

# 2019 Corporate Governance Developments – “Interesting Times” for Insurance Industry

For those concerned with corporate governance in the insurance industry, 2019 is shaping up to be the kind of year that calls to mind the ancient Chinese curse of “may you live in interesting times.” From new disclosure requirements to developments in California and overseas, at the International Association of Insurance Supervisors (IAIS) and the National Association of Insurance Commissioners (NAIC), there are plenty of topics of interest. This alert highlights a few recent developments and 2019 expectations, but is not exhaustive. For additional information, see our contact information at the end of the paper. Links to documents referenced are also listed at the end.

## US Corporate Governance Annual Disclosure (CGAD) Requirements

### US Regulatory Status

Adoption of an insurer governance disclosure requirement is now an accreditation standard for US state insurance departments, with an accreditation compliance deadline of 2020. As of December 2018, some 21 states and the US Virgin Islands have adopted a governance disclosure requirement. This is in keeping with the NAIC’s 2014 adoption of model law #305 and model regulation #306, the Corporate Governance Model Disclosure Act and Regulation (Model CGAD or Model). Many of the remaining US jurisdictions are expected to adopt governance disclosure rules in 2019, to be effective by the 2020 accreditation date.

### What the CGAD Filings Require

The Model CGAD provisions require every insurer, by June 1 each year, to submit a summary of “governance structures, policies and practices to permit the Commissioner to gain and maintain an understanding of the insurer’s corporate governance framework.” The company CEO or secretary must attest in writing that the insurer has implemented the practices described in the filing and that the filing has been shared with the insurer’s board of directors or a board committee. The insurer may decide whether to make the filing at the “level of the ultimate controlling parent,” “an intermediate holding company level” or an “individual legal entity level.” The filing is submitted to the lead US regulator if it is made on a group basis, and to the domiciliary regulator if it is made on a legal entity basis. The statute encourages the insurer to make disclosures at the level at which significant risk and financial decisions are made.

The CGAD filing is confidential. It requires only disclosure and does not include new governance requirements. Nevertheless, the Model is a good roadmap of topics regulators may be scrutinizing. The Model gives the state Insurance Commissioner discretion to hire third party experts, to request additional information and to impose financial penalties for late filings.

The Model notes more than 30 different elements to be covered in the filing, some required and some suggested, such as:

- Board and committee structure, membership selection and qualification, policies and practices
- Oversight of management, management’s qualifications, compensation, ethics practices and compliance
- Oversight of critical risk areas, including actuarial, investment, strategy, compliance, succession planning and financial reporting

## International Association of Insurance Supervisors (IAIS)

### Application Paper on Proactive Supervision of Corporate Governance

On November 8, 2018, the IAIS Governance Working Group issued an Application Paper on Proactive Supervision of Corporate Governance. It continues the IAIS review of regulatory practices to improve supervisory oversight under the Insurance Core Principles (ICP). This paper is intended to offer guidance for more proactive and robust supervision under ICP 7 (corporate governance) and ICP 8 (risk management). Much of the paper focusses on supervisory structures, staffing and processes to support more effective regulation.

The paper also suggests governance topics on which regulators should focus, including a list of “yellow and red flags.” Many of these topics will be familiar to US insurers. They include board and committee structure, board involvement in risk management, execution of written policies, risk oversight, compliance, whistleblower policies, financial indicators and lack of cooperation.

The paper is open for public comment until midnight, Central European Time, December 17, 2018. Comments must be submitted through the IAIS website Consultation Tool. The NAIC International Relations (G) Committee is submitting written comments, most of which suggest clarifying language. One NAIC comment emphasizes that in some instances, it is important for the supervisor to be able to communicate confidentially with the insurer. Another NAIC comment notes that supervisory staff should guard against supervisory findings that are illegitimate or trumped up.

## California Developments

### Public Company Board Diversity

By the end of 2019, publicly held California domestic corporations and other publicly held corporations with headquarters in the state must begin to meet minimum gender diversity requirements. California became the first US jurisdiction to enact a gender diversity mandate when California SB 826 was signed into law on September 30, 2018. Those companies must have at least one female director by December 31, 2019, regardless of whether December 31 is the end of the company's fiscal year. Additional female directors are required by December 31, 2021 for companies with five or more directors. The Secretary of State may apply six-figure penalties for non-compliance. There has been significant commentary suggesting that the law may be challenged successfully on both US and California constitutional grounds.

### California Insurance Department Diversity Initiatives

The California Insurance Department continues its efforts to increase insurance company diversity:

- **Governing Board Diversity (GBD) Summit** – In March 2018, California Insurance Commissioner Dave Jones convened a GBD Summit of insurer CEOs and directors to discuss diversity best practices and challenges in the industry.
- **2018 Multistate Insurance Diversity Survey (MIDS)** – The California regulator continues to send licensed companies with more than US\$300 million in premium a diversity survey about board and supplier composition and diversity initiatives. Although New York, Oregon, Washington, and Washington DC are listed as using the same survey, only the California Insurance Department is posting information about the survey on its website at this time. In April 2018, the National Association of Mutual Insurance Companies (NAMIC) issued a statement raising concerns about the collection and use of data requested by the MIDS.
- **Commissioner Jones CEO Letters** – On September 26, 2018, Commissioner Jones sent a letter to 50 CEOs of California-licensed insurers whose boards he characterized as having no ethnic or gender diversity. The letter asks that the companies communicate their intent to create a governing board policy statement or strategy to add a diverse director.

## Links to Referenced Documents

- [NAIC Model Law #305](#)
- [NAIC Model Reg #306](#)
- [NAIC Model Law and Reg Implementation Map](#)
- [IAIS Application Paper on Proactive Supervision of Corporate Governance](#)
- [Insurance Core Principles](#)
- [California SB 826](#)
- [MIDS 2018 Instruction Letter](#)
- [MIDS 2018 Survey](#)
- [MIDS 2018 Results](#)
- [NAMIC April 2018 Press Release re MIDS](#)
- [California September 2018 CEO Letter](#)

## Contacts

For more information about these or other governance topics, please contact one of lawyers listed here.

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