

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

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Tex. Admin. Code §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214, concerning insurance holding company systems. These amendments and new sections are necessary to implement statutory changes from Senate Bills 1283 and 1284 (79th Leg., 2005), 1542 (80th Leg., 2007), and 1431 (82nd Leg., 2011), and adopt rules consistent with 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 the Insurance Code Chapter 823 (Act). The proposed amendments and new sections update the law relating to the functions of insurance holding company systems in response to lessons learned as a result of the nation's recent financial crisis.

Legislative intent from the enrolled bill analysis to Senate Bill 1431 provides that the updated NAIC model act and regulation address the needs of insurance regulators to be able 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 TDI with reports on enterprise or system risks posed by non-insurance operations that may 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 regulatory tools needed to evaluate contagion risk that may develop within an insurance holding company system, which impacts the department's ability to protect the interests of the public and the state generally. The proposed sections provide the commissioner with enhanced access to information about the financial condition of insurance holding company systems and enhanced examination authority.

The proposal contains non-substantive changes in the text to correct punctuation and grammar, and conform to current agency writing style. In addition, the proposal contains updated citations due to re-codification of the Insurance Code, current agency address, renumbering due to proposed amendments, recitation of proposed section form numbers and names, and other conforming changes. Generally, the proposal 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 proposal are from Senate Bill 1431. This proposal notes when proposed amendments are from Senate Bills 1283, 1284, and 1542.

An informal draft of this proposal was posted on the TDI website from September 13, 2012, to September 21, 2012. Subsequent changes were made to the draft, including the deletion of proposed §7.206, and are reflected in this proposal. Specifically, substantive changes to §7.201 include proposed 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 TDI 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 website” to clarify where to file and which form to attach with the fee.

Section 7.202 includes proposed amendments to definitions. “Divesting person,” “Divestiture,” and “Enterprise Risk” are added to §7.202(a)(10) - (12), respectively, and are identical to the Insurance Code §823.002 to highlight the added concepts of divestiture and enterprise risk. Section 7.202(a)(15) tracks language from the 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” includes HMOs as provided in the Insurance Code §843.051(f) from Senate Bill 1284 (79th Leg., 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 the Insurance Code §823.015 from Senate Bill 1283 (79th Leg., 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 that is 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 ending in a five or a zero and adds that an insurer must file an annual registration statement as provided in the Insurance Code §823.055(b) from Senate Bill 1542 (80th Leg., 2007). In addition, §7.203(g) includes a provision 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 found in proposed new §7.211 (Form C) pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007) even if there are no changes. A filing fee remains required for Form B. Section 7.203(k) adds, pursuant to Insurance Code §823.0595, that the ultimate controlling person of an insurer is required to file an enterprise risk report on proposed Form F.

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

Section 7.203(m)(4) adds that 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. 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 the 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, pursuant to the 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 proposed Form F (enterprise risk report), pursuant to the 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 the 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, 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. 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 pursuant to the 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 proposed Form D. Section 7.204(a)(2)(D) relates to §7.212 (proposed 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 pursuant to the 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 pursuant to Senate Bill 1283 (79th Leg., 2005). The proposed rule continues to require a domestic insurer to file acquisition statements and the language in the rule denying the exemption is no longer needed. Proposed §7.205(h) deletes the requirement to file a rarely used exemption form as found in proposed for repeal §7.213 (Form E) which is published in this issue of the *Texas Register*.

Proposed 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. Subsections 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, which is available on the department 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 proposed 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. The timeframe for the projections moves from §7.209(m)(3) to proposed §7.209(m)(1) for clarification. 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, applicant agrees to provide enterprise risk management information required by proposed new §7.214 (Form F) pursuant to 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 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 pursuant to 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). Proposed §§7.210(h) and (i) follow the NAIC model language and retain the Form B content. Section 7.210(i)(2) includes affiliates pursuant to Insurance Code §823.052(c)(1). In addition, §7.210(i)(2) adds that the filing is of the end of the person's latest fiscal year or any other period as determined by the commissioner. Sections 7.210(i)(5) and (6) permit commissioner 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. Proposed §7.210(j) deletes the requirement for a copy of the charter or articles of incorporation and bylaws pursuant to the Insurance Code §823.052 from Senate Bill 1542 (80th Leg., 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 (proposed Form C) pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007). A Form C is not required to be filed if a Form B amendment is filed in the interim.

Proposed new §7.211 (Form C), summary of material changes to registration statement, adds language consistent with NAIC model regulations and provides that an insurer required to file an annual registration statement also furnish a summary of material changes to the registration statement pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007). The proposed 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 pursuant to the Insurance Code §§823.053 - 823.055. Section 7.211 (Form C) relating to disclaimers of control or affiliation is proposed for repeal and the requirements regarding disclaimers of control or affiliation pursuant to Insurance Code §823.010 are added to §7.203 (m). Proposed 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.

Proposed new §7.212 (Form D), prior notice of a transaction, adds the NAIC model regulation language. The proposal for repeal of existing Form D for extraordinary dividends is published in this edition 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) differs 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. Proposed §7.212(e) concerns loans or extensions of credit to a non-affiliate 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.

Proposed new §7.213 (Form E), notice of ordinary and extraordinary dividends and other distributions, replaces existing §7.213, regarding exemptions, which is proposed for repeal in this issue of the *Texas Register*. Section 7.213 consolidates

ordinary and extraordinary dividend and distribution from Form D, concerning extraordinary dividends, and content from the HC Dividend form, concerning ordinary dividends which is currently on the department website. 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 dividend and distribution are required. Although proposed §7.213(b)(5), regarding earned surplus, applies to HMOs pursuant to the 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 the 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.

Proposed new §7.214 (Form F) is an addition to the regulations and contains enterprise risk report information required by the Insurance Code §823.0595 and follows the NAIC model language. The Insurance Code §823.0595 includes a statutory notice requirement in accord with Acts 2011, 82nd Leg., ch. 922 (S.B. 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 and has proposed a master confidentiality agreement and places notice of that determination in the *Texas Register*. The notice is found in proposed §7.214(e).

In conjunction with these proposed amendments and new sections, the proposed repeal of §§7.211 - 7.213 is also published in this issue of the *Texas Register*.

2. FISCAL NOTE. Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the proposed amendments and new sections are in effect, there are several public benefits anticipated because of the enforcement and administration of the proposal, as well as potential costs for persons required to comply with the proposal.

ANTICIPATED PUBLIC BENEFITS

The public benefits anticipated as a result of the proposal include: (i) updating existing rules regulating holding company systems to implement statutory changes enacted by the 79th, 80th, and 82nd Legislatures; and (ii) adopting rules consistent with the NAIC model regulations, where applicable, to provide enhanced holding company system reporting, more effective regulation to protect consumers, and closer alignment of Texas holding company requirements with those of other states. These proposals

are expected to facilitate standardization of compliance and create cost efficiencies to regulated companies; enhance effective regulation of holding company systems as forms and requirements for acquisition and divestiture, registration, summary of material changes, prior notice of a transaction, dividend and distribution, and disclaimers will create further standardization and transparency; and establish the enterprise risk report form which will allow for uniform reporting and assessment of critical risks among complex entities in a holding company system to protect Texas insurance consumers and the public.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

The cost to persons required to comply with the proposal during each year of the first five years that the rules will be in effect are nominal, because the proposed requirements are routine, include information that is expected to be readily available by the applicant, and are driven by statute. Some additional costs may be incurred by larger companies that have a greater exposure in the market.

Statutory changes to the Insurance Code §823.154 and §823.157 added the requirement that notice of divestitures, in addition to acquisitions, be filed with TDI. Although notice of divestitures was not required previously, the notice will only be required in situations where an acquisition subject to filing does not exist. Mr. Saenz anticipates that there will be no more than one divestiture filing from the industry in the next five years and the filing on proposed Form A, §7.209 creates nominal administrative costs for a company filing divestiture information.

The Insurance Code §823.055 was changed from requiring registration filing every five years to requiring annual filing with a summary of material changes from the prior year. Proposed §7.203 and §7.210 (proposed Form B), will require companies to file an annual registration statement with the commissioner each year over the next five years. However, companies will not incur additional administrative costs as companies have been making annual filings since the statute took effect in 2007. The Insurance Code §823.052 provides that the annual filing will require disclosures of corporate governance and internal control responsibilities of the insurer's board of directors. The information in the filing is readily available and may create nominal professional staff costs in each year of the first five years. The summary of material changes is new as proposed in Form C, §7.211, which incorporates the NAIC model form. The requirement to notify TDI of material changes is currently accomplished through the filing of transactions throughout the year; however, the changes will now be summarized in Form C. The filing on a specified form will create nominal administrative costs each year of the first five years, which is, to some extent, being offset by the requirement eliminated in the Insurance Code §823.052 for filing the charter, by-laws, and articles of incorporation, which has been in effect since 2005.

Form D, prior notice of a transaction, is proposed in §7.212 to incorporate the NAIC model form and is required pursuant to the Insurance Code §§823.101, 823.102, and 823.103, to describe certain elements of the transaction and business impacts for which information is expected to already exist. In practice, companies are required to provide the overview of transactions to TDI in a filing; the description of the transaction

will now be summarized in Form D. The filing will create nominal administrative costs for companies filing transactions.

There will be no additional costs associated with §7.213, proposed Form E, each year over the next five years, because filing dividend and distribution information is already required. Currently, companies file separate forms for ordinary and extraordinary dividend and distribution. The proposed rule consolidates filing ordinary and extraordinary dividend information into one form.

The Insurance Code §823.0595 provides that companies, writing direct or assumed annual premium of \$300 million or more (phased in from 2014 to 2016), which are required to register with the commissioner, must file an enterprise risk report as proposed in §7.203(k) on proposed Form F, §7.214. Form F is proposed in accord with the NAIC model rule. The report provides a description of the material risks within the insurance holding company system that may pose enterprise risks to the insurer. Companies required to file the enterprise risk report are expected to be operating prudently and have current enterprise risk management in place based on best practices for corporate governance. Administrative and professional staff costs associated with compiling and filing the enterprise risk report on the basis of existing enterprise risk management will vary depending on the complexities of a holding company system as well as the size of the company based on the direct or assumed annual premium range written by the insurer. Mr. Saenz anticipates costs to range from \$16,000 to \$19,000 for companies with annual direct or assumed premium writings of \$5 billion or more; from \$14,000 to \$16,000 for companies with annual direct or

assumed premium writings greater than \$1 billion but less than \$5 billion; from \$11,000 to \$13,000 for companies with annual direct or assumed premium writings greater than \$500 million but less than \$1 billion; and from \$8,000 to \$9,000 for companies with annual direct or assumed premium writings of \$300 million to \$500 million. Costs will be reduced to the extent that a company may submit information as filed with the Securities and Exchange Commission as long as it is responsive to the information required in proposed Form F.

The Insurance Code §823.201 requires that an enterprise risk report pursuant to §823.0595 be filed upon an acquisition of control of any company that must register with the commissioner. Proposed §7.209, Form A, provides that the information required by proposed new Form F be filed within 15 days after the end of the month in which the acquisition of control occurs. Mr. Saenz anticipates that administrative and professional staff costs associated with the enterprise risk report filed upon a change of control will range from \$12,000 to \$19,000, depending on the complexities of the holding company system.

TDI has determined that the associated costs for implementing the statutory changes and adopting rules consistent with the NAIC model regulations, as applicable, will not have an adverse effect on small and micro businesses, and the cost for compliance will vary only for large businesses with regard to the enterprise risk report as outlined in this cost note.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. In accord with the Government Code §2006.002(c), TDI has determined that these proposed amendments and new sections will not have an adverse economic effect on small or micro businesses. The costs for compliance will only vary between the smallest and largest businesses, because of the additional expense to larger companies due to filing the enterprise risk report on proposed Form F.

Although the department has determined that the proposed amendments and new sections will not have an adverse effect on small and micro businesses, the department has considered the purpose of the applicable statutes, which is to implement statutory changes, adopt rules consistent with the NAIC model regulations, as applicable, and provide enhanced reporting, evaluation, and regulation of solvency and risk that may develop within an insurance holding company system to protect the public, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the department's position that to waive or modify the requirements of the proposed amendments and new sections for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

The proposed amendments and new sections include provisions for certain reporting requirements that are provided to implement statutory changes and to adopt rules consistent with the NAIC model regulations. These amended requirements are routine and include information that is expected to be readily available by the applicant.

Proposed §7.202 adds that HMOs are subject to the Act; however, HMOs have been subject to the Act since the Insurance Code §843.051(f) took effect in 2005. Current Form C, with regard to a filing requirement for disclaimers, is proposed for repeal, and the content along with statutory changes is relocated to proposed §7.203. Proposed Form C, §7.211, for the summary of material changes to the registration statement, contains information that is readily available and already being filed. Proposed §7.203 and §7.210 (Form B) add a requirement for internal control disclosure to the registration statement; however, this information is expected to be readily available and will require only routine reporting. Proposed §7.203 and §7.209 (Form A) add a requirement for filing an enterprise risk report, proposed Form F; however, this requirement is applicable only to large companies. Proposed §7.204 adds requirements for terms to be included in agreements for prior notice filed in accord with proposed §7.212 (Form D), which already are applied in practice. Proposed §7.212 (Form D) requires a transaction being filed to include certain summary information which is readily available and will require routine reporting. Proposed §7.213 (Form E) consolidates Form D and the HCDividend form on the TDI website for ease of filing. In accord with the Government Code §2006.002 (c), TDI is not required to prepare an economic impact statement or a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of

government action and, so, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5:00 p.m. on January 28, 2013. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Angel Garrett, Assistant Chief Analyst, Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2750 scheduled for January 24, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered. The notice to consider the adoption of the proposed repeal is published in this edition of the *Texas Register*.

7. STATUTORY AUTHORITY. The amendments and new sections are proposed pursuant to the 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), 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 health maintenance organizations, 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§7.201	Insurance Code §§403.001, 823.012, 823.052, 823.055, 823.0595, 823.101, 823.102, 823.103, 823.107, 823.154, 823.157
§7.202	Insurance Code §§823.002, 823.015, 843.051
§7.203	Insurance Code §§823.002, 823.010, 823.015, 823.052, 823.055, 823.0595, 823.060
§7.204	Insurance Code §§823.101, 823.102, 823.103

§7.205	Insurance Code §§823.002, 823.154, 823.157, 823.164, 823.201
§7.209 (Form A)	Insurance Code §§823.002, 823.015, 823.154, 823.157, 823.201
§7.210 (Form B)	Insurance Code §§823.002, 823.015, 823.052, 823.055, 823.0595, 823.060
§7.211 (Form C)	Insurance Code §§823.055, 823.060
§7.212 (Form D)	Insurance Code §§823.101, 823.102, 823.103
§7.213 (Form E)	Insurance Code §§403.001, 403.051, 403.052, 403.053, 823.008, 823.012, 823.053, 823.107, 843.051
§7.214 (Form F)	Insurance Code §§823.002, 823.0595, 823.060

9. TEXT.

§7.201. Forms Filings.

(a) General requirements.

(1) The forms ~~[that are]~~ specified in §§7.209 - 7.214 ~~[[§§7.209 - 7.213]~~ of this title (relating to Form A, Form B, Form C, Form D, ~~[and]~~ Form E, and Form F, respectively) are ~~[intended to be]~~ guides for preparing ~~[in the preparation of]~~ the

statements, notices, and applications required by the Insurance Code Chapter 823 ~~[Article 21.49-1]~~. They ~~[are to]~~ provide notice of the information required and the location the department expects to find it ~~[in which it will be expected to be found]~~. In preparing any statement, notice, or application, the text of the form need not be repeated so long as it ~~[there]~~ is clear ~~[identity of the matter]~~ to which matter the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer ~~[thereto]~~ is in the negative, an appropriate statement to that effect must ~~[shall]~~ be made. The forms specified in §§7.209 - 7.214 ~~[[§§7.209 - 7.213]~~ of this title are also referred to in this subchapter as Forms A - F ~~[A - E]~~. 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 ~~[a disclaimer]~~, Form D as prior notice of a transaction, ~~[an extraordinary dividend, and]~~ Form E as a notice of dividend or distribution, ~~[an exemption statement.]~~ and Form F as an enterprise risk report. For use in accordance with §7.209(d) and (f) of this title ~~[and §7.210(e) of this title]~~, the department ~~[Texas Department of Insurance]~~ 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 ~~[Texas Department of Insurance. Copies of this form may be obtained from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099].~~

(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 [~~as a part thereof,~~] 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 [~~as a part thereof,~~ must ~~shall~~] be filed with the commissioner by personal delivery or by mail addressed to: Financial Analysis [~~and Examinations~~], Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 [~~149099~~], 333 Guadalupe, Austin, Texas 78714-9104 [~~78714-9099~~]. Each statement, notice, or application will ~~shall~~ be subject to the appropriate filing fee provided [~~for~~] in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee must ~~shall~~ be forwarded to the Cashier's Office, Mail Code 9999, [~~Financial Analysis and Examinations~~] at the previously stated [~~above~~] address [~~of the Texas Department of Insurance~~] under separate cover along with the Fee Transmittal Form available on the department website [~~a copy of the letter transmitting the statement, notice, or application~~].

(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 ~~shall~~ be clear, easily readable, and suitable for photocopying. Debit in credit categories and credits in debit categories must ~~shall~~ be designated so as to be clearly distinguishable [~~as such~~] on photocopies. Statements, notices, and applications must ~~shall~~ be in [~~the~~] English [~~language~~] and monetary values must ~~shall~~ 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 ~~[shall]~~ be accompanied by a translation into ~~[the]~~ English ~~[language]~~ and any monetary value shown in a foreign currency must ~~[shall]~~ be converted into United States currency with the rate of exchange ~~[used]~~ disclosed in the submission.

(4) Every statement, notice, or application must ~~[shall]~~ state on the cover ~~[face]~~ page ~~[thereof]~~ the names and addresses of all persons on whose behalf it ~~[the same]~~ 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 ~~[Such]~~ reference must ~~[shall]~~ clearly identify the material and indicate it is incorporated by reference.

(2) The right to incorporate by reference does not apply to §7.209 ~~[and §7.213]~~ of this title ~~[(relating to Form A and Form E)]~~ or to a completely restated up-to-date registration statement filed in accordance with §7.203(g) of this title (relating to Registration of Insurers) and §7.210 of this title ~~[(relating to Form B)]~~.

(3) Where an item requires a summary or outline of the provisions of any document, only a brief statement must ~~[shall]~~ be made as to the most important provisions of the document. In addition to the ~~[such]~~ 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 [such] documents need be filed. A schedule must [shall] be attached identifying and detailing the ways [the details in which] the [such] other document differs from the filed exhibit.

(4) By use of a reference, the person filing is [shall be] deemed to have verified the accuracy of the information referred to as though it was an original statement, unless the person filing identifies the [such] 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 [there shall be added such] further material information needed [, if any, as may be necessary] to make the information contained [therein] not misleading. The person filing may also file [such] exhibits [as desired] in addition to those expressly required [by the statement]. The [Such] exhibits must [shall] 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 [shall] include on the top of the cover page the phrase "Amendment No." [to] and must [shall] indicate the date of amendment and not the date of the original filing.

(e) Information unknown or unavailable. [Information required need be given only insofar as it is known or reasonably available to the person filing the statement.] If

any required information is unknown and not reasonably available to the person filing, either because ~~the~~ obtaining the information ~~thereof~~ 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 ~~shall~~ give the ~~such~~ information on the subject as the person ~~he~~ possesses or can acquire without unreasonable effort or expense, together with the sources ~~thereof~~.

(2) The person filing must ~~shall~~ 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 ~~such~~ person for the information.

§7.202. Definitions.

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

(1) (No change.)

(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 ~~such~~ controlling person includes a member of the immediate family of a person, any other

person that is an affiliate of such family member is ~~[shall be]~~ deemed to be an affiliate of the ~~[such]~~ 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 ~~[30%]~~ 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 ~~[shall]~~ be calculated, as follows:

(A) and (B) (No change.)

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's ~~[senior associates,]~~ 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 ~~[possession]~~, direct or indirect, ~~[of the power]~~ 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 [~~shall be~~] presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds [~~with~~] the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10 percent [~~10%~~] 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 the Insurance Code[;] Chapter 941, or for a reciprocal or interinsurance exchange under the Insurance Code[;] Chapter 942. This presumption may be rebutted by a showing made in the manner provided by the Insurance Code [~~Act~~] §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 such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises₁ directly or indirectly₁ either alone or pursuant to 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) and (7) (No change.)

(8) Controlling producer--An insurance broker or brokers or any person, firm, association₁ or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission₁ or other thing of value, such person, firm, association₁ or corporation acts or aids in any manner in soliciting, negotiating₁ or

procuring the making of any insurance contract on behalf of an insured other than such person, firm, association, or corporation, and who, directly or indirectly:

(A) (No change.)

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with the ~~[such]~~ controlled property and casualty insurer which is equal to or greater than 5.0 percent ~~[5.0%]~~ of the admitted assets of the ~~[such]~~ insurer as reported in the ~~[such]~~ insurer's quarterly statement filed as of September 30 ~~[30th]~~ 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 pursuant to the Insurance Code~~;~~ Chapter 4001 ~~[21]~~, Subchapter A, and any subagent or representative of the agent, who acts ~~[as such]~~ 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 ~~[shall]~~ 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) [(10)] 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 [such] policy-making functions for an applicant.

(14) [(11)] Foreign insurer--Includes an alien insurer.

(15) [(12)] 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 [except that it shall not be deemed

~~to include: the United States, a state or any political subdivision, agency or instrumentality thereof~~ or any corporation which is wholly owned, directly or indirectly, by any of them [~~one or more of the foregoing~~].

(16) [(13)] 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, [or] sister, mother, father, or grandparent.

(17) [(14)] Insurance holding company system--~~[Consists of]~~ Two [~~two~~] or more affiliated persons, one or more of which is an insurer.

(18) [(15)] 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, [and] group hospital service companies[;] and health maintenance organizations, and any other entity which is [~~made~~] subject to the Insurance Code[;] Chapter 823 by applicable law, but does [~~except that it shall~~] 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) ~~[(16)]~~ Person--An individual, [a] corporation, [a] partnership, ~~[an]~~ association, [a] joint stock company, [a] trust, ~~[an]~~ unincorporated organization, or ~~[any]~~ similar entity or ~~[any]~~ combination of them ~~[the foregoing]~~ acting in concert, but not a ~~[shall not include any]~~ securities broker performing only ~~[no more than]~~ the usual and customary broker's function.

(20) ~~[(17)]~~ Security holder of a specified person--One ~~[Of a specified person is one]~~ who owns any security of the ~~[such]~~ 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 ~~[shall]~~ not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(21) ~~[(18)]~~ Subsidiary of a specified person--An ~~[Of a specified person is an]~~ affiliate controlled by the ~~[such]~~ person directly or indirectly through one or more intermediaries.

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

(23) ~~[(20)]~~ Voting security--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders, ~~[of a person]~~ for or against the election of directors, or any other matter involving the direction of the management and policies of the ~~[such]~~ person, or any other security or instrument ~~[which]~~ the department ~~[Texas Department of Insurance]~~ deems to be of similar nature including, but not limited to, those described in the ~~[such]~~ rules and regulations ~~[as]~~ the

department [~~Texas Department of Insurance~~] may prescribe in the public interest as a voting security.

(b) Exemption--Commercially Domiciled Insurer.

(1) The commissioner may exempt from the provisions of the Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines [~~that~~] 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 [~~shall~~] set forth the specific criteria under which it is granted and will [~~shall~~] 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 the Insurance Code Chapter 823 and these sections. A rescission of an exemption must [~~shall~~] set forth the rationale for the rescission. Requests for an exemption under this subsection must [~~shall~~] be filed with [~~the~~] Financial Analysis [~~Division~~], Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 [~~149099~~], 333 Guadalupe, Austin, Texas 78714-9104 [~~78714-9099~~]. 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 [~~has agreed to~~] notify [~~the~~] Financial Analysis [~~Division~~] within 10 [~~ten~~] 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 [~~shall~~] give consideration to the matters contacted in subparagraphs (A) - (D) of this paragraph in connection with an exemption requested under the Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) (No change.)

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

(B) Adequacy of policyholder surplus, based upon:

(i) and (ii) (No change.)

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

(iv) (No change.)

(C) and (D) (No change.)

(2) The provisions of this subchapter do [~~shall~~] 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 [~~such~~] insurer under the Insurance Code Chapter 827.

§7.203. Registration of Insurers.

(a) Registration. Except as provided by the Act, every insurer ~~[which is]~~ authorized or incorporated to do business in this state and ~~[which]~~ is a member of an insurance holding company system must ~~[shall]~~ register in accord ~~[accordance]~~ with the Act~~[, §3]~~. ~~[An insurer which is a member of an insurance holding company system which ceases to be exempt from regulation under the Act, §2(r), shall register in accordance with the Act, §3.]~~ 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 ~~[Commissioner]~~ must ~~[shall]~~ terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in ~~[subparagraph (3) of]~~ §7.202 of this title ~~[(relating to Definitions)]~~.

(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 ~~[shall]~~ furnish to the commissioner ~~[of insurance]~~ 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 ~~[thereto]~~, if required by the commissioner.

(c) Information and forms required. Every insurer subject to registration must ~~[shall]~~ file a registration statement in accord ~~[accordance]~~ 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, ~~§3,~~ need not be filed pursuant to the Act, §823.054 ~~§3(b) and (d). See the Act, §3(c)~~, 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 ~~shall~~ 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 ~~Such~~ amendment must ~~shall~~ be in accord ~~accordance~~ with §7.210 of this title ~~(relating to Form B)~~, 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 ~~such~~ unamended portions. The ~~Such~~ amendment must ~~shall~~ be filed within 15 days after the end of the month in which the registered insurer learns of the ~~each such~~ change or addition. Any transaction that is ~~formally~~ approved by ~~official order of~~ the commissioner ~~under any of the following enumerated provisions~~ is ~~shall be~~ deemed to be an amendment to the registration statement without further action or filing. ~~;~~

~~[(1) the Act, §4;]~~

~~[(2) any transactions reported in an acquisition statement (Form A) under the Act, §5;]~~

~~[(3) the Insurance Code, Article 21.25, §§1-5, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article;]~~

~~[(4) the Insurance Code, Article 11.20;]~~

~~[(5) the Insurance Code, Article 11.21;]~~

~~[(6) the Insurance Code, Article 14.13;]~~

~~[(7) the Insurance Code, Article 14.61;]~~

~~[(8) the Insurance Code, Article 14.63;]~~

~~[(9) the Insurance Code, Article 21.26, provided that all or 100% of the stock is initially and simultaneously purchased in order to effect a total reinsurance;]~~

~~[(10) the Insurance Code, Article 22.15, provided that all requirements of the article are met;]~~

~~[(11) the Insurance Code, Article 22.19, provided that the reinsurance is a total direct reinsurance; and]~~

~~[(12) any other transaction formally approved by official order of the commissioner under authority authorized by any other provisions of the Insurance Code.]~~

(f) Material changes. The following occurrences are ~~[shall]~~, without limiting ~~[limitation on]~~ the meaning of the phrase "material changes," ~~[be]~~ deemed ~~[to be]~~ material changes for ~~[the]~~ 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 ~~[such]~~ domestic insurer if, after the ~~[such]~~

acquisition, ~~the~~ ~~[such]~~ person, directly or indirectly, owns or controls less than 50 percent ~~[50%]~~ of the then issued and outstanding voting securities of ~~the~~ ~~[such]~~ domestic insurer, in which case §7.210(b) and (c) of this title ~~[(relating to Form B)]~~ must ~~[shall]~~ be made current;

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

(3) a change in the control of the registrant, in which case the entire registration statement must ~~[shall]~~ be made current (~~[this paragraph is effective]~~ notwithstanding any other provision of this subchapter);

(4) a change in the information required by §7.210(f) and (g) of this title ~~[(relating to Form B)]~~, in which case the respective subsection must ~~[shall]~~ 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 ~~[(relating to Form B)]~~, in which case the respective subsection must ~~[shall]~~ 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 [Commissioner's Approval Required])]~~ and those transactions for which notification is

given under §7.204(a)(2) occurring within 12 months next preceding, in the aggregate or cumulatively involve the lesser of one-half of 1.0 percent [1.0%] or more of an insurer's admitted assets, or 5.0 percent [5.0%] or more of an insurer's surplus, calculated as of the 31st day of December next preceding. In this [~~such~~] case, §7.210(c) and (f) of this title [~~(relating to Form B)~~] must [~~shall~~] be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding. After the [~~such~~] transactions are reported and the filings pursuant to §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 pursuant to this subsection and which aggregately or cumulatively involve the lesser of one-half of 1.0 percent [1.0%] or more of an insurer's admitted assets, or 5.0 percent [5.0%] or more of an insurer's surplus, calculated as of the 31st day of December next preceding, must [~~shall~~] be reported pursuant to subsection (e) of this section [~~§7.203(e) of this title (relating to Registration of Insurers)~~].

(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 [~~shall~~] 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 pursuant to §7.211 of this title. [~~an amendment to the registration statement which shall make the registration statement current. Within 120 days of the end of each calendar year ending in a five or a zero, the registrant shall file a completely restated up-to-date~~

~~registration statement as set out in §7.210 of this title (relating to Form B), with amendments consolidated therein. The registrant is not required to file an annual amendment to its registration statement under this subsection in the year that it files a completely restated up-to-date registration statement. The registration statement referred to in §7.1301(d)(22) of this title (relating to Regulatory Fees) includes each annual amendment to the registration statement and the completely restated up-to-date registration statement.]~~

(h) Termination of registration. The commissioner must ~~[shall]~~ terminate the registration of any insurer as provided in the Insurance Code §823.056 ~~[Act, §3(f)]~~.

(i) Consolidated filing. Any licensed insurer may file a consolidated registration statement or any amendment ~~[thereto]~~ 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 such affiliates. Each registration statement may include information regarding any insurer in the insurance holding company system even if the ~~[such]~~ insurer is not authorized to do business in this state. Each licensed insurer in the ~~[such]~~ filing must ~~[shall undertake the duty to]~~ determine the correctness of the entire statement and ~~[any]~~ amendments and is bound by the terms of the entire statement and ~~[or]~~ amendment. The ~~[Such]~~ 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 ~~[(relating to Form B)]~~, a licensed insurer may file a copy of the registration

statement or similar report [~~which~~] it is required to file in its state of domicile (or a report [~~which~~] 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 [~~to be furnished as specified~~] in §7.210 of this title [~~(relating to Form B)~~] and any of the [~~such~~] information not in the [~~such~~] statement or report is provided by supplement; and

(B) (No change.)

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

(3) (No change.)

(4) The commissioner may require under this subsection or subsection (i) of this section separate filings if the commissioner [~~he~~] deems the [~~such~~] 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 pursuant to the Insurance Code §823.0595 must furnish the required information on Form F, which is made a part of these regulations.

(l) ~~[(k)]~~ Exemptions. The provisions of this section do ~~[shall]~~ not apply to any insurer, information, or transaction if and to the extent exempted by ~~[that]~~ the commissioner by rule, regulation, or order ~~[shall exempt the same]~~.

(m) ~~[(h)]~~ Disclaimer.

(1) Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or the ~~[such a]~~ disclaimer may be filed by the ~~[such]~~ insurer or any member of an insurance holding company system as a separate filing. ~~[The disclaimer shall be in accordance with §7.211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation.]~~

(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 [A] copy of any disclaimer filed with the commissioner to the insurer, if the affected insurer is not a party to it [thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner]. The insurer must [~~shall~~], within 15 business days after receipt [~~thereof~~], 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 [~~shall be~~] relieved of the [~~any~~] duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with the [~~such~~] person unless and until the commissioner disallows the [~~such a~~] 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. [~~Unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with the requirements of the Act, §5(a)-(c). The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.]~~

(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 ~~[such]~~ person is ~~[shall be]~~ subject to the Act, ~~[\$5,]~~ 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 ~~[which shall]~~ makes ~~[make]~~ current the disclaimer of control or affiliation previously filed pursuant to this subsection.

(n) ~~[(m)]~~ Violations. The failure to file a registration statement or any amendment ~~[thereto]~~ to a Form B (relating to Registration Statement) or Form F (relating to Enterprise Risk Report) ~~[required]~~ within the time specified for the ~~[such]~~ filing is ~~[shall be]~~ a violation of this section.

(o) ~~[(n)]~~ Dividends and distributions. Each registered insurer must ~~[shall]~~, by personal delivery, by telecopy or facsimile, or by mail addressed to: Financial Analysis ~~[and Examinations]~~, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 ~~[149099]~~, 333 Guadalupe, Austin, Texas 78714-9104 ~~[78714-9099]~~, provide notice to the commissioner of all dividends and other distributions to shareholders within two business days following the declaration ~~[thereof]~~ and at least 10 ~~[ten]~~ calendar days prior to payment in ~~[the]~~ Form E (relating to Notice of Dividend or Distribution) ~~[form prescribed by the commissioner and adopted herein by reference as Form HC Dividend (Rev. 01/2002)]~~ and the ~~[such]~~ notice is ~~[shall be]~~ deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice must ~~[shall]~~ be accompanied by documentation supporting each of the standards specified in the Insurance Code ~~[Act]~~,

§823.008 [4(b)], unless the [such] documentation has previously been provided during the current calendar year and the person to whom the [such] documentation was sent is identified. Dividends and distributions must [shall] be reviewed by the commissioner and, if the standards in the Act, §823.008 [4(b)] are not met, the commissioner will [shall] take appropriate action, including, but not limited to, that provided under the Insurance Code §§82.001 - 82.056, 83.001 - 83.153 and Chapters 403, 404, 441, and 443 [Articles 1.32, 21.28, 21.28-A, 21.31, and 21.32]. All reported dividends and distributions must [shall] be reviewed annually in the registration statement filed pursuant to §7.210 of this title. See §7.204(d) of this title [~~relating to Commissioner's Approval Required~~] for requirements regarding extraordinary dividends and distributions.

§7.204. Transactions Subject to Prior Notice [Commissioner's Approval Required].

(a) Prior approval and notice.

(1) The prior written approval of the commissioner is [shall be] required for the transactions specified in the Act, §823.102 [~~§4(d)(1)~~]. 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, 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.

(2) The following transactions pursuant to 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 [such] transaction at least 30 days prior ~~[thereto]~~, or a [such] shorter period as the commissioner [he] may permit, and the commissioner [he] has not disapproved it within the [such] period:

(A) sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments, involving either more than one-half of 1.0 percent [1.0%] but less than 5.0 percent [5.0%] of the insurer's admitted assets, or more than 5.0 percent [5.0%] but less than 25 percent [25%] 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;

(B) reinsurance agreements, including reinsurance treaties, or pooling agreements, or any amendments or modification to any agreement, and [or agreements or modifications to those treaties or agreements, including] 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) (No change.)

(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 the 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 the 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 pursuant to the 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 the 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 ~~shall~~ 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) (No change.)

(G) participation in an investment pool by a property and casualty insurer pursuant to the Insurance Code Chapter 424 [~~Article 2.10-5~~]; and

(H) (No change.)

(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 ~~[thus]~~ 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 ~~[herein contained shall be deemed to]~~ 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 ~~[hereunder]~~, must ~~[shall]~~ 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 ~~[such]~~ transactions must ~~[shall]~~ set forth the specific reasons for the ~~[such]~~ disapproval.

(6) The approval of any transaction under this subsection ~~is~~ ~~[shall be]~~ 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~~ ~~[Requests for]~~ approval of transactions pursuant to subsection (a)(1) of this section and ~~give~~ notices of proposed transactions pursuant to subsection (a)(2) of this section, ~~must~~ ~~[shall]~~ ~~furnish the~~ ~~required information on Form D (relating to Prior Notice of a Transaction)~~ ~~[be~~ ~~accompanied by descriptions of the essential features of such transactions which are~~ ~~reasonably adequate to permit proper evaluation thereof by the commissioner]~~ including the applicable filing fee provided for in §7.1301(d)(23) of this title (relating to Regulatory Fees). ~~The~~ ~~[Such]~~ descriptions ~~must~~ ~~[shall]~~ 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~~ ~~[such]~~ transactions; whether any officers or directors of a party are pecuniarily interested ~~[therein]~~, 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 the ~~Insurance Code~~ ~~[Act,]~~ ~~§823.101~~ ~~§4(a)~~, and evidencing that the transaction will not adversely affect the interest of policyholders. Proposed contracts, agreements, or memoranda of understanding ~~must~~ ~~[shall]~~ provide for settlement within 90 days. No ~~[such]~~ request or notice ~~is~~ ~~[shall be]~~ deemed filed with the commissioner until the date all ~~of the~~ ~~[such]~~ 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 ^{Insurance Code} Act, §823.101 [~~§4(a)~~].

(d) Extraordinary dividends and other distributions.

(1) An [~~No~~] insurer subject to registration under §7.203(a) of this title [~~(relating to Registration of Insurers)~~] must not [~~shall~~] 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 [~~accordance~~] with §7.213 [~~§7.212~~] of this title (relating to Form E [~~D~~]) of the declaration [~~thereof~~], including the applicable filing fee pursuant to §7.1301(d)(23) of this title, provided [~~and~~] the commissioner has not [~~within such period~~] disapproved the [~~such~~] payment; or

(B) the commissioner approves the [~~shall have approved such~~] payment within the [~~such~~] 30-day period. The written notice required under this paragraph will [~~shall~~] 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 [~~§4(b)~~], and the payment of any required filing fee pursuant to §7.1301(d)(23) of this title have been provided.

(2) For purposes of these sections 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 exceeds the greater of:

(A) 10 percent [~~10%~~] (20 percent [~~20%~~] if the [~~such~~] insurer is a title insurer) of the [~~such~~] insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(B) the net gain from operations of the [~~such~~] insurer, if the [~~such~~] insurer is a life or title insurer, or the net income, if the [~~such~~] insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding;

(C) an extraordinary dividend or distribution must [~~shall~~] not include pro rata distributions of any class of an insurer's own securities;

(D) in determining the 12-month cumulative amount for dividends or distributions, the calculation must [~~shall~~] be based on the declaration date(s) of the [~~such~~] 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 [~~§4(c)(3)~~].

(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 [~~§4(b)~~], among others, must [~~shall~~] be considered.

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

(a) Filing Requirements. Filing and other regulatory requirements for acquisitions, ~~or~~ changes of control, or divestitures and certain other matters as

specified in the Act, §823.153 and §823.154 [~~§5(a)~~], are governed by the Act, §823.153 and §823.154 [~~§5(a)~~]. For purposes of this subsection, a domestic insurer as defined in the Act, §823.153 [~~§5(a)(2)~~], [~~shall~~] includes [~~include~~] any person controlling a domestic insurer, including a commercially domiciled insurer, unless the [~~such~~] 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 [~~§5~~]. ~~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).~~ 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 [~~§5(e)~~].

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition or divestiture statement) must [~~shall~~] be made in accord [~~accordance~~] with §7.209 of this title (relating to Form A), the acquisition or divestiture statement. The acquiring party must [~~shall~~] provide additional financial information in [~~the~~] form or substance as required by the commissioner which is material to the finding required by the Act, §823.157 [~~§5(e)(1)(iii)~~]. Any financial information required under the Act, §823.203 [~~§5(b)(3)~~], may be waived by the commissioner if the [~~such~~] information is not deemed material. No statement required by subsection (a) of this section will [~~shall~~] be deemed filed with the commissioner until [~~on~~] the date all [~~such~~] 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 [~~relating to Form A~~] be given with respect to each partner of the [such] partnership or limited partnership, each member of the [such] syndicate or group, and each person who controls the [such] partner or member. If any [such] 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 [such] corporation and by each executive officer and director of the [such] corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent [~~10%~~] of the outstanding voting securities of the [such] 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 [such] change, together with copies of all documents and other material relevant to the [such] change, must [~~shall~~] be filed with the commissioner and sent to the domestic insurer within two business days after the person learns of the [such] 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 [~~(relating to Form A) shall~~] refer to both the domestic subsidiary insurer and the person being acquired or divested.

(f) Approval or denial by commissioner; hearings. All mergers, acquisitions, ~~or~~ changes of control, or divestitures and other matters [~~as~~] specified in the Act, §823.154 [~~§5(a)~~], and mergers contemplated by the Insurance Code §441.006 [~~Article 21.28-A, §1~~], are subject to the Act, §823.157 [~~§5(e)~~]. The acquiring or divesting party has [~~shall have~~] the burden of providing sufficient competent evidence for the commissioner to make the determinations required under the Act, §823.157 [~~§5(e)(1)~~].

(g) Notices; payment of expenses.

(1) Notices, payments of expenses, and other matters [~~as~~] specified in the Act, §823.156 [~~§5(d)~~], must [~~shall~~] comport with that subsection.

(2) All provisions of the Insurance Code Chapter 823 [~~Article 21.49-1~~], and [~~ef~~] 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 a [~~the~~] notice of hearing [~~thereon~~] 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 [~~Such~~] written waiver must [~~shall~~] acknowledge receipt of a copy of the acquisition or divestiture statement.

(h) Exemptions. The provisions of this section do ~~[shall]~~ not apply to transactions and other matters exempted under the Act, §823.164 ~~§5(e)~~. 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) ~~§5(e)(3)(i)~~. An acquisition of a voting security of a domestic insurer specified in the Act, §823.164(f)(1) and (2) ~~§5(e)(4) and (6)~~, must ~~[shall]~~ be disclosed by amendment to the registration statement as provided in §7.203(f) of this title (relating to Registration of Insurers). ~~[The written application for exemption in the acquisition of a voting security specified in the Act, §5(e)(5), shall be made in accordance with §7.213 of this title (relating to Form E), the exemption statement. The approval of an application under §7.213 shall be deemed an amendment under §7.203 to an insurer's registration statement without further filing.]~~ An acquisition of a voting security of a domestic insurer by a security holder controlling, directly and indirectly, 50 percent ~~[50%]~~ of the then issued and outstanding voting securities of the ~~[such]~~ domestic insurer, is ~~[shall be]~~ subject to the Act, §823.164(g) ~~§5(e)(5)~~. An acquisition of a voting security of an insurer domiciled in this state which is not subject to the Act, §823.154 ~~§5(a)(1)~~, by virtue of the Act, §823.153 ~~§5(a)(2)~~, is ~~[shall be]~~ subject to the Act, §823.164(h)(2) ~~§5(e)(3)(ii)~~.

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

~~[(1) For certain matters relating to certain violations of the Act, see the Act, §5(f)(1).]~~

~~[(2) For certain matters relating to retention of control, see the Act, §5(f)~~

~~(2).~~

(j) Duty of insurer. Authorized insurers must ~~[are under a duty to]~~ notify the commissioner of control of, or of actions to acquire control of, an insurer as required by the Act, §823.161 ~~[§5(g)]~~.

(k) Preliminary filings. Any acquisition or divestiture statement may~~[, at the discretion of the person or persons filing the same,]~~ be preliminarily filed with the commissioner to obtain ~~[for the purpose of obtaining]~~ a preliminary review by the commissioner. It ~~[Any such filing]~~ must ~~[shall]~~ be clearly marked or designated as a preliminary filing. The ~~[Such]~~ preliminary filing must ~~[shall]~~ not invoke the requirements of this subchapter or the Insurance Code Chapter 823 ~~[, Article 21.49-1]~~, requiring that notice ~~[thereof]~~ be given to the ~~[such]~~ affected insurer involved. The ~~[Such]~~ preliminary filing will ~~[shall]~~ have no legal effect and does ~~[shall]~~ not constitute compliance with the Insurance Code Chapter 823 ~~[, Article 21.49-1]~~, and this subchapter. The commissioner is not ~~[shall not be]~~ bound by the preliminary review nor deemed to have in any manner approved the ~~[such]~~ filing.

(l) Violations. The following are ~~[shall be]~~ violations of this section:

(1) (No change.)

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

(m) and (n) (No change.)

(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, ~~§5,~~ 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 pursuant to the Act, §823.157 ~~§5(e)(1)~~, 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 ~~shall~~ not accept business from a controlling producer and a controlling producer must ~~shall~~ 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 ~~shall~~ 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 ~~[shall]~~ 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 ~~[shall]~~ remit all funds due under the terms of the contract to the controlled insurer on at ~~[a]~~ least a monthly basis. The due date must ~~[shall]~~ be fixed so that the premiums or installments ~~[thereof]~~ collected are ~~[shall be]~~ 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 ~~[shall]~~ 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 ~~[shall]~~ maintain separately identifiable records of business written for the controlled insurer;

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

(VII) a provision that the controlled insurer ~~[shall]~~ 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 ~~[shall]~~ adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and

conditions must ~~[shall]~~ 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 ~~[shall]~~ 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, ~~[then] the~~ [such] compensation must ~~[shall]~~ 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 ~~[In no event shall the]~~ 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 ~~[shall]~~ notify the controlling producer when the applicable limit is

approached and must [~~shall~~] not accept business from the controlling producer if the limit is reached. The controlling producer must [~~shall~~] 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 [~~shall~~] 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 [~~such~~] 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 [~~shall~~] have an audit committee of the board of directors composed of independent directors. The audit committee must [~~shall~~] 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 [~~shall~~] annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or [~~such~~] 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 [~~shall~~] annually report to the commissioner in its registration statement filed pursuant to §7.203(g) of this title [~~(relating Annual Amendment)~~] 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.

(iv) Disclosure requirements. The controlling producer, prior to the effective date of the policy, must [~~shall~~] 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 [~~shall~~] retain in the [~~his~~] 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) (No change.)

(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 [~~§18~~].

§7.209. Form A.

(a) and (b) (No change.)

(c) Identity and background of the applicant.

(1) (No Change.)

(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 [such] person and any predecessors [~~thereof shall~~] have been in existence and fully describe any business [~~which~~] the [such] 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 [such] chart or listing the percentage of voting securities of each [such] person [~~which is~~] controlled by the applicant or by any other [such] person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of [such] control. As to each person specified in the [such] 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 [such] 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 [such] person is an individual, or for all persons who are directors, executive officers, or owners of 10

percent [10%] or more of the voting securities of the applicant if the applicant is not an individual, with the [such] 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). [Copies of this form are available from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099].

(2) The applicant if the [such] person is an individual, or for persons who are the chair [chairman] of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must [shall] 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. [State the name and address of the applicant seeking to acquire control over the insurer.]

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

(3) [(2)] 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. [provided by a commercial lender in the ordinary course of business and if the applicant wishes the identity to remain confidential, he must specifically request that the identity be kept confidential. When confidentiality is requested such identity shall be provided by a separate instrument filed with, but not forming a part of, the acquisition statement.]

~~[(3) If the consideration is to consist in whole or in part of the insurance business and assets of the insurer or of a person controlled by the insurer, state the value thereof and how such value was arrived at.]~~

(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, [tø] liquidate the [such] insurer, [tø] sell any of its assets, [tø] merge or consolidate it with any person or persons, [tø] make any other material change in its business operations or corporate structure or management, or [tø] 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) (No change.)

(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 pursuant to §22.12 of this ~~the~~ title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms ~~that~~ 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 ~~such~~ position, evidence of the ~~such~~ 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) (No change.)

(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 ~~[legally, directly, indirectly, or]~~ beneficially owned or concerning [of] which there is [the acquiring party or any of its affiliates or any person listed in subsection (d) of this section has] a right to acquire ~~[legal, direct, indirect, or]~~ 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, ~~[Provide a copy of any written, or a confirmed description of any oral, agreements, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, any of its affiliates,]~~ or any persons listed in subsection (d) of this section is involved, including, but not limited [without limitation any such agreement, arrangement, or understanding relating] to, ~~[the]~~ transfer of any of the ~~[voting]~~ securities, joint ventures, loan or option arrangements [agreements], 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 ~~[such]~~ description the dates of purchase, ~~[the]~~ names of the purchasers, and ~~[the]~~ consideration paid or agreed to be paid ~~[therefor]~~. State whether any ~~[such]~~ shares so purchased are hypothecated.

(k) (No change.)

(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 ~~[with regard thereto]~~.

(m) Financial statements and exhibits.

(1) Financial statements, ~~[and]~~ exhibits, and financial projections of the insurer and the applicant must ~~[shall]~~ 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 ~~[shall]~~ 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 ~~[such]~~ applicant and its affiliates and any predecessors ~~[thereof shall]~~ 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 ~~[such]~~ 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, ~~[\$3,]~~ from the date of the financial statement to the date of the affidavit or certification. The ~~[Such]~~ statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the ~~[such]~~ consolidated statements are prepared in the usual course of business.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must ~~[shall]~~ be made in accord ~~[accordance]~~ with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant ~~[to the effect]~~ that the ~~[such]~~ 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 ~~[such]~~ certificate is not available, then the ~~[such]~~ financial statement must ~~[shall]~~ be sworn to by the applicant as correctly reflecting its financial condition, and in that ~~[such]~~ case, the commissioner

[of insurance] at the commissioner's discretion may require the [such] 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 accordance 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 [such] person must [shall] 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 [in order] for it to be in conformity with generally accepted accounting principles and must [shall] 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) [(3)] 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 [relating thereto]; and proposed employment, consultation, advisory, or management contracts concerning the insurer[; budget projections of the domestic insurer and the

~~applicant for a period equal to the greater of three years or the succeeding length of time of debt service required by applicant in its acquisition of control; and any additional document or papers required by regulation].~~

(5) [(4)] In addition to the other material required to be filed by this section, a person [as] described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements--Filing Requirements) must [shall] file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years. [;] These [these] reports are for review of the department [~~Texas Department of Insurance~~], and are not a part of the material required to be submitted under the Act[, §5(b)(12)]. However, the materials will [shall] be open for public inspection at the offices of the Texas Department of Insurance during the pendency of the application.

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

(o) Notice regarding divestiture of control pursuant to the Insurance Code §823.154.

Figure: 28 TAC §7.209(o):

_____ name of domestic insurer by _____ name
of divesting person (applicant). Filed with the Texas Department of Insurance, date:
_____, 20____.

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

(1) Provide the name, title, address, e-mail address 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) [(n)] Signature and certification. Signature and certification of the following form:

Figure: 28 TAC §7.209(p) [~~§7.209(n)~~]:

SIGNATURE

Pursuant to the requirements of Chapter 823 [~~Section 5 of Article 21.49-1,~~] Texas Insurance Code,

_____ has caused this application to be [duly] signed

Name of Applicant

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 therein~~].

(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) and (b) (No change.)

(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 [~~such~~] control. As

to each person specified in the [such] 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) – (5) (No change.)

(6) the name and address of any person who holds or owns 10 percent [10%] or more of any class of voting security, the class of the [such] 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) (No change.)

(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. ~~[Furnish biographical data for the ultimate controlling person(s) if such person is an individual, or for the directors and executive officers of the ultimate controlling person if the ultimate controlling person is not an individual, with such~~

~~biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.]~~

(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) and (B) (No change.)

(C) investment activities of an investment pool and transactions between pools and participants (the Insurance Code Chapters 424 and 425 [Articles 2.10-5 and 3.33, §4(g)]);

(D) - (L) (No change.)

(M) any affiliated transaction not disclosed in subparagraphs (A)-(L) of this paragraph which is subject to the Act [~~§4(d)~~]; [~~and,~~]

(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 ~~[shall]~~ be in a manner permitting ~~[as to permit]~~ the proper evaluation ~~[thereof]~~ by the commissioner, and must ~~[shall]~~ 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 ~~[such]~~ transaction; relationship of the affiliated parties to the registrant; and the holding company section number and/or commissioner's order number ~~[applicable thereto]~~.

(g) Litigation or administration proceedings. Furnish a ~~[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 ~~[such]~~ person is or was the subject; give the names of the parties and the court or agency in which the ~~[such]~~ 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 [~~thereto~~]; and

(2) (No change.)

(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) [~~h~~] 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 [~~se~~] 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 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 Generally Accepted Accounting Principles (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 published in the *Personal Financial Statements Guide* 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. ~~[The financial statements shall include the annual financial statements (including profit and loss) of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year and all subsidiaries of the registrant. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. The annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of any ultimate controlling person (other than a natural 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 which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.]~~

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

(i) [(+)] Form C required. A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B. [~~Copy of the charter or articles of incorporation and bylaws. A copy of the charter or articles of incorporation and bylaws and all amendments thereto of the ultimate controlling person and the subsidiaries of the registrant shall be furnished.~~]

(k) [(+)] Signature and certification. Furnish signature [~~Signature~~] and certification of the following form:

Figure: 28 TAC §7.210(k) [~~§7.210(j)~~]:

SIGNATURE

Pursuant to the requirements of Chapter 823 [~~Section 3 of Article 21.49-1~~], Texas Insurance Code, the Registrant has caused this Registration Statement to be [~~duly~~] signed on its behalf in the City of _____ and State of _____ on _____, 20__.

(Name of Registrant)

(Seal)

By: _____

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

[therein].

(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, _____

§7.211. 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 Following Insurance Companies

Name Address

Date: _____, 20____

Name, title, address, 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 (~~Form B~~) 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 Chapter 823, Texas Insurance Code, 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: _____

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, _____

§7.212. 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 following insurance companies

Name Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____

Name, title, address, 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 Section ~~823.101~~;
and

(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 the 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 the 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 _____ and State of _____

on

_____, 20__.

-

(Name of applicant)

(Seal)

By: _____

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

Figure: 28 TAC §7.213(a):

Date: _____, 20____

Name, title, address, e-mail address, 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 declared 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 clauses (i) and (ii) of this paragraph: \$ _____

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

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

(II) 20 percent of this clause 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) less
unrealized capital gains, 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 the 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 the 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) Furnish a copy of directors' resolution declaring dividend and any shareholders resolution supporting such 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. Include pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end.

(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) Provide 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.

(7) 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.

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

(9) Describe the existing reinsurance program of Insurer, including limits of retention.

(10) 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.

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

Figure: 28 TAC §7.213(c)(11):

SIGNATURE

Pursuant to the requirements of the Insurance Code §823.107, 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, _____

§7.214. Form F.

(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 following insurance companies

Name Address

Date _____ 20 _____

Name, title, address, 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 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.

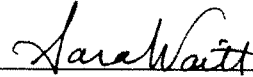
(c) The registrant/applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed pursuant to subsection (b) of this section for which the form provides responsive information. 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 pursuant to subsection (b) of this section for which the financial statement provides responsive information.

(d) If the registrant/applicant has not disclosed any information pursuant to 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 pursuant to subsection (b) of this section.

(e) Pursuant to Section 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.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on December 17, 2012.



Sara Waitt
General Counsel
Texas Department of Insurance