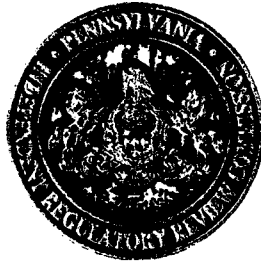


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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 16, 1999

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: IRRC Regulation #11-182 (#2069)
Insurance Department
Insurance Holding Company Systems

Dear Commissioner Koken:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Fiona Wilmarth at 783-5439.

Sincerely,

Robert E. Nyce
Executive Director

REN:wbg

Enclosure

cc: Peter Salvatore
Elaine M. Leitzel
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

INSURANCE DEPARTMENT REGULATION NO. 11-182

INSURANCE HOLDING COMPANY SYSTEMS

DECEMBER 16, 1999

We have reviewed this proposed regulation from the Insurance Department (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, consistency with the statute, legislative intent, need, reasonableness, economic impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 25.1. Definitions. – Consistency with the statute; Legislative intent; and Clarity.

NAIC

The definition of this term is “The National Association of Insurance Commissioners, or *successor organization*.” (Emphasis added.) This definition is inconsistent with Section 1401 of The Insurance Company Law (Act) (40 P.S. §§ 991.1401). The definition in the Act doesn’t include a reference to a “successor organization.” There is no indication that the General Assembly intended to recognize a successor organization to the NAIC. Consequently, the Department should delete the reference to a successor organization.

Surplus

This definition references “. . . accounting practices and procedures manuals adopted by the NAIC as required by the Commissioner.” It is unclear how many and which specific NAIC “manuals” are encompassed by this definition. Also, the phrase “. . . as required by the Commissioner.” is confusing. Will compliance with all or just some of the NAIC manuals be required? Why aren’t the specific requirements in the regulation? We request the Department clarify these issues in the final regulation.

Ultimate Controlling Person

This definition references direct or indirect control of the registrant. We have two concerns with this definition. First, to improve clarity, we suggest the Department define “registrant.” Second, what degree of control constitutes “indirect control of the registrant”? The Department should explain the distinction between “direct” and “indirect” control.

2. Section 25.11. Expenses. – Reasonableness; Need; and Clarity.

General

This section addresses expenses of experts and consultants. To improve clarity, the Department should add “of experts and consultants” to the title of this section.

Furthermore, the regulation does not outline what recourse, if any, is available if the person believes the charges are unreasonable. The Department should explain the process for questioning the costs of an expert or consultant.

Subsection (c)

This subsection requires per diem charges for experts to be comparable to prevailing rates for those services. How does the Department determine the prevailing rates? Also, why does the regulation only allow per diem rates, rather than per diem or hourly rates?

Subsection (d)

This subsection states that charges for experts “. . . will be made in accordance with provisions set forth in letters of engagement.” It appears to be obvious that charges must be made according to the contract between the Department and the expert. We request the Department explain why this subsection is necessary.

3. Section 25.12. Forms – general requirements. – Statutory authority; Legislative intent; and Clarity.

Subsection (b)

This subsection requires at least one copy of forms submitted to the Department to be signed. However, the regulation does not specify if electronic signatures are permitted. Senate Bill 555, relating to Uniform Electronic Transactions, was delivered to the Governor on December 8, 1999. This bill authorizes numerous electronic transactions, including electronic signatures. If Senate Bill 555 is signed into law before the Department submits the final regulation, the Department should amend the regulation to permit electronic signatures.

Subsection (c)

This subsection describes the procedures a filing person must follow to request that information in Forms A and E be treated as confidential. We question the Department’s statutory authority for this subsection as it relates to Form E (entitled Pre-Acquisition Notification Statement of the Potential Competitive Impact of a Proposed Merger or Acquisition).

Section 1403(c)(1) of the Act (40 P.S. § 991.1403(c)(1)) requires confidential treatment of preacquisition notices in the same manner as provided in Section 1407 of the Act. Section 1407 of the Act (40 P.S. § 991.1407) requires that all information and documents related to Sections 1404 (registration of insurers) and 1405 (standards and management of insurers within a holding company system) of the Act be given confidential treatment, unless the insurer gives written

consent or has had an opportunity to be heard. Therefore, the Department should delete the reference to Form E in this subsection.

4. Section 25.13. Forms – incorporation by reference, summaries and omissions. – Clarity.

The last sentence of Subsection (a) begins with the term “Matter.” This term is vague and confusing. It appears the term refers to information that has been previously filed with the Department. We suggest the Department use a more descriptive term in place of “Matter.”

5. Section 25.15. Forms – additional information and exhibits. – Clarity.

Subsection (a) requires the filing person to submit additional information that is necessary to make the information on Forms A - E “not misleading.” The phrase “not misleading” is vague. How can the filing person make this judgment to the satisfaction of the Department? The Department should clarify what type of additional information the Department may require to verify the information.

6. Section 25.16. Acquisition of control – statement filings. – Clarity.

Subsection (b) largely repeats the requirements of Section 1402(g) of the Act (40 P.S. § 991.1402(g)). However, Subsection (b) is a lengthy single sentence which is very confusing. The Department could break the sentence into subparagraphs to improve readability and clarity.

In addition, the Department should clarify what information is required to determine that a transaction will not change or influence the control of a domestic insurer.

7. Section 25.18. Summary of registration – statement filing. – Statutory authority and Consistency with the statute.

As written, this section would require an insurer to file Form C (Summary of Registration Statement) with any jurisdiction in which the insurer is required to do business, if required to do so by the chief regulatory insurance official in that jurisdiction. If that official does not establish a filing deadline, the insurer is required to file Form C within 15 days.

We have several concerns with this section. First, we question the Department’s statutory authority to establish filing requirements for another jurisdiction. Second, we note that the language in this section is contrary to the language in the statute. Section 1404(a)(1) (40 P.S. § 991.1404(a)(1)) creates an exemption from registration requirements for a foreign insurer subject to substantially similar registration requirements in the jurisdiction of its domicile. Under 40 P.S. § 991.1404(a)(1) and (2), the Department may require a foreign insurer which is not required to register in Pennsylvania, to file the same information with the Department as it files in the jurisdiction of its domicile. The Department should amend Section 25.18 to correspond with Section 1404(a)(1) and (2) of the Act. This approach is also consistent with the intent of Section 4B of the NAIC model regulations. If the Department does not revise this section, it should explain its authority to require insurers to make filings in other jurisdictions.

8. Section 25.21. Transactions subject to prior notice – notice filing. – Economic impact; Reasonableness; and Clarity.

Subsection (c) allows the Department to “. . . withdraw its prior approval of a transaction and require the transaction to be reversed or take other regulatory action as a result of a material change in information furnished on Form D.” As a practical matter, how could an insurer reasonably be expected to reverse a transaction which it has already executed? For example, if the Department gives its approval for an insurer to enter into a loan agreement, how could the insurer later nullify its loan agreement without incurring substantial costs?

It’s our understanding that the Department intended this subsection to preclude an insurer from proceeding with an approved transaction if a material change occurs before the transaction is consummated. Since the Department approves a specific transaction, the insurer cannot materially deviate from the approved transaction without notifying the Department and receiving approval. The Department should amend this provision to clearly reflect its intent.

Also, what “other regulatory action” does the Department contemplate under Subsection (c)?

9. Section 25.22. All dividends and other distributions. – Economic impact; Need; Reasonableness; and Clarity.

General

This section in the existing regulations applies only to extraordinary dividends and other distributions. The proposed regulation imposes the existing reporting requirements for extraordinary dividends on all dividends. The Department should explain the need to apply this section to all dividends.

Subsection (b)

This subsection requires that dividends be paid “. . . only out of unassigned funds (surplus)” The phrase “unassigned funds (surplus)” is unclear. The defined term in Section 25.1 *Definitions* is “surplus.” The Department should use “surplus,” or explain the difference between that term and “unassigned funds (surplus).”

Subsection (c)

Subsection (c)(5) requires the insurer to submit a balance sheet and income statement covering the time period from the last annual submittal to “the end of the month preceding the month in which the request for dividend or other distribution approval is submitted.” Why would the most recent quarterly financial statement not suffice? Requiring financial statements through the end of the month preceding the insurer’s request may be a burdensome, expensive reporting requirement. The Department should revise the regulation to require the reporting through the end of the most recent quarter, or limit the requirement in the proposed regulation to extraordinary dividends.

Subsection (f)

This subsection allows the Department to “. . . withdraw its prior approval of a dividend or other distribution and require the transaction to be reversed or take other regulatory action as a result of a material change in information furnished under this section.” As a practical matter, how could an insurer reasonably be expected to reverse a dividend which it already paid? Also, what “other regulatory action” does the Department contemplate under Subsection (f)?

It’s our understanding that the Department intended this subsection to preclude an insurer from proceeding with an approved transaction if a material change occurs before the transaction is effected. Since the Department approves a specific transaction, the insurer cannot materially deviate from the approved transaction without notifying the Department and receiving further approval. The Department should amend this provision to clearly reflect its intent.

10. FORM A. Statement regarding the acquisition of control of or merger with a domestic insurer. – Need and Economic impact.

Item 3 requires biographical affidavits to be signed in the original and notarized. An affidavit is not required if one was filed within three years and there is no change to the information already on file. One commentator recommends lesser requirements. The commentator believes copies of biographical affidavits should be allowed and, if there is no change to the information, the affidavit on file does not need to be replaced every three years.

The Department should explain why copies of biographical affidavits are not acceptable. Further, if there is no change to the information already on file, why is a new biographical affidavit needed? Why doesn’t the Department simply require an annual affidavit attesting to the accuracy of the biographical affidavit on file?

11. FORM B. Insurance holding company system annual registration statement. – Consistency with the statute; Need; Economic impact; and Clarity.

The requirements for directors and executive officers are identical to the requirements in FORM A, Item 3 above. The Department should explain the need for original, notarized affidavits and the need to replicate them if there is no change in the information already on file.