

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS
28 TEX. ADMIN. CODE §§7.201 - 7.205, 7.209, 7.210, AND §§7.211 - 7.214

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214, concerning insurance holding company systems. The amendments and new sections are adopted with changes to the proposed text published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10100 and 10264) and will be republished.

The amendments primarily adopt changes relating to form filings, definitions, registration of insurers, transactions subject to prior notice, acquisition or divestiture statements filing requirements, and Forms A - F; and non-substantive changes to conform to current agency writing style. A public hearing was held to consider the proposed rules on January 24, 2013, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. The public comment period closed on January 28, 2013, and the department received three comments. In conjunction with these adopted amendments and new sections, the adopted repeal of §§7.211 - 7.213 is also published in this issue of the *Texas Register*.

In accord with Government Code §2001.033(a)(1), the department's reasoned justification for these rules is set out in this order, which includes the preamble and rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of the groups and associations that commented and whether they were in support of or in opposition to adopting the rules,

the reasons why the department agrees or disagrees with some of the comments and recommendations, and all other department responses to the comments.

2. REASONED JUSTIFICATION. The amendments and new sections are necessary to implement statutory changes from SB 1283 and SB 1284 (79th Legislature, 2005), SB 1542 (80th Legislature, 2007), and SB 1431 (82nd Legislature, 2011), and to conform the rules to the National Association of Insurance Commissioners (NAIC) model regulations, as applicable. Insurance companies and health maintenance organizations (HMOs) are subject to the Texas Insurance Holding Company Systems Act, which is codified in Insurance Code Chapter 823 (Act). The adopted amendments and new sections update the law relating to the functions of insurance holding company systems in response to lessons learned following the nation's recent financial crisis.

Legislative intent, as explained in the legislative bill analysis for SB 1431 (enrolled version), provides that the updated NAIC model act and regulations address insurance regulators' need to assess the enterprise risk within a holding company system and its potential impact on the solvency of an insurer within the holding company system. Insurance companies and HMOs are required to provide the department with reports on enterprise or system risks posed by noninsurance operations that could spread to an insurance company and potentially harm its financial condition. These changes provide transparency in holding company system operations while building on the existing firewalls that provide insurance company solvency protection. As a result, the department will have the additional regulatory tools needed

to evaluate contagion risk that could develop within an insurance holding company system, and this will enhance the department's ability to protect the interests of the public and the state generally. The adopted sections provide the commissioner with greater access to information about the financial condition of insurance holding company systems and enhanced examination authority.

The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214 including figures, contain non-substantive changes in the text to conform to current agency writing style, and correct punctuation and grammar. The adoption also contains updated citations to conform with Insurance Code recodification, current agency address, renumbers sections to accommodate adopted amendments, recitation of adopted section form numbers and names, and other conforming changes. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Generally, the adoption incorporates statutory changes relating to form filings, definitions, registration of insurers, transactions subject to prior notice, acquisition or divestiture statements-filing requirements, and Forms A - F. The majority of statutory changes in the adoption are from provisions in SB 1431, and adopted amendments from SB 1283, SB 1284, and SB 1542, are noted separately.

The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214, also include changes from the amendments formally proposed on December 28, 2012. The department amends §7.203(f)(6) and (o); and §7.204(a)(1), (a)(2)(A), and (d)(2) to reflect certain statutory threshold changes that may occur during

legislative session. These changes are necessary to avoid immediate revision of the holding company rules if specific thresholds for transactions are amended by the Legislature. The department substitutes specific threshold language with adoption by reference to statute to embrace these possible changes. In §7.203(f)(6), the department replaces the language with regard to thresholds in the aggregate or cumulatively that involve the lesser of one-half of 1.0 percent or more of an insurer's admitted assets, or 5.0 percent or more of an insurer's surplus, calculated as of December 31 next preceding with "under Subchapter C of the Act."

The department amends §7.203(o) and deletes the language "within two business days following the declaration and at least 10 calendar days prior to payment" and substitutes "under Insurance Code §823.053" with regard to the period for providing notice to the department of the declaration of a dividend as part of the registration statement. This substitution does not lengthen the notice time frame, but it allows for the rule to automatically comport with changes to the notice periods should the Legislature amend §823.053(b)(1).

The department amends §7.204(a)(1) and deletes the phrase "that involve more than the lesser of five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs." The rules are amended to reflect possible statutory change, but the paragraph remains if the legislature does not address transaction thresholds. The department amends §7.204(a)(2)(A) and deletes "involving either more than one-half of 1.0 percent but less than 5.0 percent of the insurer's admitted assets, or more than 5.0

percent but less than 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding, and transactions in the securities of affiliates other than a subsidiary of an insurer, which are not subject to paragraph (1) of this subsection." In addition, the department amends §7.204(d)(2) and deletes subparagraphs (A) and (B) which relate to thresholds, and renumbers subparagraphs (C) and (D) as (B) and (C). The first sentence of §7.204 (d)(2) is amended to read "[f]or purposes of these sections." The remainder of the first sentence becomes new subparagraph (A) and is added as "an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months under the Act, §823.107." These amendments are also necessary to remove transaction thresholds if statutory changes occur in legislative session.

The department amends §7.205(b) and adds the language "§7.209(a) - (n) and §7.209(o), respectively" to the end of the first full sentence. The change is necessary to clarify that the form content for the acquisition statement can be found in §7.209(a) - (n), while the form content for the divesture statement can be found in §7.209(o).

In response to comment, the department makes a change to §7.209(n), which is necessary for clarification purposes. The phrase "[a]s applicable" is deleted from the beginning of the sentence and added following the "Insurance Code §823.0595" citation language to clarify that filing an enterprise risk report with Form A does not apply to all insurers. Only insurers of a certain size, and with regard to the statutory phase-in

periods that meet the change of control thresholds in Insurance Code §823.0595, must file an enterprise risk report (adopted new Form F) with a Form A.

In response to comment, the department adopts new language to §7.210(i)(2) and adds the phrase “and, on request of the commissioner, the annual financial statements of the” before the word “affiliates.” This change is necessary to align §7.210(i)(2) with Insurance Code §823.052(c-1), with regard to affiliates and requires that the ultimate controlling person file financial statements with the registration statement only on request of the commissioner. Even though the NAIC model regulations do not include affiliates, it is incumbent that the department retains the authority to request affiliate financial statements in the interest of protecting Texas policyholders.

The department amends the second sentence of §7.210(i)(6) and replaces the phrase “published in the Personal Financial Statements Guide,” with the words “as issued.” This change is necessary to delete the Personal Financial Statements Guide, an American Institute of Certified Public Accountants (AICPA) publication, which is outdated.

The department, in response to comment, amends §7.213(b)(4)(A)(ii) and related §7.204(d)(2)(D). In an effort to provide uniformity with the NAIC model regulations and include more relevant factors in determining the threshold for extraordinary dividends, the department adopts new language in new §7.204(d)(2)(C) and changes “declaration date(s)” to “payment date(s),” and in §7.213(b)(4)(A)(ii) replaces the word “declared” with “paid.” These changes are necessary to reflect that the date of the payment and

amount paid, rather than the declaration and amount of the declared dividend be used to calculate the aggregate amount of dividends during the past 12 months and for proposed dividends for purposes of the extraordinary threshold.

Also, in response to comment, the department amends the definition of “earned surplus” in §7.213(b)(5). The language “less unrealized capital gains,” is deleted from the paragraph. This change is necessary to clarify that earned surplus is defined as “unassigned funds.” The remaining line item on the annual statement for the earned surplus calculation is unassigned funds, which is labeled in the annual statement by name.

In response to comment, the department makes a change to §7.213(c)(2). Although the content of the amendment to the board of directors’ resolution was not in the proposed rules, the department adopts the language that “[o]n request of the commissioner,” the directors’ resolution declaring dividends be furnished. This change is necessary to provide administrative ease to the declarant while the department retains the authority to request board of directors’ resolution information when it is in the best interest of the policyholders.

In response to comment and in an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the following language from §7.213(c)(4), “[i]nclude pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end.” This change is necessary because requiring extraordinary dividend approval to include

the historical and pro forma financials is unduly burdensome and time consuming to produce projections going out up to 24 months depending on the timing of the filing.

In response to comment, and in an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the following language from §7.213(c)(6) “[p]rovide a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio.” The deletion is necessary to remove the requirement in this subsection which is unduly burdensome and time consuming to produce. Subsequent paragraphs (7) - (11) are renumbered as (6) - (10) to reflect the deletion of §7.213(c)(6).

The figures to §§7.209(o), 7.211(a), 7.212(a), and 7.214(a) are amended to add the word “email” so that individuals can provide the department with another way to contact them for the purpose of receiving notices and correspondence concerning the statements.

Figure to §7.213(c)(10) is amended to add “Insurance Code Chapter 823” and replace “Insurance Code §823.107.” The change is necessary to reflect that other sections in Insurance Code Chapter 823 may apply to extraordinary dividends and distributions in addition to §823.107.

Due to the uncertainty of the adoption date of these amendments, the department intends that the changes in Form B requirements under §7.203 and §7.210, do not apply for the 2012 Form B filings due April 30, 2013.

3. HOW THE SECTIONS WILL FUNCTION. The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214 update the rules relating to holding company systems. Changes to §7.201 include adopted amendments to form filings. Section 7.201(a)(1) adopts by reference the latest version of the NAIC biographical affidavit form, which is available on the department's website. In §7.201(a)(2), the term "Financial Analysis" is replaced with "Cashier's Office," and "a copy of the letter transmitting the statement, notice, or application" is replaced with "the Fee Transmittal Form on the department's website," to clarify where to file and which form to attach with the fee.

Section 7.202 includes adopted amendments to definitions. "Divesting person," "Divestiture," and "Enterprise Risk" are added to §7.202(a)(10) - (12), respectively, and are identical to Insurance Code §823.002, in order to highlight the added concepts of divestiture and enterprise risk. Section 7.202(a)(15) tracks language from Insurance Code §823.002(6), regarding the definition of "Insurer," to clarify that the holding company definition no longer includes any agency, authority, or instrumentality 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. Section 7.202(a)(18) of the rules defining "Insurer" now includes HMOs, as provided in Insurance Code §843.051(f) from SB 1284 (79th Legislature, 2005).

Section 7.203(a) removes an exemption from the Act for an insurance holding company system where each affiliate in the system is privately owned by not more than

five security holders, each of whom is an individual, as found in Insurance Code §823.015 from SB 1283 (79th Legislature, 2005). Section 7.203(e)(1) - (12) regarding amendments to registration statements are deleted to simplify the subsection. Section 7.203(e) deletes formal approval by official order to clarify that any transaction approved by the commissioner is deemed to be an amendment to the registration statement without further action or filing. Section 7.203(g) deletes the requirement that a registrant must file a restated up-to-date registration statement within 120 days of the end of each calendar year that ends in a five or a zero, and adds that an insurer must file an annual registration statement as provided in Insurance Code §823.055(b) from SB 1542 (80th Legislature, 2007). In addition, §7.203(g) includes a provision that an insurer that is required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement, as found in adopted new §7.211 (Form C) and under Insurance Code §823.055(c) from SB 1542 (80th Legislature, 2007) even if there are no changes. A filing fee remains required for Form B. In accord with Insurance Code §823.0595, §7.203(k) adds that the ultimate controlling person of an insurer is required to file an enterprise risk report on adopted Form F.

An amendment to §7.203(m) adds requirements that disclaimers of control or affiliation in narrative format be consistent with the NAIC model regulations, and as provided in Insurance Code §823.010. These requirements were previously located in §7.211 (Form C), which is adopted for repeal in this issue of the *Texas Register*.

Section 7.203(m)(4) adds that the applicant of a disclaimer that has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information. Section 7.203(m)(5) deletes the provision that, unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with certain requirements of the Act, as provided in Insurance Code §823.010(f). Section 7.203(m)(5) retains the provision that after a disclaimer has been filed, the insurer is relieved of the duty to register or report under subsection (a) of this section unless and until the commissioner disallows the disclaimer. In addition, §7.203(m)(5) deletes the requirement that the commissioner must furnish all parties in interest with notice and opportunity to be heard prior to disallowing a disclaimer and adds, under Insurance Code §823.010 (e), that if the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner. Section 7.203(n) adds failure to file a registration statement or any amendment to a Form B (registration statement) or to adopted Form F (enterprise risk report), under Insurance Code §823.060, as a violation of this subchapter.

An amendment to §7.204 changes the title from “Commissioner’s Approval Required” to “Transactions Subject to Prior Notice” to be consistent with NAIC model regulations, and to capture and distinguish the threshold for large transactions versus specific transactions. Section 7.204 (a)(1) concerns large transactions and adds

existing statutory language from Insurance Code §823.102(a) that this section applies only to sales, purchases, exchanges, loans or extensions of credit, or investments, including an amendment or modification of an affiliate agreement previously filed under this section. Section 7.204(a)(2) concerns specific transactions, including sales, purchases, exchanges, loans or extensions of credit, or investments, and adds reinsurance agreements, including pooling agreements, and the requirement that these transactions are applicable to amendments or modifications of affiliate agreements as previously filed under Insurance Code §823.103. The non-statutory addition of the term “guarantee” to the rule is included as an extension of credit and corresponds to NAIC model language in adopted Form D. Section 7.204(a)(2)(D) relates to §7.212 (adopted Form D) and contains the minimum information required for management or service, cost sharing, and rental or leasing agreements to the extent consistent with applicable law or regulation, and as applicable.

Section 7.205 adds the concept of divestiture to the acquisition statements filing requirements under Insurance Code §823.154 and §823.157. Language in §7.205(a) stating that an acquisition of control of a domestic insurer is subject to the Act, §5, regardless of the domestic insurer’s exemption from regulation under the Act, §2(r), is deleted in accord with SB 1283 (79th Legislature, 2005). The adopted rule continues to require a domestic insurer to file acquisition statements, and the language in the rule denying the exemption is no longer needed. Adopted §7.205(h) deletes the requirement to file a rarely-used exemption form as found in adopted for repeal §7.213 (Form E) which is also published in this issue of the *Texas Register*.

Adopted amendments to §7.209 (Form A), statement regarding the acquisition, change of control, or divestiture of a domestic insurer, add language to be consistent with NAIC model regulations. Subsection 7.209(d)(1) and (f)(4) add that biographical data must be in the form of the latest version of the biographical affidavit form published by the NAIC and adopted by reference in §7.201(a)(1) of this title and which is available on the department's website. Section 7.209(e) adds NAIC model language regarding the nature, source, and amount of funds or other consideration and moves the consideration language from §7.209(e)(3) to adopted subsection (e)(1). Section 7.209(g) adds a requirement for a statement of the method by which the fairness of the proposal was determined. Section 7.209(i) adds that the description must identify the persons with whom the contacts, arrangements, or understandings have been made. Section 7.209(m) is not a statutory amendment, but adds the requirement that financial projections of the insurer and the applicant must be attached as an appendix. For clarification, the time frame for the projections moves from §7.209(m)(3) to adopted §7.209(m)(1). Section 7.209(m)(3) was added to adopt rules consistent with NAIC formatting with smaller paragraphs. Section 7.209(m)(5) adds the word "divestiture" to Form A. Section 7.209(n) adds the concept and requirement that, as applicable, the applicant agrees to provide enterprise risk management information required by adopted new §7.214 (Form F) under Insurance Code §823.0595 within 15 days after the end of the month in which the acquisition of control occurs, as required by Insurance Code §823.201(d). The intent of this addition is to preserve the exemption in Insurance Code §823.0595 (g) and comply with the phase-in components of the statute. Section

7.209(o) adds the concept of filing notice regarding divestiture of control under Insurance Code §823.154.

Section 7.210 (Form B) amends the registration statement. Section 7.210(e) replaces former biographical data requirements with NAIC model language. No affidavit is required. Section 7.210(f)(1)(O) adds an internal control inquiry in accord with Insurance Code §823.052 (b)(12). Adopted §7.210(h) and (i) follow the NAIC model language and retain the Form B content. Section 7.210(i)(2) includes affiliates under Insurance Code §823.052(c)(1). In addition, §7.210(i)(2) adds that the filing is at the end of the person's latest fiscal year or any other period as determined by the commissioner. Section 7.210(i)(5) and (6) permit the commissioner's discretion with regard to the standard and type of financial statement to be filed by the ultimate controlling person, whether or not the ultimate controlling person is an individual. Adopted §7.210(j) deletes the requirement for a copy of the charter or articles of incorporation and bylaws in accord with Insurance Code §823.052 from SB 1542 (80th Legislature, 2007), and adds that an insurer required to file an annual registration statement will also furnish a summary of material changes to the registration statement (adopted Form C) under Insurance Code §823.055(c) from SB 1542 (80th Legislature, 2007). A Form C is not required if a Form B amendment is filed in the interim.

Adopted new §7.211 (Form C), summary of material changes to registration statement, adds language consistent with NAIC model regulations and provides that an insurer that is required to file an annual registration statement must also furnish a summary of material changes to the registration statement in accord with Insurance

Code §823.055(c) from SB 1542 (80th Legislature, 2007). The adopted text differs from the NAIC model regulations, to the extent that, under §7.203(e) and (g), only material changes need to be filed as amendments under Insurance Code §§823.053 - 823.055. Section 7.211 (Form C) relating to disclaimers of control or affiliation is adopted for repeal and the requirements regarding disclaimers of control or affiliation under Insurance Code §823.010 are added to §7.203 (m). Adopted Form C must be filed annually with the Form B even if there are no changes to be reported. Form C does not require a separate filing fee from Form B.

Adopted new §7.212 (Form D), prior notice of a transaction, adds the NAIC model regulation language. The adoption for repeal of existing Form D for extraordinary dividends is published in this issue of the *Texas Register*. Section 7.212(b) includes a requirement to identify the parties and furnish information for each of the parties to the transaction. Section 7.212(c) requires a description of the transaction and differs from the NAIC regulations in §7.212(c)(1) because there is no reference to the NAIC model laws. Section 7.212 (c)(2),(3), and (5) differ from the NAIC model regulations by including transaction requirements from §7.204(b). Section 7.212(d) concerns sales, purchases, exchanges, loans, extensions of credit, guarantees, or investments. Adopted §7.212(e) concerns loans or extensions of credit to a nonaffiliate and does not include NAIC model language, to avoid conflict with the Act regarding notice parameters. Section 7.212(f) concerns reinsurance and §7.212(g) concerns management, service, and cost-sharing agreements.

Adopted new §7.213 (Form E), notice of ordinary and extraordinary dividends and other distributions, replaces existing §7.213, regarding exemptions, which is adopted for repeal in this issue of the *Texas Register*. Section 7.213 consolidates ordinary and extraordinary dividends and distributions from Form D, concerning extraordinary dividends, and content from the HCDividend form, currently on the department website, concerning ordinary dividends. Section 7.213(b) adds the ordinary dividend content and §7.213(c) contains extraordinary dividend information. Section 7.213(b)(4)(B) is a bridge calculation to determine if information relating to extraordinary dividends and distributions is required. Although adopted §7.213(b)(5), regarding earned surplus, applies to HMOs under Insurance Code §843.051(f), the department will discontinue use of the earned surplus form. The distinction between earned surplus and adequacy of surplus, for purposes of Insurance Code Chapter 823 regarding dividends, no longer remains. Section 7.213(b)(9) adds a certification that the declaration or payment of the dividend or distribution does not violate certain provisions of the Insurance Code, as applicable.

Adopted new §7.214 (Form F) is an addition to the regulations and contains enterprise risk report information required by Insurance Code §823.0595, and it follows the NAIC model language. Insurance Code §823.0595 includes a statutory notice requirement in accord with Acts 2011, 82nd Legislature, ch. 922 (SB 1431), §18 that, subject to the §823.0595(b) phase-in requirements, the department may not implement this section until the 180th day after the date the commissioner has determined that the NAIC has completed an enterprise risk form, has proposed a master confidentiality

agreement, and places notice of that determination in the *Texas Register*. The notice is found in adopted §7.214(e).

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§7.203(o)

COMMENT: Two commenters request that the period for providing notice to the department of the declaration of a dividend be longer than the two business days provided. The commenters state that as a practical matter, it is often difficult to time the meeting of the board or obtain signatures of the board members for written consent with the timing of the filing requesting approval of the dividend. The commenters further state that most states and the NAIC model regulations provide for a longer period for the provision of this notice. Since this provision also requires that the notice of the declaration of the dividend also be given at least 10 calendar days prior to payment, the department would have adequate notice of the declaration of the dividend prior to its payment.

AGENCY RESPONSE: The department agrees with the commenters, but makes a different change. The department cannot increase the number of days to provide notice to the department of the declaration of a dividend in the rule, because the second business day is a statutory requirement under Insurance Code §823.053(b)(1). The department will delete the specific time frames from §7.203(o) and add the language “under Insurance Code §823.053” to ensure the rules will comport with any future statutory changes.

§7.204(a)(2)(D)

COMMENT: One commenter requests that even though the proposed requirements for terms or provisions that must be included in management or service agreements are consistent with the NAIC model regulations, the rule differs from the NAIC regulations because it includes rental or leasing agreements in the minimum standards. The commenter further states that Insurance Code §823.101(b-1), which permits the department to determine by rule all provisions that would be included in a cost sharing, services, or management agreement, does not mention rental or leasing agreements. The commenter explains that some of the specific provisions in §7.204(a)(2)(D)(i) – (xiii) seem to better fit cost sharing and management agreements instead of rental or leasing agreements, and requests that only management and cost-sharing agreements be needed to comply with the added minimum terms.

AGENCY RESPONSE: The department disagrees and declines to make a change. SB 1431 added Insurance Code §823.101(b-1), which provides “[a]n agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner.” The statute applies to agreements generally and includes cost-sharing, services, or management agreements, but does not limit the types of agreements. Section 7.204(a)(2)(D) adds only what must be contained in the agreements, which has included the rental or leasing agreements language since 1992. In addition, “must at a minimum, to the extent not inconsistent with applicable law or regulation, and as applicable” was added to clarify that if the terms are not relevant to a

type of agreement, then those terms will not be required in the agreement. It is in the best interest of the public that where applicable, there is transparency and full disclosure with regard to registered insurers' agreements.

COMMENT: One commenter requests clarification that previously approved agreements do not have to be refiled as transactions under §7.204(a)(2)(D) unless other amendments or modifications are filed after the effective date of the adopted changes and recommends corresponding language to that effect for §7.204(a)(2) and §7.204(a)(2)(D) . The commenter is concerned that the amendments may require insurers to refile all lease, cost-sharing, service, and management agreements if they do not contain the minimum required provisions in subsection (D)(i) – (xiii), which could impose considerable costs on insurers, especially those involving companies in a holding company system domiciled in different states. Further, the commenter states that Chapter 823 provides for standards of review and approval, but does not contain provisions that permit disapproval of an agreement after it has been previously approved. Applying the provisions of a new or amended rule retroactively could be inconsistent with requirements of the Texas and United States Constitutions.

AGENCY RESPONSE: The department agrees that previously approved agreements do not have to be refiled as transactions with regard to §7.204(a)(2)(D) unless other amendments or modifications are filed after the effective date of the adopted changes, but declines to make the change. The department does not intend retroactive application and believes that it is clear that the adopted rule is applicable to future

agreements, or existing agreements that are modified or amended subsequent to the effective date of the rule.

COMMENT: One commenter requests that the department confirm in its adoption order that the intent of the language in §7.204(a)(2)(D) is that the parties to an agreement can define what books and records will be those of the insurer and those of an affiliated entity contracting with the insurer. The commenter's concern is that the published rule seems to provide that ownership of books and records related to the agreement remains the property of the insurer; however, an insurer that has contracted with an affiliated broker may be required under federal securities law to maintain certain records that would be the books and records of the broker and not the insurer.

AGENCY RESPONSE: The department agrees in part, and points out that the commenter did not ask the department to change the rule. The adopted amendment provides for the commenter's scenario with the language "to the extent not inconsistent with applicable law or regulation, and as applicable," as found in §7.204(a)(2)(D). To the extent that ownership of books and records by the insurer would conflict with applicable law or regulation or is not applicable for another reason, the parties to an agreement can define what books and records will be those of the insurer and those of an affiliated entity contracting with the insurer. However, the adopted amendment does not provide for the parties to an agreement to define ownership of books and records to an entity other than the insurer in the absence of contravening law or a compelling reason.

§7.209(m)(3)(B)

COMMENT: One commenter requests that the phrase “unless the commissioner permits otherwise,” be added to §7.209(m)(3)(B). (The commenter quoted §7.209(l)(3)(B), but the department believes from context that the commenter intended to use §7.209(m)(3)(B)). The commenter states that the current rule is not amended and seems to require individual persons who are applicants in a Form A to include a certificate of an independent public accountant. Further, the commenter states that similar language appears in financial statements filed in a Form B except that §7.210(i)(5) provides that “unless the commissioner permits otherwise,” personal financial statements must include the certificate. The commenter states that there are numerous small life insurance companies domiciled in Texas where individuals may be required to file personal financial statements, and the discretion to use other methods of filing should be included in both sections.

AGENCY RESPONSE: The department agrees in part, but declines to make a change. The department did not propose any substantive change to §7.209(m)(3) so the commenter’s concerns were not addressed in the proposal. Paragraph 7.209(m)(3) begins with “unless exempted by the commissioner” and applies to subparagraphs (A) and (B) since the subparagraphs should not be read independently from the paragraph. The commenter quoted §7.210(i)(5), but the department believes from context that the commenter may have intended to cite §7.210(i)(6) with regard to individuals. Section §7.210(i)(5) and §7.210(i)(6) differ from §7.209(m)(3)(B) in that the former falls under a

larger subsection which contains a heading with no content. Therefore, each paragraph falling under §7.210(i) has to express specific content.

§7.209(n)

COMMENT: One commenter requests that, although “as applicable” was added to adopted new §7.209(n), the department clarify that filing an enterprise risk report with Form A does not apply to all insurers. The commenter states that there are certain exemptions from filing the enterprise risk report, depending on the size of the insurer and the phase-in period in statute. The commenter further states that certain small insurers with less than \$300 million are not required to file the enterprise risk report.

AGENCY RESPONSE: The department agrees and makes a nonsubstantive change to §7.209(n). The phrase “[a]s applicable” is moved from the beginning of the sentence to following the “Insurance Code §823.0595” citation to clarify that only insurers that meet the change of control thresholds in Insurance Code §823.0595 must file an enterprise risk report (adopted new Form F).

§7.210(i)(2)

COMMENT: One commenter requests a change to §7.210(i)(2) that would not require affiliates to file financial statements with the Form B registration statement. The commenter states that this requirement seems inconsistent with the NAIC model act, which requires only financial statements for the ultimate controlling person, and Insurance Code §823.052 (c-1), which permits the commissioner to request affiliate

financial statements but does not require their filing. The commenter states further that requiring all affiliates to file financial statements may be unnecessary and an administrative burden on both the holding company group and the department. The commenter provides an alternative and suggests defining a materiality threshold when affiliate financial statements are filed.

AGENCY RESPONSE: The department agrees in part and makes a corresponding change. Although the department declines to delete “affiliates” from §7.210(i)(2), new language is added before the word “affiliates” which now reads, “and, on request of the commissioner, the annual financial statements of the affiliates.” This change makes §7.210(i)(2) consistent with Insurance Code §823.052(c-1) and the NAIC model act, with regard to affiliates, and requires that affiliates file financial statements with the registration statement only upon request of the commissioner. Even though the NAIC model regulations do not include affiliates, it is incumbent that the department retains the authority to request affiliate financial statements in the interest of protecting Texas policyholders.

§7.213(b)(4)(A)(ii) and related §7.204(d)(2)(D)

COMMENT: Two commenters request that the date of the payment and amount paid, rather than the declaration and amount declared of the dividend, be used to calculate the aggregate amount of dividends during the past 12 months and for proposed dividends for purposes of the extraordinary threshold. The commenters state that using the amount actually paid and the date of the payment is consistent with the NAIC model

regulations. The commenters also state that the actual amount of the dividend and the date it is paid are more relevant factors in determining the threshold for extraordinary dividends as opposed to the date of the declaration, which is not as relevant to the cash flows and other financial measures of the insurer. The commenters suggest that insurers often declare a dividend in an amount that is likely higher than the amount of the dividend actually paid in order to have more flexibility once the payment date of the dividend approaches.

AGENCY RESPONSE: The department agrees with this comment and makes the substantive changes. In an effort to provide uniformity with the NAIC model regulations and be more relevant with regard to the financial measures of insurers, the department adopts new language in §7.204(d)(2)(D) and changes “declaration date(s)” to “payment date(s),” and in §7.213(b)(4)(ii) replaces the word “declared” with “paid.”

§7.213(b)(5)

COMMENT: One commenter requests that the department clarify what line in the annual statement earned surplus refers to in this section.

AGENCY RESPONSE: The department agrees that this paragraph should be further clarified and points out that no change was requested. However, in an effort to clarify the definition of “earned surplus,” the department makes a substantive change to this adoption by deleting the phrase, “less unrealized capital gains” from this subsection. The effect of this deletion is that earned surplus is defined as unassigned funds which is required as a line item on the annual statement.

§7.213(c)(2)

COMMENT: Two commenters request that the department consider removing the requirement to enclose a copy of the directors' resolution declaring the dividend from the dividend filing purely for administrative ease. The commenters state that this is not a requirement in the NAIC model or in the jurisdictions with which the commenters are familiar.

AGENCY RESPONSE: The department agrees in part and makes a substantive change to §7.213(c)(2). Although the request with regard to the board of directors' resolution was not in the proposed rules, the department adopts the phrase "[o]n request of the commissioner" the directors' resolution declaring dividends be furnished. This language will provide the administrative ease that the commenters request while the department retains the authority to request board of directors' resolution information when in the best interest of the policyholders.

§7.213(c)(4)

COMMENT: Two commenters request that the department reconsider adding the requirement that the request for approval of an extraordinary dividend include the historical and pro forma financials projected numbers for the current year end and the following year end. The commenters state that the requirement to produce projections going out to possibly 24 months, depending on the timing of the filing, would be unduly burdensome and time consuming. The commenters further state that this information is

not required in the NAIC model regulations and they are not aware of any other jurisdiction which requires this information.

AGENCY RESPONSE: The department agrees with commenters and makes the substantive change. In an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the phrase “[i]nclude pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end,” from §7.213(c)(4).

§7.213(c)(6)

COMMENT: Two commenters request that the department reconsider adding the requirement that approval of an extraordinary dividend include a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio. The commenters state that this provision is unduly burdensome and time consuming to produce. The commenters state further that this information is not required in the NAIC model regulations and they are not aware of any other jurisdiction which requires this information.

AGENCY RESPONSE: The department agrees with the commenters and makes the substantive change. In an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the language “[p]rovide a discussion of any

recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio,” from §7.213(c)(6). Subsequent paragraphs (7) - (11) are also renumbered as (6) - (10) to reflect the deletion of §7.213(c)(6).

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: American Council of Life Insurers (ACLI)

For with changes: American International Group (AIG) and Texas Association of Life & Health Insurers (TALHI)

Against: None

6. STATUTORY AUTHORITY. The amendments and new sections are adopted in accord with Insurance Code §§823.012(a), 823.052(b), 823.052(c)(13), 823.054(d), 823.055(c), 823.059(c), 823.101(b-1), 823.103(a)(4), 823.154(a)(3), 843.051(g), 36.001, and 36.004. Section 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter. Section 823.052(b) provides that the registration statement must be in a format prescribed by the NAIC or adopted by rule of the commissioner and contain current information relating to the registration statement. Section 823.052(c)(13)

provides that the registration statement must also contain information about any other information that the commissioner requires by rule. Section 823.054(d) provides that the commissioner, by rule or order, may provide a standard that is different from the standard provided by Subsection (b). Section 823.055(c) provides that an insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule. Section 823.059(c) provides that the commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter. Section 823.101(b-1) provides that an agreement, including an agreement for cost sharing, services, or management, must include all provisions required by rule of the commissioner. Section 823.103(a)(4) applies only to any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or the public, including an amendment or modification of an agreement previously filed under this section. Section 823.154(a)(3) provides that if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule. Section 843.051(g) provides that the commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of HMOs, health care plans, or evidences of coverage. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the

Insurance Code and other laws of this state. Section 36.004 provides that, except as provided by Section 36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the NAIC, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

7. TEXT.

§7.201. Forms Filings.

(a) General requirements.

(1) The forms specified in §§7.209 - 7.214 of this title (relating to Form A, Form B, Form C, Form D, Form E, and Form F, respectively) are guides for preparing the statements, notices, and applications required by Insurance Code Chapter 823. They provide notice of the information required and the location the department expects to find it. In preparing any statement, notice, or application, the text of the form need not be repeated so long as it is clear to which matter the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the negative, an appropriate statement to that effect must be made. The forms specified in §§7.209 - 7.214 of this title are also referred to in this subchapter as Forms A - F. Form A is also referred to as the acquisition or divestiture statement, Form B as the registration statement, Form C as the summary of changes to the registration statement, Form D as prior notice of a transaction, Form E as a notice of dividend or

distribution, and Form F as an enterprise risk report. For use in accord with §7.209(d) and (f) of this title, the department adopts by reference the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and available on the department website.

(2) Two complete originally signed copies (unless additional copies are requested by the commissioner) of each statement, notice, or application, including exhibits and all other papers and documents filed in connection with any acquisition statement filed under §7.209 of this title, and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed, must be filed with the commissioner by personal delivery or by mail addressed to: Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. Each statement, notice, or application will be subject to the appropriate filing fee provided in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee must be forwarded to the Cashier's Office, Mail Code 9999, at the previously stated address under separate cover along with the Fee Transmittal Form available on the department website.

(3) Statements, notices, and applications should be prepared on paper 8 1/2 inches by 11 inches or 8 1/2 inches by 14 inches in size and preferably bound at the top or top lefthand corner. All copies of any statement, notice, application, exhibit, or financial statement must be clear, easily readable, and suitable for photocopying. Debit in credit categories and credits in debit categories must be designated so as to be clearly distinguishable on photocopies. Statements, notices, and applications must be

in English and monetary values must be stated in United States currency. If any exhibit or other paper or document filed with a statement, notice, or application is in a foreign language, it must be accompanied by a translation into English and any monetary value shown in a foreign currency must be converted into United States currency with the rate of exchange disclosed in the submission.

(4) Every statement, notice, or application must state on the cover page the names and addresses of all persons on whose behalf it is made.

(b) Incorporation by reference, summaries, and omissions.

(1) Information required by any item of any statement, notice, or application may be incorporated by reference in answer or partial answer to another item. Information contained in any instrument or document filed with the commissioner within five years and currently remaining on file may be incorporated by reference. The reference must clearly identify the material and indicate it is incorporated by reference.

(2) The right to incorporate by reference does not apply to §7.209 of this title or to a completely restated up-to-date registration statement filed in accord with §7.203(g) of this title (relating to Registration of Insurers) and §7.210 of this title.

(3) Where an item requires a summary or outline of the provisions of any document, only a brief statement must be made as to the most important provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document for which reference is allowed by these sections. The particular page and paragraph of the exhibit or document to which reference is made must be specified. If two or more documents required to be attached

as exhibits are substantially identical in all material respects, a copy of only one of the documents need be filed. A schedule must be attached identifying and detailing the ways the other document differs from the filed exhibit.

(4) By use of a reference, the person filing is deemed to have verified the accuracy of the information referred to as though it was an original statement, unless the person filing identifies the information as being not verified by the person filing.

(c) Additional information and exhibits. In addition to the information expressly required to be included in the forms set out in these sections the filer must add any further material information needed to make the information contained not misleading. The person filing may also file exhibits in addition to those expressly required. The exhibits must be so marked as to indicate clearly the subject matters to which they refer.

(d) Amendment. Any amendment to a statement, notice, or application must include on the top of the cover page the phrase "Amendment No." and must indicate the date of amendment and not the date of the original filing.

(e) Information unknown or unavailable. If any required information is unknown and not reasonably available to the person filing, either because obtaining the information would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(1) The person filing must give the information on the subject as the person possesses or can acquire without unreasonable effort or expense, together with the sources.

(2) The person filing must include a statement either demonstrating that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

§7.202. Definitions.

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Insurance Code, Chapter 823.

(2) Affiliate--An affiliate of, or person affiliated with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If the controlling person includes a member of the immediate family of a person, any other person that is an affiliate of the family member is deemed to be an affiliate of the controlling person.

(3) Commercially domiciled insurer--A foreign or alien insurer authorized to do business in this state, that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 30 percent or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual

average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph must be calculated, as follows:

(A) total Texas premium for the preceding three fiscal years (or any lesser period if licensed in Texas less than three years) divided by total premium countrywide for the preceding three years; and

(B) total premium in the state of domicile for the preceding three years divided by total premium countrywide for the preceding three years.

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's associates or deputies, or their designees, as appropriate.

(5) Control--The term "control," including the terms "controlling," "controlled by," and "under common control with," means the power, direct or indirect, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10 percent or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under Insurance Code Chapter 941, or for a reciprocal or interinsurance exchange under Insurance Code Chapter 942. This presumption may be rebutted by a showing made in

the manner provided by Insurance Code §823.005, that control does not exist in fact.

The commissioner may determine, after furnishing all persons in interest with notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises, directly or indirectly, either alone or under an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(6) Controlled insurer--An insurer controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(7) Controlled person--Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(8) Controlling producer--An insurance broker or brokers or any person, firm, association, or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation, and who, directly or indirectly:

(A) controls or seeks to control a property and casualty insurer as the term control is defined in paragraph (5) of this subsection; and

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with the controlled property and casualty insurer which is equal to or greater than 5.0 percent of the admitted assets of the insurer as reported in the insurer's quarterly statement filed as of September 30 of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed under Insurance Code Chapter 4001, Subchapter A, and any subagent or representative of the agent, who acts in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyd's or licensed reciprocal or interinsurance exchange.

(9) Director--A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term must also include an attorney-in-fact of a Lloyds or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) Divesting person--A person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(11) Divestiture--An abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(12) Enterprise risk--Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(13) Executive officer--The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform policy-making functions for an applicant.

(14) Foreign insurer--Includes an alien insurer.

(15) Holding company--Any person who directly or indirectly controls any insurer, but not including any agency, authority, or instrumentality 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 or any corporation which is wholly owned, directly or indirectly, by any of them.

(16) Immediate family--A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother, sister, mother, father, or grandparent.

(17) Insurance holding company system--Two or more affiliated persons, one or more of which is an insurer.

(18) Insurer--Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, group hospital service companies and health maintenance organizations, and any other entity which is subject to Insurance Code Chapter 823 by applicable law, but does 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.

(19) Person--An individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or similar entity or combination of them acting in concert, but not a securities broker performing only the usual and customary broker's function.

(20) Security holder of a specified person--One who owns any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" does not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(21) Subsidiary of a specified person--An affiliate controlled by the person directly or indirectly through one or more intermediaries.

(22) Ultimate controlling person--That person which is not controlled by another person (as defined in this subsection).

(23) Voting security--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders, for or against the election of directors, or any other matter involving the direction of the management and policies of the person, or any other security or instrument the department deems to be of similar nature including, but not limited to, those described in the rules and regulations the department may prescribe in the public interest as a voting security.

(b) Exemption--Commercially Domiciled Insurer.

(1) The commissioner may exempt from the provisions of Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The exemption

granted under this subsection must set forth the specific criteria under which it is granted and will be subject to annual review. The commissioner may, after notice and opportunity for hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of Insurance Code Chapter 823 and these sections. A rescission of an exemption must set forth the rationale for the rescission. Requests for an exemption under this subsection must be filed with Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer will notify Financial Analysis within 10 days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to policyholders of this state, the commissioner must give consideration to the matters contacted in subparagraphs (A) - (D) of this paragraph in connection with an exemption requested under Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20 percent of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250 percent of the minimum risk-based capital described in §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs); or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in § 8.3 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

(D) Consideration may be given to other positive factors with regard to an insurer's operations or conduct.

(2) The provisions of this subchapter do not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for the insurer under Insurance Code Chapter 827.

§7.203. Registration of Insurers.

(a) Registration. Except as provided by the Act, every insurer authorized or incorporated to do business in this state and is a member of an insurance holding company system must register in accord with the Act. The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state; nor to a commercially domiciled insurer granted an exemption under §7.202 of this title (relating to Definitions). The commissioner must terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in §7.202 of this title.

(b) Information filing from insurers. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and is not required to register under subsection (a) of this section must furnish to the commissioner a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction and all amendments, if required by the commissioner.

(c) Information and forms required. Every insurer subject to registration must file a registration statement in accord with §7.210 of this title (relating to Form B), §7.211 of this title (relating to Form C), and as applicable, to §7.214 of this title (relating to Form F), providing current information about the requested matters.

(d) Materiality. Information which is not material for the purposes of the Act, need not be filed under the Act, §823.054, for certain requirements respecting materiality. See subsection (f) of this section for the rule on material changes.

(e) Amendments to registration statements. Each registered insurer must keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). The amendment must be in accord with §7.210 of this title, the registration statement, the cover page requirements of §7.201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out the unamended portions. The amendment must be filed within 15 days after the end of the month in which the registered insurer learns of the change or addition. Any transaction that is approved by the commissioner is deemed to be an amendment to the registration statement without further action or filing.

(f) Material changes. The following occurrences are, without limiting the meaning of the phrase "material changes," deemed material changes for purposes of filing an amendment to the registration statement:

(1) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person in control of the domestic insurer if, after the acquisition, the person, directly or indirectly, owns or controls less than 50 percent of the then issued and outstanding voting securities of the domestic insurer, in which case §7.210(b) and (c) of this title must be made current;

(2) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person that prior, directly or indirectly, owns or controls more than 50 percent of the then issued and outstanding voting securities of the domestic insurer, in which case §7.210(b) and (c) of this title must be made current;

(3) a change in the control of the registrant, in which case the entire registration statement must be made current (notwithstanding any other provision of this subchapter);

(4) a change in the information required by §7.210(f) and (g) of this title, in which case the respective subsection must be made current;

(5) a change of the chief executive officer, president, or more than one-third of the directors reported in §7.210(e) of this title, in which case the respective subsection must be made current;

(6) any transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates excluding those transactions approved under §7.204(a)(1) of this title (relating to Transactions Subject to Prior Notice) and those transactions for which notification is given under §7.204(a)(2) occurring within 12 months next preceding, under Subchapter C of the Act. In this case, §7.210(c) and (f) of this title must be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding. After the transactions are reported and the filings under §7.210(c) and (f) are made current, each subsequent transaction with an affiliate which, when taken together with those transactions which occurred

within the 12 months next preceding, were reported under this subsection and Subchapter C of the Act, must be reported under subsection (e) of this section.

(g) Annual amendment. Within 120 days after the end of each fiscal year of the ultimate controlling person (that person which is not controlled by another person) of the insurance holding company system, the registrant must file an annual registration statement. An insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement under §7.211 of this title.

(h) Termination of registration. The commissioner must terminate the registration of any insurer as provided in Insurance Code §823.056.

(i) Consolidated filing. Any licensed insurer may file a consolidated registration statement or any amendment on behalf of itself and any affiliated insurer or insurers which are required to register under subsection (a) of this section, if so authorized by the affiliates. Each registration statement may include information regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state. Each licensed insurer in the filing must determine the correctness of the entire statement and amendments and is bound by the terms of the entire statement and amendment. The statement may be made under the provisions of subsection (j) of this section.

(j) Alternative registration.

(1) In lieu of filing a registration statement as specified in §7.210 of this title, a licensed insurer may file a copy of the registration statement or similar report it is

required to file in its state of domicile (or a report it is required to file in another state where it is licensed if its state of domicile requires no such report) provided:

(A) the statement or report contains information substantially similar to information required in §7.210 of this title and any of the information not in the statement or report is provided by supplement; and

(B) the filing insurer is the principal insurer in the insurance holding company system or, in the case of a consolidated statement, the statement is in the form required by the principal insurer's domicile.

(2) Whether the filing insurer is the principal insurer in the insurance holding company system is a question of fact. An insurer filing a registration statement (or report in lieu of the information specified in §7.210 of this title) on behalf of an affiliated insurer must set forth a simple statement of facts which will substantiate the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (1) of this subsection.

(4) The commissioner may require under this subsection or subsection (i) of this section separate filings if the commissioner deems the filings necessary in the interest of clarity, ease of administration, or the public good.

(k) Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report under Insurance Code §823.0595 must furnish the required information on Form F, which is made a part of these regulations.

(l) Exemptions. The provisions of this section do not apply to any insurer, information, or transaction if and to the extent exempted by the commissioner by rule, regulation, or order.

(m) Disclaimer.

(1) Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or the disclaimer may be filed by the insurer or any member of an insurance holding company system as a separate filing.

(2) A 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 person (referred to as the "subject") must contain the following information:

(A) the number of authorized, issued, and outstanding voting securities or rights of the subject;

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

(C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of the person; and

(D) a statement explaining why the person should not be considered to control the subject.

(3) The applicant must simultaneously furnish a copy of any disclaimer filed with the commissioner to the insurer, if the affected insurer is not a party to it. The insurer must, within 15 business days after receipt, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer.

(4) The applicant of a disclaimer which has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information.

(5) After a disclaimer has been filed, the insurer is relieved of the duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner.

(6) After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by the person is subject to the Act, in the absence of the filing within 15 days after the end of the month in which the acquisition of an additional voting security occurs, of an amendment makes current the disclaimer of control or affiliation previously filed under this subsection.

(n) Violations. The failure to file a registration statement or any amendment to a Form B (relating to Registration Statement) or Form F (relating to Enterprise Risk Report) within the time specified for the filing is a violation of this section.

(o) Dividends and distributions. Each registered insurer must, by personal delivery, by facsimile, or by mail addressed to: Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104, provide notice to the commissioner of all dividends and other distributions to shareholders under Insurance Code §823.053 in Form E (relating to Notice of Dividend or Distribution) and the notice is deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice must be accompanied by documentation supporting each of the standards specified in Insurance Code, §823.008, unless the documentation has previously been provided during the current calendar year and the person to whom the documentation was sent is identified. Dividends and distributions must be reviewed by the commissioner and, if the standards in the Act, §823.008 are not met, the commissioner will take appropriate action, including, but not limited to, that provided under Insurance Code §§82.001 - 82.056, 83.001 - 83.153 and Chapters 403, 404, 441, and 443. All reported dividends and distributions must be reviewed annually in the registration statement filed under §7.210 of this title. See §7.204(d) of this title for requirements regarding extraordinary dividends and distributions.

§7.204. Transactions Subject to Prior Notice.

(a) Prior approval and notice.

(1) The prior written approval of the commissioner is required for the transactions specified in the Act, §823.102. This section only applies to sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments, including an amendment or modification of an affiliate agreement previously filed under this section.

(2) The following transactions under the Act, §823.103, including any amendments or modification of an agreement as previously filed between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any like transaction at least 30 days prior, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within the period:

(A) sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments;

(B) reinsurance agreements, including reinsurance treaties, or pooling agreements, or any amendments or modification to any agreement, and those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(C) any contract, agreement, or arrangement for the furnishing or receiving of services or facilities on a regular or systematic basis; or

(D) management or service agreements, cost sharing agreements, rental or leasing agreements must at a minimum, to the extent not inconsistent with applicable law or regulation, and as applicable:

(i) identify the person providing services and the nature of the services;

(ii) set forth the methods to allocate costs to include Insurance Code §823.101(e);

(iii) require timely settlement, at least every 90 days, and compliance with the requirements in the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners;

(iv) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(v) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(vi) define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(vii) specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(viii) state that all funds 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;

(ix) include standards for termination of the agreement with and without cause;

(x) include indemnifying the insurer in the event of gross negligence or willful misconduct by the affiliate providing the services;

(xi) specify that, if the insurer is placed in receivership or seized by the commissioner under Insurance Code Chapter 443:

(I) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and

(II) all books and records will immediately be made available to the receiver or the commissioner, and must be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(xii) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership under Insurance Code Chapter 443; and

(xiii) specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under Insurance Code Chapter 443, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered;

(E) agreements to consolidate federal income tax returns, which agreements must provide that a domestic insurer will be adequately indemnified in the

event the Internal Revenue Service levies upon the insurance company's assets for unpaid taxes in excess of the amount paid under the agreement;

(F) transactions with affiliated financial institutions, other than fully insured deposits;

(G) participation in an investment pool by a property and casualty insurer under Insurance Code Chapter 424; and

(H) any material transactions which the commissioner has determined after notice may adversely affect the interest of the insurer's policyholders or of the public.

(3) A domestic insurer may not enter into transactions that are part of a plan or series of similar transactions with persons within the holding company system to avoid the statutory threshold amount and avoid review. If the commissioner determines that the transactions were entered into over any 12-month period for that purpose, the commissioner may consider the series of transactions with regard to their cumulative effect and may apply the applicable statutory thresholds or the commissioner may apply sanctions under the Code.

(4) Nothing in this rule will authorize or permit any transactions which, in the case of a noncontrolled insurer, would be otherwise contrary to law.

(5) The commissioner, in reviewing transactions, must consider whether the transactions comply with the standards set forth in subsection (c) of this section and whether they may adversely affect the interest of policyholders. Any disapproval by the

commissioner of any of the transactions must set forth the specific reasons for the disapproval.

(6) The approval of any transaction under this subsection is deemed an amendment under §7.203(e) of this title (relating to Registration of Insurers) to an insurer's registration statement without further filing.

(b) Transactions. An insurer required to request approval of transactions under subsection (a)(1) of this section and give notices of proposed transactions under subsection (a)(2) of this section, must furnish the required information on Form D (relating to Prior Notice of a Transaction) including the applicable filing fee provided for in §7.1301(d)(23) of this title (relating to Regulatory Fees). The descriptions must in all cases include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identities of all parties to the transactions; whether any officers or directors of a party are pecuniarily interested, and copies of any proposed contracts, agreements, or memoranda of understanding between the parties relating to the transaction along with sufficient competent documentation evidencing compliance with the standards specified in Insurance Code §823.101, and evidencing that the transaction will not adversely affect the interest of policyholders. Proposed contracts, agreements, or memoranda of understanding must provide for settlement within 90 days. No request or notice is deemed filed with the commissioner until the date all of the material has been provided.

(c) Transactions with affiliates and others. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates are subject to the standards specified in the Act, §823.101.

(d) Extraordinary dividends and other distributions.

(1) An insurer subject to registration under §7.203(a) of this title must not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) 30 days after the commissioner has received written notice in accord with §7.213 of this title (relating to Form E) of the declaration, including the applicable filing fee under §7.1301(d)(23) of this title, provided the commissioner has not disapproved the payment; or

(B) the commissioner approves the payment within the 30-day period. The written notice required under this paragraph will be deemed filed with the commissioner only when all material sufficient to constitute a complete filing, including documentation to support each of the standards set forth in the Act, §823.008, and the payment of any required filing fee under §7.1301(d)(23) of this title have been provided.

(2) For purposes of these sections:

(A) an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months under the Act, §823.107;

(B) an extraordinary dividend or distribution must not include pro rata distributions of any class of an insurer's own securities;

(C) in determining the 12-month cumulative amount for dividends or distributions, the calculation must be based on the payment date(s) of the dividends or distributions.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution under the conditions specified in the Act, §823.107.

(e) Adequacy of surplus. For the purposes of these sections, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the factors specified in the Act, §823.008, among others, must be considered.

§7.205. Acquisition or Divestiture Statements--Filing Requirements.

(a) Filing Requirements. Filing and other regulatory requirements for acquisitions, changes of control, or divestitures and certain other matters as specified in the Act, §823.153 and §823.154, are governed by the Act, §823.153 and §823.154. For purposes of this subsection, a domestic insurer as defined in the Act, §823.153, includes any person controlling a domestic insurer, including a commercially domiciled insurer, unless the person is, either directly or through its affiliates, primarily engaged in business other than the business of insurance. A change or substitution of an attorney-in-fact of a Lloyds' or reciprocal or interinsurance exchange is subject to the Act,

§823.154. A failure to file complete and accurate information in all material respects is grounds for a denial by the commissioner under the Act, §823.157.

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition or divestiture statement) must be made in accord with §7.209 of this title (relating to Form A), the acquisition or divestiture statement, §7.209(a) - (n) and §7.209(o), respectively. The acquiring party must provide additional financial information in form or substance as required by the commissioner which is material to the finding required by the Act, §823.157. Any financial information required under the Act, §823.203, may be waived by the commissioner if the information is not deemed material. No statement required by subsection (a) of this section will be deemed filed with the commissioner until the date all material required and sufficient to constitute a full statement has been provided.

(c) Partnerships and corporate filings. If the person required to file the acquisition statement is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by §7.209 of this title be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or if the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by §7.209 be given with respect to the corporation and by each executive officer and director of the corporation, and each

person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(d) Amendment. If any material change occurs in the facts set forth in the acquisition or divestiture statement filed with the commissioner, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the domestic insurer within two business days after the person learns of the change.

(e) Acquisition or divestiture of a domestic insurer as defined in subsection (a) of this section.

(1) If the person being acquired or divested is a domestic insurer solely because of the provisions of subsection (a) of this section, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where a domestic insurer as defined in subsection (a) of this section is being acquired or divested, references to "the insurer" contained in §7.209 of this title refer to both the domestic subsidiary insurer and the person being acquired or divested.

(f) Approval or denial by commissioner; hearings. All mergers, acquisitions, changes of control, or divestitures and other matters specified in the Act, §823.154, and mergers contemplated by Insurance Code §441.006, are subject to the Act, §823.157. The acquiring or divesting party has the burden of providing sufficient competent evidence for the commissioner to make the determinations required under the Act, §823.157.

(g) Notices; payment of expenses.

(1) Notices, payments of expenses, and other matters specified in the Act, §823.156, must comport with that subsection.

(2) All provisions of Insurance Code Chapter 823, and this subchapter relating to the timely mailing of a copy of the acquisition or divestiture statement, and relating to the timely mailing of a copy of a notice of hearing before the commissioner to an insurer, may be waived by the written unanimous consent of the insurer and the person or persons filing such acquisition or divestiture statement. The written waiver must acknowledge receipt of a copy of the acquisition or divestiture statement.

(h) Exemptions. The provisions of this section do not apply to transactions and other matters exempted under the Act, §823.164. A restructuring within an insurance holding company system which results in a direct or indirect change in control of a domestic insurer is subject to the Act, §823.164(h)(1). An acquisition of a voting security of a domestic insurer specified in the Act, §823.164(f)(1) and (2), must be disclosed by amendment to the registration statement as provided in §7.203(f) of this title (relating to Registration of Insurers). An acquisition of a voting security of a domestic insurer by a security holder controlling, directly and indirectly, 50 percent of the then issued and outstanding voting securities of the domestic insurer, is subject to the Act, §823.164(g). An acquisition of a voting security of an insurer domiciled in this state which is not subject to the Act, §823.154, by virtue of the Act, §823.153, is subject to the Act, §823.164(h)(2).

(i) Retention of control. For certain matters relating to retention of control and certain violations of the Act, see the Act, §823.163.

(j) Duty of insurer. Authorized insurers must notify the commissioner of control of, or of actions to acquire control of, an insurer as required by the Act, §823.161.

(k) Preliminary filings. Any acquisition or divestiture statement may be preliminarily filed with the commissioner to obtain a preliminary review by the commissioner. It must be clearly marked or designated as a preliminary filing. The preliminary filing must not invoke the requirements of this subchapter or Insurance Code Chapter 823, requiring that notice be given to the affected insurer involved. The preliminary filing will have no legal effect and does not constitute compliance with Insurance Code Chapter 823, and this subchapter. The commissioner is not bound by the preliminary review nor deemed to have in any manner approved the filing.

(l) Violations. The following are violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed under this section; or

(2) the effectuation of, or any attempt to effectuate, an acquisition, change of control of, divestiture, or merger with, a domestic insurer unless the commissioner has approved it.

(m) Additional violations. Each director or officer of an insurance company subject to these sections, or of an insurance holding company system subject to these sections, who knowingly and willfully violates, participates in, or assents to or who knowingly and willfully permits any of the officers, agents, or employees of the insurer or

holding company system to engage in transactions or make investments that have not been properly reported or submitted under these sections or that knowingly and willfully violate these sections, is subject to administrative penalty under Insurance Code §§84.001-84.051.

(n) Additional sanctions. An entity that holds a certificate of authority granted by the department or the commissioner and that violates the Insurance Code is subject to the sanctions authorized under Insurance Code §§82.001-82.056.

(o) Producer-controlled property and casualty insurer.

(1) For purposes of this section, a controlling producer, as defined in §7.202(a)(8) of this title (relating to Definitions), is subject to the filing requirements of the Act, in addition to the following requirements.

(A) No acquisition of an insurer by a controlling producer in another state may be approved by the commissioner under the Act, §823.157, unless the acquiring party demonstrates, to the satisfaction of the commissioner, compliance with the requirements contained in subparagraph (B) of this paragraph.

(B) Approval of the acquisition of an insurer by a controlling producer in another state may not be approved unless the following requirements are met.

(i) Required contract provisions. A controlled insurer must not accept business from a controlling producer and a controlling producer must not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each

party, which contract has been approved by the board of directors of the controlled insurer and which contains the following:

(I) a provision that the controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer must suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(II) a provision that the controlling producer render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(III) a provision that the controlling producer remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that the premiums or installments collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(IV) a provision that all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System;

(V) a provision that the controlling producer maintain separately identifiable records of business written for the controlled insurer;

(VI) a provision that the contract not be assigned in whole or in part by the controlling producer;

(VII) a provision that the controlled insurer provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer must adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(VIII) a provision establishing the rate and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subclause and subclause (VII) of this clause, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(IX) a provision that, if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, the compensation must not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other

insurance. No commissions may be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified;

(X) a provision limiting the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer must notify the controlling producer when the applicable limit is approached and must not accept business from the controlling producer if the limit is reached. The controlling producer must not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(XI) a provision that the controlling producer may negotiate but must not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(ii) Audit committee. Every controlled insurer must have an audit committee of the board of directors composed of independent directors. The audit committee must annually meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent

loss reserve specialist acceptable to the commissioner to review the adequacy of the controlled insurer's loss reserves.

(iii) Reporting requirements.

(I) In addition to any other required loss reserve certification, the controlled insurer must annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line or subline of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the controlling producer.

(II) The controlled insurer must annually report to the commissioner in its registration statement filed under §7.203(g) of this title the amount of commissions paid to the controlling producer, the percentage the amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(iv) Disclosure requirements. The controlling producer, prior to the effective date of the policy, must deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer must retain in the records a signed commitment from the subproducer that the subproducer is aware of the relationship between the

controlled insurer and the controlling producer and that the subproducer has notified or will notify the insured.

(2) The contract referred to in paragraph (1)(B)(i) of this subsection does not provide to or expand any rights or privileges of a controlling producer, including, but not limited to, authority to place or write business, that do not otherwise exist or could not otherwise be exercised under the laws of the State of Texas or another state.

(p) A producer controlled insurer is subject to all the provisions of the Act absent a determination that the laws of its domiciliary state are substantially similar as provided by the Act, §823.014.

§7.209. Form A.

(a) Statement regarding the acquisition or change of control of a domestic insurer.

Figure: 28 TAC §7.209(a)

_____ by _____
Name of Domestic Insurer Name of Acquiring Person (Applicant).

Filed with the Texas Department of Insurance, date: _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____.

(b) Insurers and method of acquisition. State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

(c) Identity and background of the applicant.

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any predecessors have been in existence and fully describe any business the person and any of its affiliates intend to commence.

(3) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

(d) Identity and background of individuals associated with the applicant.

(1) Furnish biographical data for the applicant if the person is an individual, or for all persons who are directors, executive officers, or owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual, with the biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings).

(2) The applicant if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct).

(e) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements.

(2) Explain the criteria used in determining the nature and amount of the consideration.

(3) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he or she must specifically request that the identity be kept confidential.

(f) Future plans for insurer.

(1) Provide a business plan which describes any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay dividends or make other distributions, liquidate the insurer, sell any of its assets, merge or consolidate it with any person or persons, make any other material change in its business operations or corporate structure or management, or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, and describe any financial or employment guarantees given to present and contemplated management.

(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, including, but not limited to, change of location, change of name, increase in capital and/or surplus, reinsurance activity, type of business to be written, and anticipated premium volume.

(3) Provide:

(A) an affirmative statement of applicant's and the domestic insurer's compliance with Chapter 22 of this title (relating to Privacy); and

(B) if applicant proposes revisions to the domestic insurer's current privacy policy, the proposed revised privacy policy along with any revised notices required under §22.12 of this title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms applicant will be required to provide to maintain compliance with Chapter 22 of this title.

(4) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(5) Describe any other arrangement or agreement, oral or written, entered into by any acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months.

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant, its affiliates, and any person listed in subsection (d) of this section

plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement of the method by which the fairness of the proposal was determined.

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in subsection (d) of this section.

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any persons listed in subsection (d) of this section is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been made.

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

(k) Recent recommendations to purchase. Provide a copy of any written, or a confirmed description of any oral, recommendations to purchase any voting security of the insurer made by the applicant, any of its affiliates, or any person listed in subsection (d) of this section, or by anyone based on interviews with or at the suggestion of the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement.

(l) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers.

(m) Financial statements and exhibits.

(1) Financial statements, exhibits, and financial projections of the insurer and the applicant must be attached to this statement as an appendix, but list under this subsection the financial statements and exhibits so attached. Projections of the domestic insurer and the applicant must be for a period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control and any additional document or papers required by regulation.

(2) The financial statements must include the annual financial statements of the persons identified in subsection (c)(3) of this section for the preceding three fiscal years (or for such lesser period as the applicant and its affiliates and any predecessors have been in existence), and similar unaudited financial information as of a date not

earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that the unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, from the date of the financial statement to the date of the affidavit or certification. The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must be made in accord with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the certificate is not available, then the financial statement must be sworn to by the applicant as correctly reflecting its financial condition, and in that case, the commissioner at the commissioner's discretion may require the financial statement to be certified by an independent public accountant.

(A) If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accord with the

requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state.

(B) If the applicant is an individual person, the person must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he or she is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles and must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

(4) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material; and proposed employment, consultation, advisory, or management contracts concerning the insurer.

(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements--Filing Requirements) must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years. These reports are for review of the department, and are not a part of the material required to be submitted under the Act. However, the materials will be open for public inspection at the offices of the department during the pendency of the application.

(n) Enterprise risk management. Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F under Insurance Code §823.0595, as applicable, within 15 days after the end of the month in which the acquisition of control occurs.

(o) Notice regarding divestiture of control under Insurance Code §823.154.

Figure: 28 TAC §7.209(o)

_____ by _____
Name of Domestic Insurer Name of Divesting Person (Applicant).

Filed with the Texas Department of Insurance, date: _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(1) Provide the name, title, address, email, and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) Provide notice that applicant is divesting control of the above named insurance company(ies) and describe how control is being divested and include the percentage of control being divested.

(3) State the name and address of the recipient(s) of the divestiture of control.

(4) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.

(5) Describe and state the name of the person in control of the insurer before and after the divestiture of control.

(p) Signature and certification. Signature and certification of the following form:

Figure: 28 TAC §7.209(p)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823,

_____ has caused this application to
Name of Applicant

be signed on its behalf in the City of _____ and State of _____,

on _____, 20__ .

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____ of _____,
(Title) (Name of Applicant)

who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____, County, _____

§7.210. Form B.

- (a) Insurance holding company system registration statement.

Figure: 28 TAC §7.210(a)

Filed with the Texas Department of Insurance by (name of registrant) on behalf of the following insurance companies:

Name	Address

date: _____, 20__ . Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b) Identity and control of registrant. Furnish the exact name of each insurer registering or being registered ("the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

(c) Organizational chart. Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system, including all affiliated persons as defined in §7.202(a)(2) of

this title (relating to Definitions). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of the control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(d) The ultimate controlling person. As to the ultimate controlling person (that person which is not controlled by another person) in the insurance holding company system, furnish the following information:

- (1) name;
- (2) home office address;
- (3) principal executive office address;
- (4) the organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.; together with a conformed copy of the charter or articles of incorporation and its bylaws;
- (5) the principal business of the person;
- (6) the name and address of any person who holds or owns 10 percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(7) if court proceedings looking toward a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

(e) Biographical information. If the ultimate controlling person is a corporation, organization, limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

(f) Transactions, relationships, and agreements.

(1) Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates:

(A) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the registrant, or of the registrant by its affiliates;

(B) purchase, sales, or exchanges of assets;

(C) investment activities of an investment pool and transactions between pools and participants (Insurance Code Chapters 424 and 425);

(D) transactions not in the ordinary course of business;

(E) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

(F) all management and service contracts and all cost sharing arrangements;

(G) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(H) all dividends and other distributions to shareholders;

(I) agreements with affiliates to consolidate federal income tax returns;

(J) all transactions with affiliated financial institutions;

(K) the amount of commissions paid to the controlling producer, the percentage such amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance;

(L) all surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness outstanding;

(M) any affiliated transaction not disclosed in subparagraphs (A) - (L) of this paragraph which is subject to the Act;

(N) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system;

(O) the corporate governance and internal control responsibilities of the insurer's board of directors, including a statement that:

(i) the insurer's senior management or officers have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(ii) the insurer's board of directors oversees corporate governance and internal controls; and

(P) any other information the commissioner requires.

(2) No information need be disclosed if such information is not material.

See §7.203(d) of this title (relating to Registration of Insurers). The description must be in a manner permitting the proper evaluation by the commissioner, and must include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to the transaction; relationship of the affiliated parties to the registrant; and the holding company section number and/or commissioner's order number.

(g) Litigation or administration proceedings. Furnish a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(1) criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party; and

(2) proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

(h) Required statement. The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

(i) Financial statements and exhibits.

(1) Financial statements and exhibits should be attached to this statement as an appendix. List under this item the financial statements and exhibits attached.

(2) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements must include the annual financial statements of the ultimate controlling person and, on request of the commissioner, the annual financial statements of the affiliates in the insurance holding company system as of the end of the person's latest fiscal year or any other period as determined by the commissioner.

(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information must be filed for any subsequent period to

the extent available. Financial statements may be prepared on either an individual basis or, unless the commissioner otherwise requires on a consolidated basis if consolidated statements are prepared in the usual course of business.

(4) Other than with respect to the preceding, the financial statement must be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements are deemed to be an appropriate form and format.

(5) Unless the commissioner permits otherwise, the annual financial statements must be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accord with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(6) Unless the commissioner permits otherwise, any ultimate controlling person who is an individual may file personal financial statements that are reviewed

rather than audited by an independent public accountant. The review must be conducted in accord with standards for review of personal financial statements as issued by the American Institute of Certified Public Accountants. Personal financial statements must be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements for the statements to be in conformity with generally accepted accounting principles.

(7) Exhibits must include copies of the latest annual reports to shareholders of the ultimate controlling person, proxy material used by the ultimate controlling person, and any additional documents or papers required by regulation.

(j) Form C required. A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

(k) Signature and certification. Furnish signature and certification of the following form:

Figure: 28 TAC §7.210(k)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Registrant has caused this Registration Statement to be signed on its behalf in the City of

_____ and State of _____ on _____, 20____.

(Name of Registrant)

2480

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

Adopted Sections
Page 86 of 108

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and

attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify

which witness my hand and seal of office.

Notary Public in and for

2480

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

Adopted Sections
Page 87 of 108

(Seal)

_____, County, _____

§7.211. Form C.

(a) Summary of Material Changes to Registration Statement is required as follows.

Figure: 28 TAC §7.211(a)

Filed with the Texas Department of Insurance

by

Name of Registrant

On behalf of the following Insurance Companies:

Name	Address
------	---------

_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b) Furnish a brief description of all items in the current annual registration statement which represent material changes from the prior year's annual registration statement. The description must be in a manner permitting proper evaluation by the commissioner, and must include specific references to the items in the annual registration statement and to the terms contained.

(c) Changes occurring under §7.210(c) of this title (relating to Form B) in the percentage of each class of voting securities held by each affiliate need only be included where the changes result in ownership or holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

(d) Changes occurring under §7.210(e) of this title need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

(e) If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of the change must be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

(f) The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose is to avoid statutory threshold amounts and the review that might otherwise occur.

(g) Signature and certification are required as follows.

Figure: 28 TAC §7.211(g)

SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Insurance Code Chapter 823, the Registrant has caused this Registration Statement to be signed on its behalf in the City of

_____ and State of _____ on _____, 20____.

(Name of Registrant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

2480

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____ County, _____

§7.212. Form D.

(a) Prior notice of a transaction. Prior notice of a transaction is required as follows.

Figure: 28 TAC §7.212(a)

Filed with the Texas Department of Insurance

by

Name of Applicant

On behalf of the following Insurance Companies:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b) Identity of parties to transaction. Furnish the following information for each of the parties to the transaction:

- (1) name;
- (2) home office address;
- (3) principal executive office address;
- (4) the organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (5) a description of the nature of the parties' business operations;

(6) relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;

(7) where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

(c) Description of the transaction. Furnish the following information for each transaction for which notice is given:

- (1) a statement identifying the statute under which the transaction is filed;
- (2) a statement of the nature of the transaction and the reasons for entering into or changing the transaction;
- (3) a statement of how the transaction complies with Insurance Code §823.101;
- (4) the proposed effective date of the transaction; and
- (5) the financial impact of the transaction on the domestic insurer.

(d) Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments.

(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the

insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under the loan, extension of credit, or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

(3) If the transaction involves an investment, guarantee, or other arrangement, state the period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of the investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(e) Loans or extensions of credit to a non-affiliate. If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding through which the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase the assets of, or make investments in, any affiliate of the insurer making loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of funds, securities,

property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction on the insurer's surplus.

(f) Reinsurance. If the transaction is a reinsurance agreement or modification or a reinsurance pooling agreement or modification described in Insurance Code §823.103(a)(2), furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(g) Management agreements, service agreements, and cost sharing arrangements.

(1) For management and service agreements, furnish:

(A) a brief description of the managerial responsibilities or services to be performed;

(B) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(2) For cost-sharing arrangements, furnish:

- (A) a brief description of the purpose of the agreement;
 - (B) a description of the period of time during which the agreement is to be in effect;
 - (C) a brief description of each party's expenses or costs covered by the agreement;
 - (D) a brief description of the accounting basis to be used in calculating each party's costs under the agreement;
 - (E) a brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
 - (F) a statement regarding the cost allocation methods specifying whether proposed charges are cost or market based. If market based, include the rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
 - (G) a statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.
- (h) Signature and certification. Signature and certification are required as follows.

Figure: 28 TAC §7.212(h)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Applicant has caused this Prior Notice of a Transaction Statement to be signed on its behalf in the City of

2480

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

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_____ and State of _____ on _____,

20____.

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and

attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify

which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____ County, _____

§7.213. Form E.

(a) Notice of Ordinary and Extraordinary Dividends and Other Distributions.

Complete subsections (a) and (b) of this section for an Ordinary Dividend under §7.203(o) of this title (relating to Registration of Insurers) and complete subsections (a) - (c) of this section for an Extraordinary Dividend under §7.204(d) of this title (relating to Transactions Subject to Prior Notice).

Figure: 28 TAC §7.213(a)

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b) Dividend or distribution.

(1) Name of insurer.

(2) Address of insurer.

(3) Declaration of dividend:

(A) Amount of declared dividend or distribution: \$

(B) Recipient of declared dividend or distribution.

(C) Declaration date.

(D) Proposed payment date.

(4) The dividend or distribution is in compliance with the Act and is indicated in subparagraphs A and B of this paragraph:

(A) Calculation.

(i) Amount of current dividend or distribution: \$

(ii) Dividends or distributions paid during preceding 12 months, excluding current dividend or distribution but including declaration date, payment date, type of dividend or distribution, and amount: \$

(iii) Total of (i) and (ii): \$

(iv) Surplus as regards policyholders (net worth for HMO) as of preceding December 31: \$

(I) 10 percent of (iv) for Life, P&C, and HMO: \$

(II) 20 percent of (iv) for Title: \$

(v) Operating income:

(I) Net gain from operations before realized capital gains as of preceding December 31 for Life, Title and HMO: \$

(II) Net income as of preceding December 31 for P&C: \$

(vi) Greater of calculated surplus from (iv) or the operating income from (v): \$

(B) If the amount from (iii) exceeds the amount from (vi), then provide the information required by subsection (c) relating to extraordinary dividend and distribution.

(5) Earned surplus, defined as the unassigned funds (surplus), must be greater than the current dividend or distribution amount stated in (4)(A)(i) of this subsection. Earned surplus must be calculated as of the most recent financial information available.

(6) Supporting documentation of the balance sheet, summary of operations including capital and surplus account, and cash flow statement of the most recently filed monthly, quarterly, or annual statement, together with documentation to support the standards specified in Insurance Code §823.008.

(7) Additional requirements are as follows:

(A) Identify property, including bank accounts, to be used to pay the dividend or distribution or to be converted to pay the dividend or distribution.

(B) Provide insurer's ratio of net written premium to capital and surplus for 12 months as of the end of the last calendar year. In addition, provide the same ratio after deducting the total amount of the present dividend or distribution.

(C) Identify and describe any reason (other than general business trends) that earnings are expected to decrease.

(D) Identify any investment or contribution by the insurer to subsidiaries made since the last calendar year or to be made in the immediate future.

(E) Give a brief statement as to the effect upon the insurer's capital and surplus or HMO's net worth and the reasonableness of remaining capital and surplus or net worth after payment of dividend or distribution in relation to the insurer's outstanding liabilities and the adequacy of capital and surplus or net worth relative to the insurer's financial needs.

(8) Certification that there has been no material adverse change in the financial condition of the insurer since the date of the most recent financial statement filed with the department and the payment of the dividend or distribution does not adversely affect the interest of policyholders.

(9) Certification that the declaration or payment of the dividend or distribution does not violate any of the provisions of Insurance Code Chapter 403 or §841.253, as applicable, and that the amount of the dividend or distribution declared was calculated based on the amount of cash and the current fair market value of any other property to be paid or distributed.

(10) Signature.

Figure: 28 TAC §7.213(b)(10)

SIGNATURE

Date: _____

(Name of Insurer)

By: _____

(Printed Name)

(Title)

(c) Extraordinary Dividend and Distribution.

(1) State purpose of dividend or distribution.

(2) On request of the commissioner, furnish a copy of directors' resolution declaring dividend and any shareholders resolution supporting the declaration are to be attached to this form.

(3) Effect of declaration.

(A) Give the total amount of dividend or distribution in dollars when so expressed, or if declared in some other terms, the approximate dollar value and identify the exact property in which the dividend or distribution is payable if not cash (include method of valuing the property other than cash).

(B) Explain any difference in treatment and basis with regard to any share of issued and outstanding stock that will not be treated equally in distribution of dividend, excluding treatment of classes of stock.

(C) Explain basis concerning the different treatment in distribution of dividend given by class of stock.

(D) Give number of shares by class to whom proposed dividend is payable, the dividend per share of each class and total amount of dividend by class of stock.

(E) By class of stock, give total amount of each dividend declared, the amount payable per share, and the date of declaration for the five calendar years preceding this notice.

(F) Give the net gain or loss from operations after dividends to policyholders and federal income taxes, excluding capital gains and losses of the insurer for each of the last five calendar years as reported in the insurer's annual statement to the department.

(4) Provide a balance sheet, income statement, and cash flow statement for the interim period from the last annual statement to the end of the month preceding the month in which this application is submitted.

(5) Provide the National Association of Insurance Commissioners authorized control level Risk Based Capital Ratio before and after dividend or distribution and projected for year end and the following year end.

(6) Explain any restrictions on the volume of the insurer's underwritings within the last year or in the immediate future that did not previously exist.

(7) Explain any limitations and reasons for limitations established for geographical underwriting within the last year or in immediate future that did not previously exist.

(8) Describe the existing reinsurance program of insurer, including limits of retention.

(9) Identify and describe any deviation of more than 10 percent in value of any loans or investments held by insurer (other than replacement of maturing securities with comparable securities) from that disclosed in your last annual statement.

(10) Signature and certification of the following form is required:

Figure: 28 TAC §7.213(c)(10)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Insurer has caused this notice to be signed on its behalf in the City of _____ and the State of _____ on _____, 20 ____.

(Name of Insurer)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated

that he or she has read the preceding application and that the answers, exhibits, and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20 _____,
to certify which witness my hand and seal of office.

(Signature)

Notary Public in and for

(Seal)

_____ County, _____

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(a) Enterprise Risk Report is required as follows.

Figure: 28 TAC §7.214(a)

Filed with the Texas Department of Insurance

by

Name of Registrant/Applicant

On behalf of/related to the following Insurance Companies:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

Date _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b) The registrant/applicant, to the best of its knowledge and belief, must provide information regarding the following areas that could produce enterprise risk as defined in §7.202 of this title (relating to Definitions), provided such information is not disclosed

in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

(1) any material developments regarding strategy, internal audit findings, compliance, or risk management affecting the insurance holding company system;

(2) acquisition or disposal of insurance entities and reallocation of existing financial or insurance entities within the insurance holding company system;

(3) any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;

(4) developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;

(5) business plan of the insurance holding company system and summarized strategies for the next 12 months;

(6) identification of material concerns of the insurance holding company system raised by supervisory college, if any, in the last year;

(7) identification of insurance holding company system capital resources and material distribution patterns;

(8) identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(9) information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called; and

(10) identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

(c) The registrant/applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed under subsection (b) of this section for which the form provides responsive information. If the registrant/applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant/applicant includes specific references to those areas listed under subsection (b) of this section for which the financial statement provides responsive information.

(d) If the registrant/applicant has not disclosed any information under subsection (b) of this section, the registrant/applicant must include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure under subsection (b) of this section.

(e) As added by §18 of Acts 2011, 82nd Leg., ch.922 (S.B. 1431), the commissioner of insurance has determined that the National Association of Insurance Commissioners has completed an enterprise risk form and has proposed a master confidentiality agreement.

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

Adopted Sections
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8. CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on May 2, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts amendments to §§7.201 - 7.205, 7.209, 7.210, and new §§7.211 - 7.214.



Eleanor Kitzman
Commissioner of Insurance

COMMISSIONER'S ORDER NO. 2480