Enterprise Risk "Form F" Reporting Requirements

By Josh Windsor

Recently, much attention has been paid to the NAIC's Own Risk and Solvency Assessment ("ORSA") initiative, anticipated to be effective in 2015. However, another enterprise risk requirement, the Form F Enterprise Risk Reporting requirement, adopted under the 2010 revisions to the NAIC's Insurance Holding Company System Regulatory Act (Model 440) and the corresponding Regulation (Model 450) (collectively, the "Model Law"), will become effective as early as 2013 in some states.

The NAIC adopted this Model Law in response to the lack of authority of U.S. insurance supervisors to oversee and intervene when activities of non-insurance affiliates might pose material risks to a US insurer. The Model Law is perceived to be a key regulatory tool. The main goal of these new provisions is to prevent problems at the parent or affiliate level. Currently, however, no state insurance commissioner can administratively or through a court order enjoin an affiliate not present in that state from activities that may pose an enterprise risk. It is interesting to note that there appears considerable conceptual overlap between Enterprise Risk reporting and Own Risk Self Assessment ("ORSA"). One of the three components of the ORSA self-assessment is an evaluation of capital adequacy and solvency risk from a group perspective, including an evaluation of the risk that transactions within the insurance group pose for the insurer's ability to carry out its business objectives. However, unlike ORSA, there are no minimum size exceptions for Enterprise Risk reports in the NAIC model law. Thus, a small insurer with single subsidiary will have to make an annual Form F filing.

The Model Law includes a specified definition of "enterprise risk," and requires that an annual report be filed by the ultimate controlling person ("UCP") of an insurer in an insurance holding company system ("IHCS") subject to Form B filing. The lead regulator will be determined according to criteria set forth in the Financial Analysis Handbook adopted by the NAIC.

The Insurance Holding Company System Regulatory Act (Model #440) defines "Enterprise Risk" very broadly as:

> "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 upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurers Risk-Based Capital to fall into company action level...or would cause the insurer to be in a hazardous financial condition."

The revisions to the NAIC model Holding Company Act include significantly strengthened requirements that regulators maintain information provided under the Holding Company Act — including Form F filings — in confidence (Section 8 of the Model).

Form F filings are not subject to disclosure under state freedom or information laws, public record laws and may not be obtained pursuant to subpoena. The filing also is not discoverable or admissible in a private civil action. The revisions also provide that disclosure of privileged or confidential material to the regulator

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pursuant to the Holding Company Act is not a waiver of any applicable privilege or confidential status.

The regulator may share confidential information with the NAIC, with other state regulators and with supervisory colleges, provided that the recipient agrees in writing to maintain the confidentiality of the information and verify in writing that it has the authority to maintain the required degree of confidentiality. It should be noted that regulators are prohibited from sharing confidential information and privileged documents with the insurance commissioner of a state that has not adopted the revisions to the model Holding Company Act, even where the commissioner has agreed in writing to keep the information in confidence.

As of April 2013, the following states have adopted the new regulatory reporting requirement with an effective date of July 1, 2013: Rhode Island, West Virginia, Indiana, Kentucky, Nebraska, California, Connecticut, Florida, Illinois, Louisiana, Oklahoma, and Pennsylvania. Two states, Texas and Kansas, have adopted a slightly modified version of the Enterprise Risk reporting requirement.

The new Form F Enterprise Risk Report (ERR) is a confidential document which requires the UCP to disclose information about enterprise risks to the insurer's business posed by the insurer's parent, its affiliates, and its subsidiaries. The required information involves 10 areas of IHCS operations: 1) material developments regarding strategy, internal audit findings, compliance or risk management affecting the IHCS; 2) acquisition or disposal of insurance entities; 3) changes in shareholders; 4) developments in various investigations, regulatory activities or litigation; 5) business plan; 6) material concerns of the insurance holding company system; 7) capital resources; 8) negative movement in credit ratings; 9) corporate or parental guarantees; and 10) any material activity or development.

Since Form F is submitted with the annual Form B, most insurer groups'first Form F will be due April 30, 2014.

The Form F rules require all non-insurer holding companies to file an ERR and there is no minimum size exception. The revision also requires each insurer's annual registration statement to include a statement on corporate governance and internal controls. If a holding company fails to follow Form F requirements, there are possible regulatory sanctions and regulator's denial of any request by the insurer for approval to pay an extraordinary dividend to its parent company shareholder.

The UCP does not have to disclose any information on Form F that the insurer has previously disclosed on Form B. However, if the UCP does not disclose information related to any of the 10 areas of inquiry, then the UCP must attach a statement affirming that it has not identified any enterprise risk subject to disclosure. Finally, if the IHCS has previously filed similar information with the SEC or is not domiciled within the U.S., then the UCP can attach the SEC fillings to meet the requirement of completing Form F. If the UCP chooses to attach SEC filings, then it must clearly reference what information is relevant to the Form F.

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Lastly, when any acquisition of control over an insurer occurs, and requires a Form A control filing, an acquiring person has to agree to three additional processes:

- provide a Form F annually
- provide any information requested by insurer's regulator on any subsidiaries within control of the IHCS to allow for an evaluation of enterprise risk on the insurer being acquired
- file a Form F document within fifteen days after the month of acquisition

While the timeframe in which the Enterprise Risk reporting requirements will be fully implemented is unclear, senior management of insurers should prepare for Form F filings. Given the broad scope of the Form F reporting requirements for most holding company systems, significant lead time will be required to address all of the Form F items.

About the Author

Josh Windsor, FSA, FIA, MAAA is a Consulting Actuary with Risk and Regulatory Consulting. He is a Fellow of the Society of Actuaries, Fellow of the Institute and Faculty of Actuaries and member of the American Academy of Actuaries. Josh is currently a member of several Society of Actuaries and American Academy of Actuaries committees dealing with aspects of ORSA, Market Risk, Principles Based Approach, AG43 and C3 Phase II, Life Settlements, Policyholder behavior risks (especially in the tail) and the mortality experience of Guaranteed Issue Life Insurance policies. He is also the Secretary of the Actuarial Society of New York.