

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	12/14/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 1/22/2016**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

31 04 18 02-.14

**3. Name of Promulgating Authority**

Maryland Insurance Administration

**4. Name of Regulations Coordinator**

Catherine E Grason

**Telephone Number**

410-468-2201

**Mailing Address**

200 St. Paul Place, Suite 2700

**City State Zip Code**

Baltimore MD 21202

**Email**

Catherine.Grason@maryland.gov

**5. Name of Person to Call About this Document**

Catherine Grason

**Telephone No.**

410-468-2201

**Email Address**

catherine.grason@maryland.gov

**6. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 8/4/15.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes - No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Phoebe Pappas, Assistant Attorney General, (telephone #410-468-2032) on 12/11/15. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Alfred W. Redmer, Jr.

**Title**

Insurance Commissioner

**Telephone No.**

410-468-2090

**Date**

12/11/15

**Title 31**  
**MARYLAND INSURANCE ADMINISTRATION**  
**Subtitle 04 INSURERS**

**31.04.18 Form Filings [Under] under the Maryland Insurance Acquisitions Disclosure and Control Act**

Authority: See attached.

**Notice of Proposed Action**

[]

The Insurance Commissioner proposes to amend Regulation .02 and propose new Regulations .03-.14 under COMAR 31.04.18 Form Filings Under Maryland Insurance Acquisitions Disclosure and Control Act.

**Statement of Purpose**

The purpose of this action is to implement the statutory changes to Insurance Article, §§7-101 et. seq. and 2-209.1, Annotated Code of Maryland, designed to conform to the National Association of Insurance Commissioners' (NAIC) Insurance Company Holding Company System Regulatory Act (Model 440). These statutory changes became effective in Maryland on 1-1-14. These proposed regulations seek to conform COMAR to the NAIC's Insurance Holding Company System Model Regulation (Model 450). Both the Model Act and Regulation are NAIC accreditation standards for the Maryland Insurance Administration's Examination and Audit Unit.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Catherine Grason, Director of Regulatory Affairs, Maryland Insurance Administration, 200 St. Paul Place, Ste. 2700, Baltimore, MD 21202, or call

410-468-2201, or email to [insuranceregreview.mia@maryland.gov](mailto:insuranceregreview.mia@maryland.gov), or fax to 410-468-2020. Comments will be accepted through February 22, 2015. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 16
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?  
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:  
No additional funds are necessary for implementation of these regulations.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:  
These regulations implement and clarify existing statutory requirements. No additional funds are required for compliance.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.  
These regulations impact insurance companies, which in Maryland, are not small businesses.
- G. Small Business Worksheet:

Attached Document:

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## **Title 31 MARYLAND INSURANCE ADMINISTRATION**

### **Subtitle 04 INSURERS**

#### **Chapter 18 Form Filings [Under] *under the* Maryland Insurance Acquisitions Disclosure and Control Act**

Authority: Insurance Article, §2-109, §2-109.1 and Title 7, Annotated Code of Maryland

##### **.02 [Filing Requirements] *Definitions.***

[A person required to file statements with the Commissioner under Insurance Article, Title 7, Subtitles 3 and 6, Annotated Code of Maryland, shall file the statements in accordance with the forms, guidelines, and instructions approved by the Commissioner.]

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.*

(2) “Control”, “controlling”, “controlled by”, or “under common control with” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, through ownership of voting securities or of securities convertible into voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, whether or not the power is exercised or sought to be exercised unless the power is the result of an official position with or corporate office held by the person.

(3) Enterprise Risk.

(a) “Enterprise Risk” means 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; and

(b) “Enterprise Risk” includes anything that would:

(i) Cause the insurer’s risk based capital to fall to or below a company action level under Insurance Article, Title 4, Subtitle 3, Annotated Code of Maryland; or

(ii) Cause the insurer to be in a hazardous financial condition under Insurance Article §9–102, Annotated Code of Maryland.

(4) “Executive officer” means the chief executive officer, president, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(5) “Extraordinary dividend” or “extraordinary distribution” has the meaning stated in the Insurance Article, §7-706(b), Annotated Code Maryland.

(6) “Form A” means the “Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer” form filed pursuant to Insurance Article, §7–304, Annotated Code of Maryland, and Regulation .08 of this chapter.

(7) “Form B” means the “Insurance Holding Company System Annual Registration Statement” form filed pursuant to Insurance Article, §7–601, Annotated Code of Maryland, and Regulation .09 of this chapter.

(8) “Form C” means the “Summary of Changes to Registration Statement” form filed pursuant to Insurance Article, §7–601, Annotated Code of Maryland, and Regulations .10 and .11 of this chapter.

(9) “Form D” means the “Prior Notice of a Transaction” form filed pursuant to Insurance Article, §7–703, Annotated Code of Maryland, and Regulation .12 of this chapter.

(10) “Form E” means the “Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer” form filed pursuant to Insurance Article, §7–303(a), Annotated Code of Maryland, and Regulation .07 of this chapter.

(11) “Form F” means the “Enterprise Risk Report” form filed pursuant to Insurance Article, §7–603(h)(1), Annotated Code of Maryland, and Regulation .13 of this chapter.

(12) “Insurance holding company” means a person that directly or indirectly controls an insurer or controls a person that controls an insurer.

(13) “Insurance holding company system” means two or more affiliates, at least one of which is an insurer.

(14) “NAIC” means the National Association of Insurance Commissioners.

(15) “Ordinary dividend” means any dividend or distribution of cash or other property with a fair market value that when combined with the fair market value of any other dividends or distributions made in the preceding 12 months that is not an extraordinary dividend as defined in Insurance Article, §7-706(b), Annotated Code Maryland.

(16) “Subsidiary” means an affiliate of a person that, directly or indirectly, through one or more intermediaries, is controlled by that person.

(17) “Ultimate controlling person” means the person within an insurance holding company system that is not controlled by any other person.

### **.03 Adequacy of Surplus.**

The factors set forth in Insurance Article, §7–105(a), Annotated Code of Maryland are not intended to be an exhaustive list for use in determining whether an insurer’s assets and surplus are reasonable in relation to the insurer’s outstanding liabilities, and adequate to meet its financial needs. In applying the factors set forth in Insurance Article, §7–105(a), the Commissioner shall adhere to the following principles.

A. The Commissioner shall not deem any single factor as necessarily controlling;

B. The Commissioner shall consider the net effect of the factors, plus other factors deemed by the Commissioner to impact the financial condition of the insurer;

C. In comparing the surplus maintained by other insurers, the Commissioner shall consider the extent to which each of the factors varies from company to company; and

D. In determining the quality and liquidity of investments in subsidiaries, the Commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent the individual investments so warrant.

### **.04 Forms - General Requirements.**

A. A person required to file a statement, form, or notification pursuant to Insurance Article, Title 7, Annotated Code of Maryland, shall file the statement, form, or notification as specified in the instructions provided in this chapter, and in accordance with the forms, guidelines, and instructions approved by the Commissioner. The forms are not intended to be blank forms which are to be filled in; rather, the forms are intended to be guides in the preparation of the

statements. A filed statement shall contain the number and captions of all items outlined in the form with text addressing each applicable item or a response in the negative where not applicable.

B. A person filing a statement, form, or notification pursuant to Insurance Article, Title 7, Annotated Code of Maryland, and this chapter shall provide the filing including exhibits, documents, information, and all other papers filed as part of the submission:

(1) Electronically to the Commissioner; or

(2) Via personal delivery or mail addressed to: The Insurance Commissioner, Maryland Insurance Administration, Attention: Chief Financial Analyst, Examination & Auditing Unit, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

C. The statement, form, or notification pursuant to §A of this regulation shall:

(1) Be prepared in the English language; and

(2) State monetary values in United States currency.

D. Exhibits, documents, information, and all other papers filed as part of the submission pursuant to §A of this regulation shall:

(1) Be easily readable;

(2) Be suitable for review and reproduction;

(3) Designate debits in credit categories and credits in debit categories so as to be clearly distinguishable on reproductions;

(4) Provide a translation into the English language if the exhibit, document, or information is in a foreign language; and

(5) Provide conversion into United States currency if the monetary values are in a foreign denomination.

E. The person submitting a filing under §B(2) of this regulation:

(1) Shall prepare the statements on 8 1/2 x 11 inch paper;

(2) May bind at the top or the top left-hand corner of the paper; and

(3) May provide the exhibits, documents, information, and all other papers filed as part of the submission, unless specifically prepared for the filing, in their original size paper.

F. A statement, form, or notification filed pursuant to Insurance Article, Title 7, Annotated Code of Maryland, shall be:

(1) Signed in the manner prescribed on the form; and

(2) Accompanied by a copy of the power of attorney or other authority if the signature of any person is affixed pursuant to a power of attorney or other similar authority.

#### **.05 Forms - Incorporation by Reference, Summaries and Omissions.**

A. A person filing a statement, form, or notification pursuant to Insurance Article, Title 7, Annotated Code of Maryland, and this chapter may:

(1) Incorporate by reference in an answer or partial answer to:

(a) Information required in previously submitted or current submissions of other filings of statements, forms, or notifications pursuant to Insurance Article, Title 7, Annotated Code of Maryland; and

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document provided in previously submitted or current submissions of other filings of statements, forms, or notifications pursuant to Insurance Article, Title 7, Annotated Code of Maryland, provided the document is filed as an exhibit to the submission; and

(2) Provide excerpts of documents to be filed as exhibits if the documents are extensive.

B. Exhibits, documents, information, and all other papers filed as part of the submission of a statement, form, or notification filed within 3 years of the current filing pursuant to Insurance Article, Title 7, Annotated Code of Maryland, and this chapter may be omitted as exhibits for the current filing.

C. References to exhibits, documents, information and or all other papers filed as part of the submission of prior filings shall:

(1) Clearly and concisely identify the material; and

(2) Specifically indicate that such material is to be incorporated by reference for the current filing.

D. Incorporation by reference pursuant to §A and §C of this regulation may not be used if the incorporation would render the submission of a statement, form, or notification pursuant to Insurance Article, Title 7, Annotated Code of Maryland, and this chapter incomplete, vague or confusing.

#### **.06 Extension of Time to Provide Notification.**

A. If it is impractical for a person filing a statement, form, or notification pursuant to Insurance Article, Title 7, Annotated Code of Maryland, to furnish any required information, document or report at the time it is required to be filed, the person shall file with the Commissioner a separate document:

(1) Identifying the information, document, or report in question;

(2) Stating why the filing thereof at the time required is impractical; and

(3) Requesting an extension of time for filing the information, document or report to a specified date.

B. The request for extension shall be deemed granted unless the Commissioner denies the request in writing and within 30 business days of the receipt of the request.

**.07 Pre-Acquisition Notification.**

A. If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Insurance Article, §7-303(a), Annotated Code of Maryland, that person shall file with the Commissioner at least 30 days before a transaction is proposed to become effective, a Form E, in accordance with the format, guidelines, and instructions approved by the Commissioner.

B. The acquiring person in an acquisition subject to Insurance Article, §7-403 shall file with the Commissioner at least 30 days before the acquisition is proposed to become effective, a Form E, in accordance with the format, guidelines, and instructions approved by the Commissioner.

C. Upon request and in addition to the information provided in §§A or B of this regulation, the Commissioner may require the opinion of an economist about the competitive impact of the acquisition or merger in the State, together with a summary of the education and experience of the economist indicating the economist's ability to make an informed opinion pursuant to Insurance Article, §7-403(c)(2)(ii), Annotated Code of Maryland.

**.08 Statement of Filing for Acquisition of Control of a Domestic Insurer.**

A. A person seeking to acquire control of a domestic insurer pursuant to Insurance Article, §7-304, Annotated Code of Maryland, shall file with the Commissioner a Form A at least 60 days before a transaction is proposed to become effective, in accordance with the format, guidelines, and instructions approved by the Commissioner.

B. If any material change occurs in the facts set forth in the statement filed with the Commissioner and provided to the insurer in the Form A, an amendment, together with copies of any documents or other materials necessary to describe the amendment, shall be filed with the Commissioner prior to the Commissioner's disposition on the application, and provided to the insurer within the earlier of 2 business days after:

- (1) The change occurs; or
- (2) The person that filed the statement learns of the change.

**.09 Annual Registration Statement.**

A. A person required to file an annual registration statement pursuant to Insurance Article, §7-601, Annotated Code of Maryland, shall file with the Commissioner a Form B, in accordance with the format, guidelines, and instructions approved by the Commissioner.

B. The Form B shall be filed within 15 days after the insurer becomes subject to registration, and for each subsequent year, annually on or before May 1.

C. If a material change occurs in the facts set forth in the Form B filed with the Commissioner pursuant to this regulation:

- (1) An amendment to the Form B shall be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement;
- (2) Only those items which are being amended shall be reported; and
- (3) Each amendment shall include at the top of the cover page:
  - (i) Amendment No. [insert number] to Form B for [insert year]; and
  - (ii) The date of the change.

D. No information need be disclosed pursuant to §C(1) of this Regulation if the information is not material. Sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5 percent) or less of an insurer's admitted assets as of the 31st day of the December next preceding shall not be deemed material for the purposes of this section.

**.10 Summary of Changes to Registration Statement and Pre-Divestiture Notification.**

A. A person required to file an annual registration statement pursuant to Insurance Article, §7-601, Annotated Code of Maryland, and Regulation .09 of this chapter shall file with the Commissioner a Form C, in accordance with the format, guidelines, and instructions approved by the Commissioner, annually on or before May 1.

**11. Disclaimers and Termination of Registration**

A. 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 (hereinafter referred to as the "subject") shall contain the following information:

1. The number of authorized, issued and outstanding voting securities of the subject;
2. With respect to the person whose control is denied and all affiliates of such 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;
3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and
4. A statement explaining why the person should not be considered to control the subject.

B. A request for termination of registration shall be deemed to have been granted unless the Commissioner, within thirty days after receipt of the request, notifies the registrant otherwise.

**.12 Transactions Subject to Prior Notice – Notice Filing and Standards.**

A. A person filing notice with the Commissioner of a proposed transaction pursuant to Insurance Article, Title 7, Subtitle 7, Annotated Code of Maryland, shall file a Form D, in accordance with the format, guidelines, and instructions approved by the Commissioner.

B. Pursuant to Insurance Article, §7-702(6), Annotated Code of Maryland, agreements, including but not limited to management agreements, service contracts, tax allocation agreements, or cost-sharing agreements shall include as applicable, the following provisions:

- (1) Identification of the person providing services and the nature of such services, managerial responsibilities, or services to be performed;
- (2) The methods to allocate costs;
- (3) Timely settlement, not less frequently than on a quarterly basis and compliance with the requirements in the NAIC Accounting Practices and Procedure Manual regarding expense allocation;
- (4) The prohibition of the advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
- (5) The statement 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;
- (6) The definition of books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
- (7) The statement that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
- (8) The statement 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;
- (9) The standards for termination of the agreement with and without cause;
- (10) The indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
- (11) Specify that, if the insurer is placed in receivership or seized by the Commissioner pursuant to Insurance Article, §9-212, Annotated Code of Maryland:
  - a. All of the rights of the insurer under the agreement extend to the receiver or the Commissioner; and
  - b. All books and records will immediately be made available to the receiver or the Commissioner, and shall be turned over to the receiver or the Commissioner immediately upon the receiver's or the Commissioner's request;
- (13) Specify that if the insurer is placed in receivership pursuant to Insurance Article, §9-212, Annotated Code of Maryland the affiliate has no automatic right to terminate the agreement; and
- (14) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner pursuant to Insurance Article, §9-212, Annotated Code of Maryland, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

C. In determining whether a transaction is fair and reasonable pursuant to Insurance Article, §7-702, Annotated Code of Maryland, the Commissioner may consider:

- (1) Services received or provided;
- (2) Whether the services provided by the affiliated entity are:
  - (a) Only being provided to other affiliated entities; or
  - (b) Being provided to both affiliated and non-affiliated entities;
- (3) The cost of services received or provided, including:
  - (a) Actual cost;
  - (b) Market cost;
  - (c) Overhead charges;
  - (d) Profit margin;
  - (e) The allocation method used to share:
    - (i) Costs of services received or provided; and
    - (ii) Federal income tax expenses and credits among parties to consolidated federal income tax filing agreements; and
- (4) Other factors deemed necessary by the Commissioner to determine if the terms of the transaction are fair and reasonable.

### **.13 Enterprise Risk Report.**

The ultimate controlling person of an insurer required to file an enterprise risk report under Insurance Article, §7-603(h)(1), Annotated Code of Maryland, shall:

A. By July 1 of each year, file with the Commissioner a properly executed Form F in accordance with the format, guidelines, and instructions approved by the Commissioner; and

B. File any other document or information that the Commissioner considers necessary to identify the significant risks within the insurance holding company system that could pose enterprise risk to the insurer.

### **.14 Extraordinary Dividends and Other Distributions.**

*A. Pursuant to Insurance Article, §7-706, Annotated Code of Maryland, a domestic insurer may not pay an extraordinary dividend or make any other extraordinary distribution to its shareholders unless:*

*(1) The insurer provides notice of the declaration to the Commissioner at least 30 days before the declaration is made; and*

*(2) The Commissioner has approved or not disapproved the declaration within 30 days following the notice.*

*B. The insurer shall file a written request for approval of extraordinary dividends or any other extraordinary distribution to shareholders and shall include the following in the request:*

*(1) The amount of the proposed dividend or distribution;*

*(2) The date proposed for the payment of the dividend or the distribution;*

*(3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;*

*(4) The copy of the calculations determining that the proposed dividend is extraordinary pursuant to the definition in §7-706(b). The work paper shall include the following information:*

*(a) The amounts, dates, and form of payment of all dividends or distributions of cash or other property stated at fair market value paid within the preceding 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought;*

*(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December of the preceding year; or*

*(c) If the insurer is a life insurer, the net gain from operations of the insurer not including realized capital gains or pro rata distributions of any class of the insurer's own securities for the 12 month period ending December 31 of the preceding year; or*

*(d) If the insurer is not a life insurer, the net investment income not including realized capital gains or pro rata distributions of any class of the insurer's own securities for the 12-month period ending December 31 of the preceding year; and*

*(e) If the insurer is not a life insurer, the net investment income from the 3 calendar years prior to the preceding calendar year not including realized capital gains, minus dividends paid to stockholders in the preceding 3 calendar years.*

*(5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and*

*(6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.*