

**SUBCHAPTER B. INSURANCE COMPANY HOLDING SYSTEMS**  
**28 TAC §7.215**

**INTRODUCTION.** The Commissioner of Insurance adopts new 28 TAC §7.215, concerning group capital calculation filing requirements for certain insurance holding company systems. The new section is adopted with a nonsubstantive change to the proposed text published in the August 19, 2022, issue of the *Texas Register* (47 TexReg 4963). The change revises an incomplete statutory reference in §7.215(k).

**REASONED JUSTIFICATION.** The new section is based on National Association of Insurance Commissioners (NAIC) model regulations requiring the ultimate controlling person of an insurer in an insurance holding company system to file with the insurer's lead state regulator a group capital calculation concurrently with the insurer's registration. Section 7.215 will (1) help the Texas Department of Insurance (TDI or the department) identify and quantify risks in certain holding company systems by increasing the transparency of those systems, (2) align TDI's rules with anticipated updates to the NAIC's accreditation requirements, and (3) meet conditions established in the covered agreements between the United States and its counterparts in the European Union and United Kingdom.

New §7.215 is derived from the NAIC Insurance Holding Company System Model Regulation (#450), with elements of its Insurance Holding Company System Model Regulatory Act (#440). The group capital calculation quantifies an insurance holding company system's key financial information--including financial information about noninsurance entities in the system--at the worldwide-undertaking level. The NAIC

models establish the formula, format, and reporting criteria for the group capital calculation. That filing provides regulators with another tool for group-wide supervision.

Section 7.215 requires an insurer to file a group capital calculation only if the entity is either (1) subject to the covered agreements, or (2) required by the United States Federal Reserve Board to perform a group capital assessment that cannot be shared with the department. Under the new rule, the Commissioner may, after considering certain criteria, require other insurers to file a group capital calculation. The Commissioner may also determine the form of the group capital calculation filing and extend the filing deadline. Finally, the new rule also establishes exemptions from the filing requirement.

The text of subsection (k) as proposed is changed to insert the word "Chapter" in a reference to Insurance Code Chapter 823, Subchapter B.

### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** The department received a written comment from one commenter, USAA, in support of the proposal with changes. No commenters spoke at a public hearing on the proposal held on August 31, 2022. One commenter, American Insurance Group, filed a card at the hearing in support of the proposal.

#### **Comment on §7.215**

**Comment.** A commenter states that it recognizes that the group capital calculation is to be kept confidential; it proposes additional confidentiality language for the rule and asks the department to confirm its intent to keep the group capital calculation results confidential. The commenter also asks the department to minimize burdensome duplicative supervisory and regulatory requirements and preserve the filing exemption

for similarly situated groups subject to the United States Federal Reserve Board's anticipated group capital assessment filing requirement.

**Agency Response.** The department appreciates the commenter's discussion of confidentiality and duplicative regulatory requirements but declines to change the proposed rule text. Insurance Code §823.011 establishes the confidentiality protection for the group capital calculation results. That protection is bolstered by 28 TAC §7.209(q), which recognizes that supplemental information filed with the registration statement is confidential under §823.011. The department will assert those protections consistent with that statute and regulation as is its practice. Further, the department does not have authority to provide confidentiality protections beyond those in statute. Thus, the additional text proposed by the commenter is unnecessary. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); Tex. Att'y. Gen. Op. No. JM-0830 (1987) at 2 ("It is well-established that a governmental body cannot close information by agency rule[.]"). With regard to the commenter's concerns about duplicative regulatory requirements and preservation of an exemption for similarly situated groups subject to the United States Federal Reserve Board's anticipated group capital assessment requirements, the proposed rule text addresses those concerns. Once the United States Federal Reserve Board requires the commenter to make the federal group capital assessment filing and that filing is made available to the department, the commenter will meet the criteria for the exemption and avoid duplicative regulatory requirements.

**STATUTORY AUTHORITY.** The Commissioner adopts new §7.215 under Insurance Code §§823.012(a), 823.052(c)(13), and 36.001.

Insurance Code §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 Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Insurance Code §823.052(c)(13) authorizes the Commissioner to require by rule any other information to be included in the registration statement in addition to the items specifically listed in §823.052.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

**TEXT.****§7.215. Group Capital Calculation.**

(a) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is described by paragraphs (1) or (2) of this subsection must annually file a group capital calculation report:

(1) an insurance holding company system that is subject to a covered agreement, defined by Insurance Code Chapter 493, Subchapter C, concerning Credit for Reinsurance; or

(2) an insurance holding company system that is required by the United States Federal Reserve Board to perform a group capital assessment, unless the Federal Reserve Board shares that group capital assessment with the Texas Department of Insurance and under terms of an information sharing agreement.

(b) Except as provided by subsection (e) of this section, the Commissioner may require the ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is not subject to subsection (a) of this section to annually file a group capital calculation. In exercising this discretion, the Commissioner will consider the following factors:

(1) whether any insurer in the insurance holding company system is in a risk-based capital action-level event described by §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) or a similar standard for a non-U.S. insurer;

(2) whether any insurer in the insurance holding company system meets one or more of the standards of an insurer found to be in hazardous financial condition under §8.3 of this title (relating to Hazardous Conditions and Remedy of Hazardous Conditions);

(3) whether the Commissioner finds that any insurer in the insurance holding company system otherwise exhibits qualities of a troubled insurer on the basis of any unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

(4) whether the insurance holding company system's annual direct written and unaffiliated assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, exceeded \$1,000,000,000 in its last filed financial statement;

(5) whether the insurance holding company system has any insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(6) whether the insurance holding company system has any banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(7) whether the insurance holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group; and

(8) whether any of the non-insurers in the insurance holding company system pose a material financial risk to the insurer's ability to honor policyholder obligations.

(c) The group capital calculation filing must be made concurrently with the registration statement, unless given an extension by the Commissioner on the basis of reasonable grounds shown. The person submitting the group capital calculation must confirm that it was completed in accordance with the latest version of the Group Capital Calculation Instructions published by the National Association of Insurance Commissioners (NAIC) and available on the NAIC website. The Commissioner may allow a controlling person who is not the ultimate controlling person to file the group capital calculation.

(d) The Commissioner may accept an annual limited group capital filing in lieu of the group capital calculation described in subsection (c) of this section if the factors listed in subsection (b)(4) - (8) of this section are present.

(e) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the insurer's lead state is exempt from filing a group capital calculation if the insurance holding company system meets any of the following criteria:

(1) an insurance holding company system that has in its holding company structure only one insurer that:

(A) writes business in Texas only; and

(B) assumes no business from any other insurer;

(2) an insurance holding company system whose non-U.S. group-wide supervisor is located in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, that recognizes the U.S. state regulatory approach to group supervision and group capital;

(3) an insurance holding company system whose non-U.S. jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information about the insurer and any parent, subsidiary, or affiliated entity, if applicable, will be provided in accordance with a memorandum of understanding or similar document; or

(4) an insurance holding company system:

(A) that provides information to its lead state commissioner and that meets the requirements for accreditation under the NAIC financial standards and accreditation program, directly or indirectly, through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with group supervision requirements; and

(B) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, recognizes and accepts the group capital calculation as the worldwide group capital assessment for U.S. insurance groups that operate in that jurisdiction. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if:

(i) the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a

competent regulatory authority in that jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program:

(I) will be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state; and

(II) will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction notifies in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard.

(f) Notwithstanding subsection (e) of this section, the Commissioner, after consultation with other supervisors or officials, may require the group capital calculation filing for the U.S. operations of a non-U.S.-based insurance holding company system for which Texas is the lead state if the Commissioner finds the filing appropriate for prudential oversight and solvency monitoring purposes.

(g) The Commissioner may consult a list of non-U.S. jurisdictions that recognize and accept the group capital calculation published through the NAIC Committee Process (NAIC List) to determine whether the ultimate controlling person of an insurer is exempt under subsection (e)(4) of this section.



(h) The Commissioner may recommend to the NAIC that a non-U.S. jurisdiction where no U.S. insurance groups operate be included on the NAIC List if that jurisdiction provides to the Commissioner confirmation under subsection (e)(4) of this section.

(i) If the Commissioner's determination under subsection (e)(4) of this section differs from the NAIC List, the Commissioner will provide thoroughly documented justification for the determination to the NAIC and other states.

(j) If the Commissioner determines that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the Commissioner may recommend to the NAIC that the non-U.S. jurisdiction be removed from the NAIC List.

(k) Nothing in this section precludes an insurer from voluntarily providing the Commissioner with information related to Insurance Code Chapter 823, Subchapter B, concerning Registration.

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

Issued at Austin, Texas, on September 26, 2022.

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The Commissioner adopts new 28 TAC §7.215.

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# 2022-7525

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

Adopted Section  
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Commissioner of Insurance

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