**Special Note: The following procedures do not supersede state regulation but are merely additional guidance an analyst may consider useful.**

**The *Corporate Governance Annual Disclosure Model Act (#305)* and *Corporate Governance Annual Disclosure Model Regulation (#306)* provide a summary of an insurer or insurance group’s corporate governance structure, policies and practices to permit the Commissioner to gain and maintain an understanding of the insurer’s corporate governance framework.**

**States should also consider completion of applicable questions within the Operational and Strategic risk repositories of this Handbook based upon the level of concern an analyst may have with management performance and the driving forces behind operations.**

**Introduction**

Model #305 and #306 require an insurer, or an insurance group, to file a summary of an insurer or insurance group’s corporate governance structure, policies and practices with the commissioner by June 1 of each calendar year. Model #305 allows the information to be at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. Because most corporate governance is driven at a controlling or intermediate holding company level, this guidance is contained within this section dealing with group supervision. As such, reviewing the corporate governance disclosure of a group is a responsibility of the lead state. In addition to the role of the lead state, other analysts from participating states may also review corporate governance since it is common for most groups have some level of governance at the individual legal entity level.

**Non-Lead State Reliance on the Lead State Analysis of Corporate Governance Annual Disclosure:**

Model #305 requires the filing to be made with the lead state; however, non-lead domestic states may request the CGAD filing from the insurer. Because the filing may be made on a group basis or legal entity basis, it may contain information that applies to all insurers within the group or it may contain information applicable to a specific legal entity.

It may be necessary or acceptable for the lead state to share its work papers with another state, related to such filing, provided such information is shared in accordance with the confidentiality provisions of Model #305. This is because similar to other solvency regulation models, Model #305 contemplates both off-site and on-site examination of such information. The lead state can share the analysis of the filing through NAIC tools (i.e., iSite+ Regulator File Sharing System) or other means deemed appropriate. Before a non-lead state requests the CGAD filing or conducts a full review of CGAD to determine its impact on their domestic insurers, non-lead domestic states should consider obtaining and reviewing the lead state’s analysis of CGAD to reduce duplication of analysis efforts.

**To the extent the lead state’s analysis of the Corporate Governance Annual Disclosure (CGAD) addresses policies and practices of the group applicable to the non-lead state’s domestic insurer, that analysis may be leveraged by the non-lead state to reduce the analysis work of the non-lead state.** If the lead state’s analysis of CGAD does not assess the impact on the non-lead state’s domestic insurer or the CGAD is on a legal entity basis, the non-lead domestic state should consider a review of CGAD. Analysis steps are included in the non-lead state analysis procedures.

**IAIG Considerations:**

While the considerations outlined in this chapter are generally applicable to all insurers/insurance groups (depending on the level at which the CGAD filing is made), there are some additional corporate governance assessment considerations applicable to U.S. based IAIGs on an annual basis that are incorporated into this section. It is the responsibility of the group-wide supervisor to ensure that the group meets minimum governance expectations at both the legal entity (for its domestic insurers) and head of the IAIG level. As such, the group-wide supervisor should request and review additional information from the head of the IAIG as necessary to complete this assessment, which may include requesting information similar to what is provided in a CGAD and/or additional information (e.g., biographical affidavits, conflict of interest statements) at the head of the IAIG level. In addition, the analyst should utilize other filings and resources already available to the department including holding company filings (i.e., Form B, Form F), ORSA and any other relevant information (e.g., SEC Proxy Statements, voluntary disclosures) to complete this assessment.

***Procedures #1 - 2*** assist analysts in reviewing the Corporate Governance disclosure for completeness and help guide analysts through each of the major items of information required by Model #306.

***Procedures #3 - 5*** assist analysts in summarizing any concerns relative to the insurer or insurance group’s corporate governance and its impact.

***PROCEDURES #6 - 8*** assist analysts in assessing the corporate governance practices of IAIGs on an annual basis.

**Compliance with Corporate Governance Disclosure Requirements**

1. Does the disclosure provide information regarding the following areas as required by Model #306?
2. The insurer’s or insurance group’s corporate governance framework and structure including consideration of the following.
	* 1. The Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
		2. The duties of the Board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the Board’s leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chair of the Board within the organization.
3. The policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:
	* 1. How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.
		2. How an appropriate amount of independence is maintained on the Board and its significant committees.
		3. The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.
		4. How the insurer or insurance group identifies, nominates and elects members to the Board and its committees. The discussion should include, for example:
			1. Whether a nomination committee is in place to identify and select individuals for consideration.
			2. Whether term limits are placed on directors.
			3. How the election and re-election processes function.
			4. Whether a Board diversity policy is in place and if so, how it functions.
		5. The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).
4. The policies and practices for directing senior management, including a description of the following factors:
	* 1. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
			1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.
			2. Any changes in an officer’s or key person’s suitability as outlined by the insurer’s or insurance group’s standards and procedures to monitor and evaluate such changes.
		2. The insurer’s or insurance group’s code of business conduct and ethics, the discussion of which considers, for example:
			1. Compliance with laws, rules, and regulations.
			2. Proactive reporting of any illegal or unethical behavior. [[1]](#footnote-1)
		3. The insurer’s or insurance group’s processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk-taking. Elements to be discussed may include, for example:
			1. The Board’s role in overseeing management compensation programs and practices.
			2. The various elements of compensation awarded in the insurer’s or insurance group’s compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.
			3. How compensation programs are related to both company and individual performance over time.
			4. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.
			5. Any “clawback” provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.
			6. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk- management objectives are met by incentivizing its employees.
		4. The insurer’s or insurance group’s plans for CEO and senior management succession.
5. The insurer or insurance group shall describe the processes by which the Board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer’s business activities, including a discussion of:
	* 1. How oversight and management responsibilities are delegated between the Board, its committees and senior management;
		2. How the Board is kept informed of the insurer’s strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;
		3. How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the Board. This description may include, for example, the following critical risk areas of the insurer:
			1. Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the *Risk Management and Own Risk and Solvency Assessment Model Act (Model #505)*);
			2. Actuarial function
			3. Investment decision-making processes
			4. Reinsurance decision-making processes
			5. Business strategy/finance decision-making processes
			6. Compliance function
			7. Financial reporting/internal auditing
			8. Market conduct decision-making processes
6. If the insurer or insurance group has not disclosed specific information listed in Procedure 1 above, was other information included that adequately describes why such information was not included?

**Assessment of Corporate Governance Disclosure**

1. Is the analyst aware of any significant and material corporate governance information not reported in the disclosure? If “yes,” refer to the Management Considerations section of IV.A. Financial Analysis and Reporting Considerations for additional guidance.
2. Based on the analyst’s review of Corporate Governance disclosure and any additional information related to the corporate governance of the insurer or insurance group, document any material concerns regarding corporate governance of the insurer or insurance group.
3. Do any of the concerns pose an immediate risk to the insurer’s or insurance group’s operations, policyholder surplus or capital position?

**Assessment of U.S. Based IAIG Corporate Governance**

1. Based on the analyst’s review of the CGAD and any additional information received (e.g., biographical affidavits, conflict of interest statements), document any material concerns related to the individual and collective suitability of Board Members, Senior Management and Key Persons in Control Functions at the IAIG.
2. In reviewing the information received and assessing suitability, consider whether the IAIG Board has the necessary information and processes in place to understand group-wide corporate governance framework and corporate structure; activities of the legal entities and associated risks; supervisory regimes applicable to the IAIG; issues that arise from cross-border business and international transactions; and the risk management, compliance, audit, actuarial and related areas of the group.
3. In reviewing the information received, consider whether the group-wide corporate governance framework includes policies and processes to identify and avoid, or manage, conflicts of interest that may adversely affect the IAIG as a whole or any of its legal entities.
4. Based on the analyst’s review of the CGAD and any additional information received, document any material concerns related to the appropriateness of the corporate governance framework given the structure, business, and risks of the IAIG including the risks of its legal entities, and the reporting lines in place between the material legal entities and the head of the IAIG.
5. Consider what role or influence the head of the IAIG plays in setting corporate governance expectations at the legal entity level, including establishing the “tone at the top”.
6. Based on the analyst’s review of the CGAD and any additional information received, document any material concerns related to whether the IAIG’s group-wide governance structure promotes effective oversight of the group-wide operations independent of day-to-day management.

**For the U.S. lead state**:

* Analysts should update the Group Profile Summary and Supervisory Plan with any material information.
* Analysts should communicate to the examiner-in-charge (EIC) any prospective risks identified in the review of corporate governance disclosure that affects the domestic insurer. In addition, analysts should share information or open items related to group-wide corporate governance assessments with the EIC to facilitate effective review and follow-up of the analysis during onsite exam activities.

**Recommendations for further action, if any, based on the overall conclusion above:**

For the U.S. lead state that is also the group-wide supervisor:

* Contact the holding company seeking explanations or additional information
* Meet with the holding company management
* Suggest assessment or follow-up procedures to be completed during the next examination
* Pursue, as appropriate, within an international supervisory college
* Other (explain)

For the U.S. lead state that is not the group-wide supervisor:

* Contact the group-wide supervisor, seeking explanations or additional information
* Pursue, if applicable and as appropriate, within an international supervisory college
* Other (explain)

For a non-lead state:

* Contact the lead state, seeking explanations or additional information
* Pursue, if applicable and as appropriate, within an international supervisory college (if applicable)

|  |  |
| --- | --- |
| Analyst: | Date: |
| Supervisor Review: | Date: |
| Supervisor Comments: |

1. See additional discussion of conflicts of interest, which could be covered in this section of the CGAD, under Assessment of IAIG Corporate Governance Assessment below. [↑](#footnote-ref-1)