circumstance, is held invalid by a court of competent jurisdiction, that determination does not affect other provisions or applications of these rules that can be given effect without

the invalid provision or application, and to that end, the provisions of these rules are severable.

R 500.74 Forms; general requirements.

Rule 4. (1) The department shall make available forms, titled Form A, Form B, Form C, Form D, and Form F, that must be used to prepare the statements required under chapter 13. The forms are not intended as blank forms to fill in. The statements filed must contain the numbers and captions of all items. The text of the items may be omitted, as long as the answers to the items clearly indicate the scope and coverage of each item. All instructions, whether appearing under the items of the form or elsewhere in the form, must be omitted. Unless expressly provided otherwise, if an item is inapplicable or the answer is in the negative, an appropriate statement to that effect must be made.

(2) One complete copy of each statement, including exhibits and all other papers and documents filed as part of the statement, must be filed with the director by personal delivery or mail addressed to: Director of the Department of Insurance and Financial Services, P.O. Box 30220, Lansing, Michigan 48909, or 530 West Allegan Street, 7th Floor, Lansing, Michigan 48933, Attention: Office of Insurance Financial and Market Regulation. The copy must be signed in the manner prescribed on the form or otherwise prescribed by the department. If an individual or group of individuals are ultimate controlling persons, the individuals shall sign the Form A, Form B, Form C, and Form F statements. The director shall reject a copy that is not properly signed until it is conformed. If the signature of a person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority must be filed with the statement.

(3) Statements must be prepared electronically. Statements must be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories must be designated to make them clearly distinguishable on photocopies. Statements must be in the English language and monetary values must be stated in United States currency. If an exhibit or other paper or document filed with the statement is in a language other than English, it must be accompanied by a translation into the English language and a monetary value shown in a foreign currency must be converted into United States currency, unless the director allows the monetary value to be shown in a foreign currency.

R 500.75 Forms; incorporation of information by reference; summaries and omissions.

Rule 5. (1) Information required by an item of Form A, Form B, Form D, or Form F may be incorporated by reference in an answer or partial answer to another item. Information contained in a financial statement, annual report, proxy statement, statement filed with a governmental authority, or another document may be incorporated by reference in an answer or partial answer to an item of Form A, Form B, Form D, or Form F, as long as the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the director that were filed within 3 years are not required to be attached as exhibits. References to information contained in exhibits or in documents already on file must clearly identify the material and specifically indicate that the material is incorporated by

reference in the answer to the item. Material must not be incorporated by reference if the incorporation renders the statement incomplete, unclear, or confusing.

(2) If an item requires a summary or outline of the provisions of a document, only a brief statement must be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of an exhibit or document currently on file with the director that was filed within 3 years and may be qualified in its entirety by the reference. If 2 or more documents that must be filed as exhibits are substantially identical in all material respects, except as to the parties, the dates of execution, or other details, a copy of only 1 of the documents must be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents that have a copy filed.

R 500.76 Forms; information unknown or unavailable; extension.

Rule 6. (1) If it is impractical to furnish any required information, document, or report when it must be filed, a separate document must be filed with the director that does all of the following:

- (a) Identifies the information, document, or report in question.
- (b) States why filing the information, document, or report when required is impractical.
- (c) Requests an extension of time for filing the information, document, or report to a specified date.

(2) The request in subrule (1)(c) of this rule is considered granted unless the director denies the request within 60 days after receipt of the request.

R 500.77 Forms; additional information and exhibits.

Rule 7. In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, and Form F, the director may request additional material information as necessary to make the information contained in the form not misleading. Exhibits may be filed in addition to those expressly required by the statement. The exhibit must clearly indicate the subject matter that it refers to. Changes to Form A, Form B, Form C, Form D, or Form F must include on the top of the cover page the phrase: "Change No. [insert number] to" and indicate the date of the change, not the date of the original filing.

R 500.78 Subsidiaries of domestic insurers.

Rule 8. The authority to invest in subsidiaries under section 1341a of the act, MCL 500.1341a, is in addition to any authority to invest in subsidiaries contained in another provision of the act.

R 500.79 Acquisition of control; statement filing; Form A.

Rule 9. A person required to file a statement under section 1311 of the act, MCL 500.1311, shall furnish the required information on Form A.

R 500.80 Amendments to Form A.

Rule 10. An applicant required to file Form A shall promptly advise the director of changes in the information furnished on Form A arising after the date the information was furnished but before the director's disposition of the application.

R 500.81 Acquisition of certain “domestic insurers”; Form A.

Rule 11. (1) If the person being acquired is determined to be a domestic insurer solely because of the provisions of section 1311(4) of the act, MCL 500.1311, the name of the domestic insurer on the cover page must be indicated as follows:

“ABC Insurance Company, a subsidiary of XYZ Holding Company.”

(2) If a domestic insurer described section 1311(4) of the act, MCL 500.1311, is being acquired, a reference to “the insurer” contained in Form A refers to both the domestic subsidiary insurer and the person being acquired.

R 500.82 Annual registration of insurers; statement filing; Form B.

Rule 12. An insurer required to file an annual registration statement under section 1324 of the act, MCL 500.1324, shall furnish the required information on Form B by May 1 of each year for the immediately preceding calendar year, unless an extension is granted by the director under section 1324 of the act, MCL 500.1324.

R 500.83 Summary of changes to registration; statement filing; Form C.

Rule 13. An insurer required to file an annual registration statement under section 1324 of the act, MCL 500.1324, shall furnish the required information on a summary of changes to registration statement, Form C, by May 1 of each year for the immediately preceding calendar year, unless an extension is granted by the director under section 1324 of the act, MCL 500.1324.

R 500.84 Amendments to Form B.

Rule 14. (1) An amendment to Form B must be filed within 15 days after the end of a month in which there is a material change to the information provided in the annual registration statement.

(2) Amendments must be filed in the Form B format with only those items that are being amended reported. Each amendment must include “Amendment No. [insert number] to Form B for [insert year]” at the top of the cover page and indicate the date of the change, not the date of the original filings.

R 500.85 Alternative and consolidated registrations.

Rule 15. (1) An authorized insurer may file a registration statement on behalf of an affiliated insurer or insurers that are required to register under section 1324 of the act, MCL 500.1324. A registration statement may include information not required by the act regarding an insurer in the insurance holding company system, even if the insurer is not authorized to do business in this state. Instead of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report that it must file in its state of domicile if both of the following are met:

(a) The statement or report contains substantially similar information required to be furnished on Form B.

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact, and an insurer filing a registration statement or report instead of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts that substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the director, an unauthorized insurer may follow any of the procedures that could be done by an authorized insurer under subrule (1) of this rule.

(4) An insurer may take advantage of the provisions of section 1329 or 1330 of the act, MCL 500.1329 and 500.1330, without obtaining the prior approval of the director. The director reserves the right to require individual filings if the director finds the filings necessary in the interest of clarity, ease of administration, or the public good.

#### R 500.86 Disclaimer of affiliation and termination of registration.

Rule 16. (1) A petition for disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another subject person must contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject person.

(b) With respect to the person whose control is denied and all affiliates of that person, the number and percentage of shares of the subject person's voting securities that are held of record or known to be beneficially owned, and the number of shares there is a right to acquire, directly or indirectly.

(c) All material relationships and bases for affiliation between the subject person and the person whose control is denied and all affiliates of that person.

(d) A statement explaining why the person must not be considered to control the subject person.

(2) The burden of proof for establishing that an affiliation does not exist rests with the petitioner and is subject to the director's approval.

#### R 500.87 Transactions subject to prior notice; notice filing; Form D.

Rule 17. (1) An insurer required to give notice of a proposed transaction pursuant to section 1341 of the act, MCL 500.1341, shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services must, at a minimum, do all of the following, as applicable:

(a) Identify the person providing services and the nature of the services.

(b) Set forth the methods to allocate costs.

(c) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the NAIC Accounting Practices and Procedures Manual.

(d) Prohibit advancement of money by the insurer to the affiliate except to pay for services defined in the agreement.

(e) State that the insurer shall maintain oversight for functions provided to the insurer by the affiliate and that the insurer shall monitor services annually for quality assurance.

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement.

- (g) Specify that all books and records of the insurer are and remain the property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer.
- (h) State that all money and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer.
- (i) Include standards for termination of the agreement with and without cause.
- (j) Include provisions for indemnification of the insurer if there is gross negligence or willful misconduct on the part of the affiliate providing the services.
- (k) Specify that if the insurer is placed in receivership or seized by the director under chapter 81 of the act, MCL 500.8101 to 500.8160, all of the following apply:
  - (i) All of the rights of the insurer under the agreement extend to the receiver or director.
  - (ii) All books and records must immediately be made available to the receiver or the director and must be turned over to the receiver or director immediately upon the receiver's or director's request.
- (l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to chapter 81 of the act, MCL 500.8101 to 500.8159.
- (m) Specify that the affiliate shall continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the director under chapter 81 of the act, MCL 500.8101 to 500.8159, and shall make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

R 500.88 Enterprise risk report; Form F.

Rule 18. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to section 1325a of the act, MCL 500.1325a, shall furnish the required information on Form F.

R 500.89 Group capital calculation.

Rule 19. (1) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

- (a) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000.00.
- (b) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.
- (c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure.
- (d) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation.
- (e) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept instead of the group capital calculation a limited group capital filing if both of the following apply:

(a) The insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000.00.

(b) All of the following additional criteria are met:

(i) Has no insurers within its holding company structure that are domiciled outside of the United States or 1 of its territories.

(ii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework.

(iii) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subrule (1) or (2) of this rule, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if any of the following criteria are met:

(a) An insurer within the insurance holding company system is in a risk-based capital action level event, as prescribed by the director in an order issued under section 438 of the act, MCL 500.438, or otherwise prescribed by the director, or a similar standard for a non-United States insurer.

(b) An insurer within the insurance holding company system meets 1 or more of the standards of an insurer determined to be in hazardous financial condition as established under section 436a of the act, MCL 500.436a.

(c) An insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-United States jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria:

(a) With respect to an exemption described under section 1325b(3)(d) of the act, MCL 500.1325b, either of the following:

(i) The non-United States jurisdiction recognizes the United States state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in that jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program are subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and shall not be subject to group supervision, including worldwide group governance,

solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United States jurisdiction.

(ii) Where no United States insurance groups operate in the non-United States jurisdiction, that non-United States jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This serves as the documentation otherwise required in paragraph (i) of this subdivision.

(b) The non-United States jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, must be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and that jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-United States jurisdictions that recognize and accept the group capital calculation must be published through the NAIC Committee Process as follows:

(a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list must clarify those situations in which a jurisdiction is exempted from filing under section 1325b(3)(d) of the act, MCL 500.1325b. To assist with a determination under section 1325b(4) of the act, MCL 500.1325b, the list must also identify whether a jurisdiction that is exempted under either sections 1325b(3)(c) and (d) of the act, MCL 500.1325b, requires a group capital filing for a United States based insurance group's operations in that non-United States jurisdiction.

(b) For a non-United States jurisdiction where no United States insurance groups operate, the confirmation provided to meet the requirement of subrule (4)(a)(ii) of this rule serves as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to section 1325b(3)(d) of the act, MCL 500.1325b, that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-United States jurisdiction no longer meets 1 or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-United States jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

R 500.90 Extraordinary dividends and reporting of all dividends.

Rule 20. (1) Requests for approval of extraordinary dividends or another extraordinary distribution to shareholders must include all of the following:



- (a) The amount of the proposed dividend.
  - (b) The date established for payment of the dividend.
  - (c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation.
  - (d) A copy of the calculations determining whether the proposed dividend is extraordinary. The work paper must include all of the following information:
    - (i) The amounts, dates, and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurers own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.
    - (ii) Surplus as regards policyholders, which is the total capital and surplus, as of the preceding December 31.
    - (iii) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31.
    - (iv) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31 and the 2 preceding 12-month periods.
    - (v) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding 2 calendar years.
  - (e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the director and the end of the month preceding the month in which the request for dividend approval is submitted.
  - (f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- (2) Subject to section 1343(4) of the act, MCL 500.1343, a domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the director within 5 business days after declaring the dividend and not less than 10 business days before the payment.
- (3) Subject to section 1343(5) of the act, MCL 500.1343, an insurer subject to registration under section 1324 of the act, MCL 500.1324, shall not pay an extraordinary dividend or make another extraordinary distribution to its shareholders until 30 days after the director has received notice of the declaration and has not disapproved or has approved the payment within that period.
- (4) All filings pursuant to section 1343 of the act, MCL 500.1343, that either report the declaration of all dividends before payment or request approval of an extraordinary dividend must be directed to the attention of the Office of Insurance Financial and Market Regulation.

#### R 500.91 Adequacy of Surplus.

Rule 21. The factors set forth in sections 403, 436a, 1341, 1342, and 1343 of the act, MCL 500.403, 500.436a, 500.1341, 500.1342, and 500.1343, are not an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling. Instead, the director considers the net effect of all of these

factors, plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the director considers the extent to which each of these factors varies from company to company, and in determining the quality and liquidity of investments in subsidiaries, the director considers the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments warrant.