

Corporate Governance: Recent Developments and Emerging Issues

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Disclaimer

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.



General Overview

- Corporate Governance
 - Fundamentals
 - Prior Structure/Requirements
- NAIC Risk Management Initiatives
 - Corporate Governance Annual Disclosure
 - Own Risk Solvency Assessment
 - Form F (Enterprise Risk Report)
- Cybersecurity and Corporate Governance



Corporate Governance Fundamentals



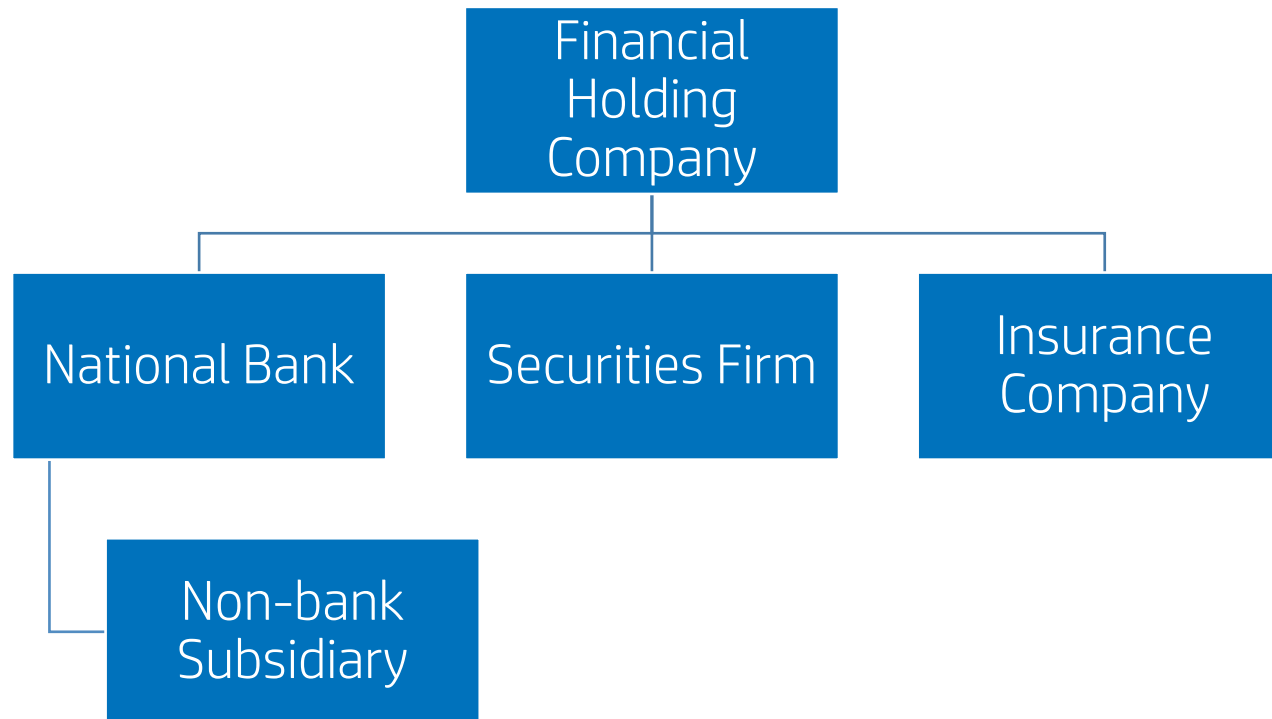
Corporate Governance Fundamentals

- What is Corporate Governance?
 - Procedures and structures
 - Shapes interactions
 - Multi-faceted subject
- Private v. Public Companies
 - Privately held: owned by private group
 - Publicly held: sold a portion to public via an IPO
 - Public disclosures



Corporate Governance Fundamentals

Holding Companies



Existing Corporate Governance Standards

- **Fiduciary Duties of Directors**
 - Good faith, full disclosure, fair dealing, undivided loyalty
- **Fiduciary Duties of Officers**
 - Permit the stockholders access to the corporate records and books
- **Public Companies**
 - Sarbanes-Oxley
 - Stock exchange listing standards



Historical Perspective – How Did We Get Here?

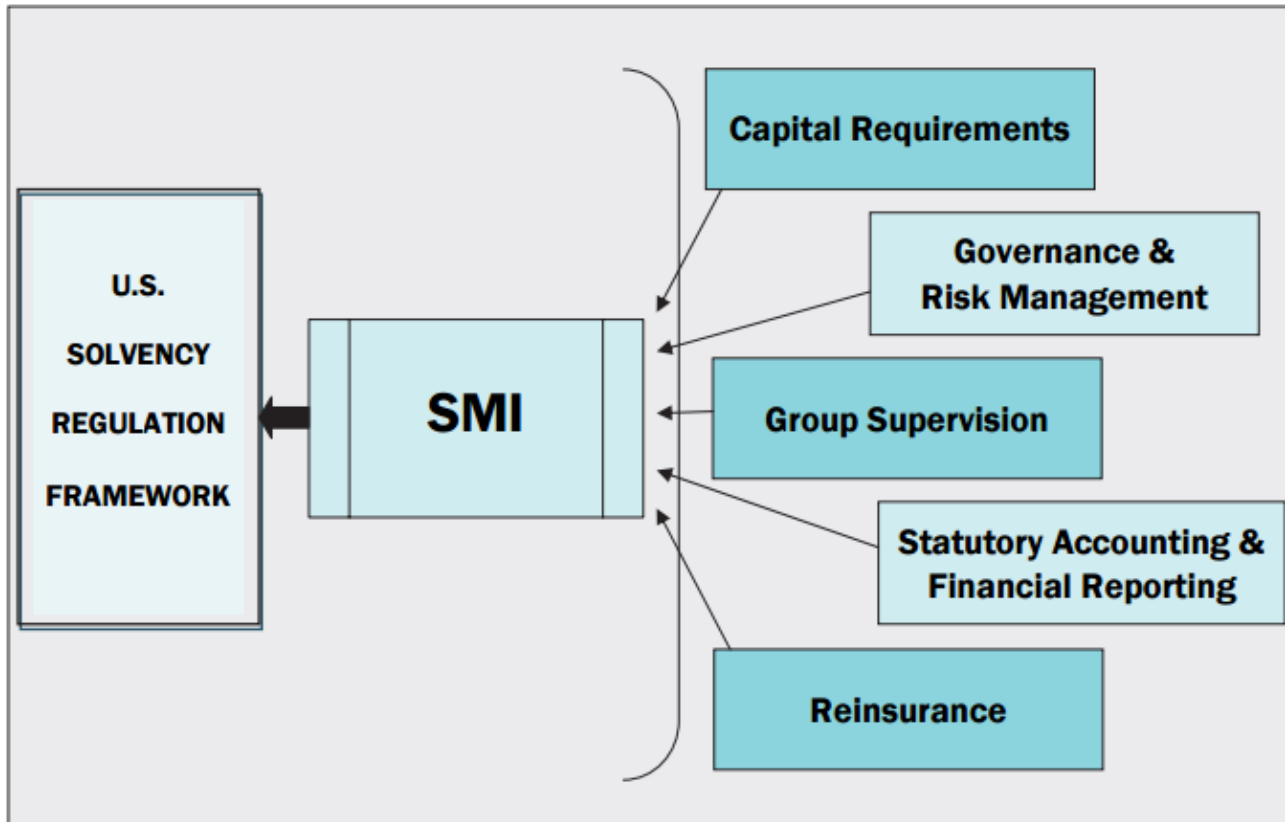
- 2008 Financial Crisis
 - Too big to fail
 - Various regulatory bodies
- Impact on Insurance Industry
 - Investment portfolios
 - Concentrated exposures



Corporate Governance in the Insurance Industry



NAIC Solvency Modernization Initiative (SMI)



http://www.naic.org/documents/index_smi_roadmap_121231.pdf



SMI – Governance and Risk Management

- Insurance Holding Company Models
 - 2014 Form F (Enterprise Risk) Enhancements
- Own Risk Solvency Assessment (ORSA) Model Act
 - 2015 ORSA Summary Reports
- Corporate Governance Models
 - 2016 Annual disclosures filed and reviewed

Overview

- Corporate Governance Annual Disclosure (CGAD)
 - Determining which entity reports
 - What should be included in CGAD
 - Lead State Filing
 - Need to establish and document organization and procedures

Corporate Governance Annual Disclosure (CGAD)

- Review and Oversight
 - Insurance Commissioners take a closer look at an insurer or insurance group's corporate governance
- Annual Disclosure Filing
 - Who reports?
 - Controlling Party
 - Holding Company
 - Legal Entity/Insurance Company

CGAD Content

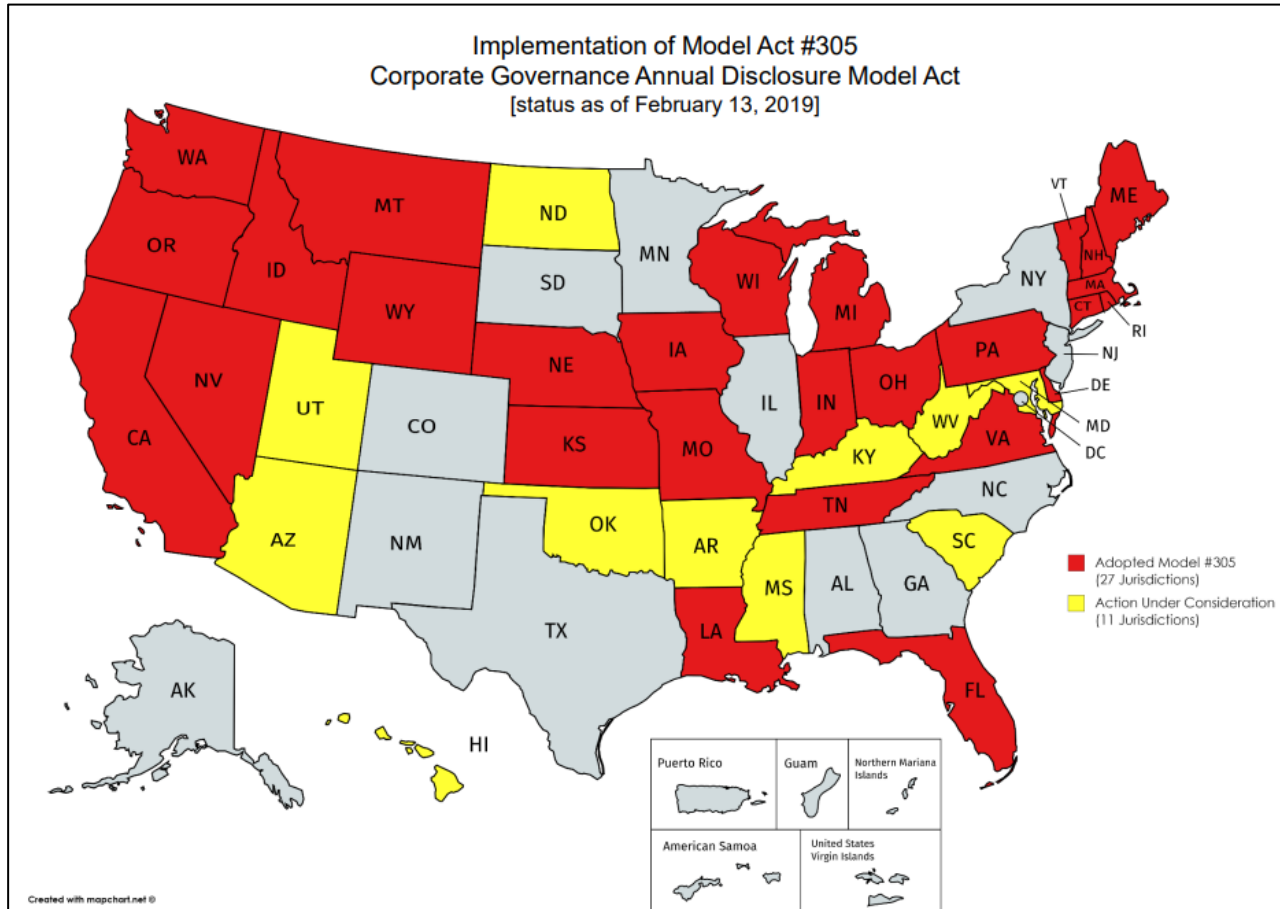
- CGAD must be detailed and address:
 - Insurer's corporate governance framework and structure
 - Policies and practices of its board of directors and committees
 - Policies and practices directing senior management
 - Internal oversight procedures

Uniform Adoption

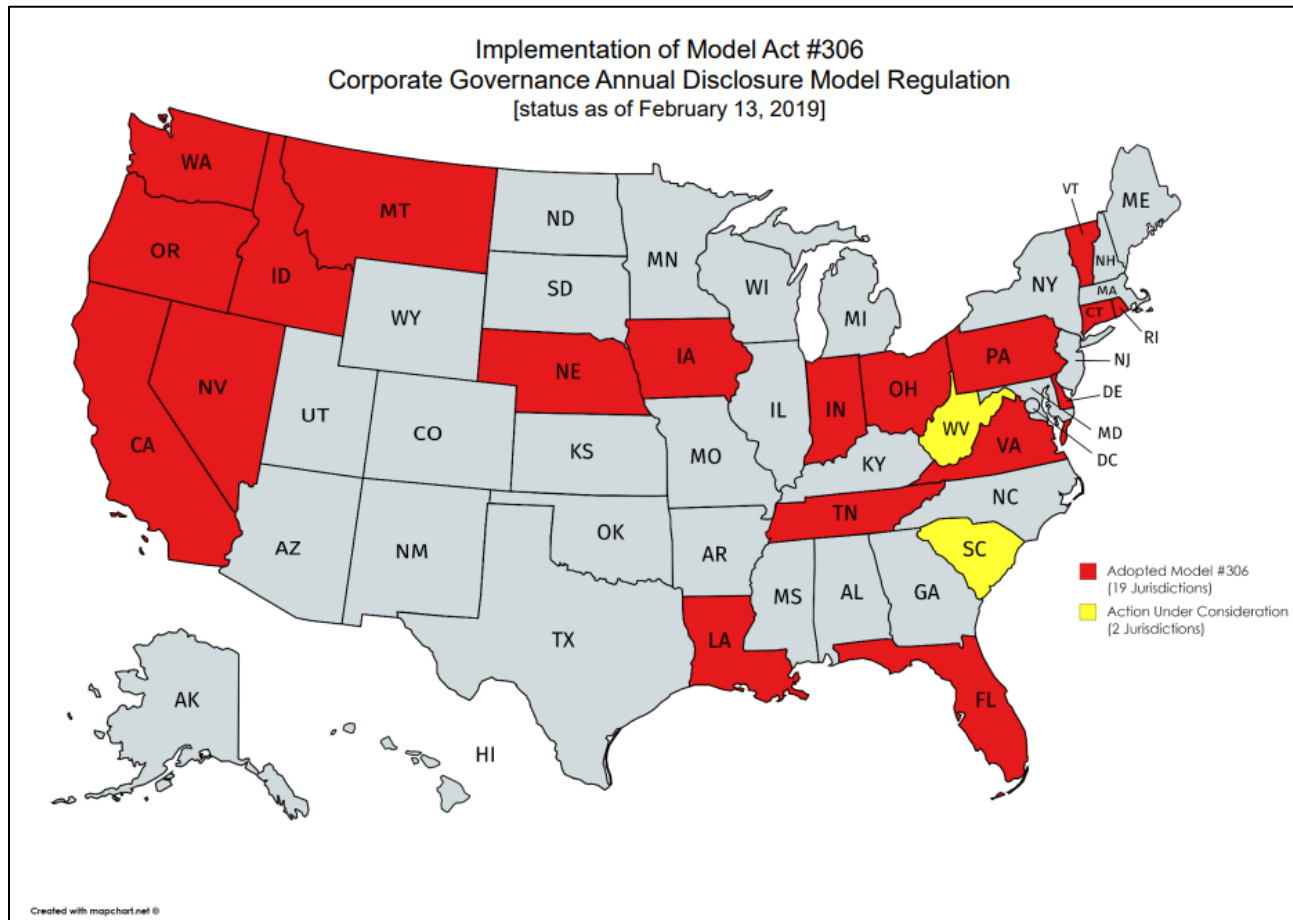
- NAIC expects all U.S. jurisdictions to adopt CGAD
- As of February, 2019:
 - Over half states have enacted the CGAD Model Law
 - 20 states have enacted the CGAD Model Regulation
- Issues with sporadic adoption of model regulations from a compliance perspective
 - Will there be an impact?
 - What should a company do?



CGAD Model Act Adoption



CGAD Model Regulation Adoption



CGAD in Action - Florida

- Florida passed CGAD – signed by Gov. Rick Scott on April 8, 2016
- Initial Disclosures must be submitted by December 31, 2018
 - Florida Office of Insurance Regulation could require a CGAD earlier
 - Unique Circumstances
 - Insurer deemed to be in hazardous financial condition
 - If insurer member of insurer group in which FL is lead state
 - Best interests of the state

CGAD in Action - Louisiana

- Disclosure required of all domestic insurers
 - Lead state filing for insurer member of insurance group
- Insurance Commissioner authorized to request CGAD
- Duplicative Filings

Overall Governance Issues

- Broad Risk Management
- Group-level Evaluations
- Internal Controls
- Director and Management Duties
- Confidentiality
- Sanctions

Own Risk and Solvency Assessment (ORSA)

- Own Risk and Solvency Assessment (ORSA)
 - A confidential internal assessment appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.
 - Prepared consistent with ORSA Guidance Manual

Own Risk Solvency Assessment (ORSA)

- The ORSA has two primary goals:
 - Foster an effective level of enterprise risk management for all insurers in the group
 - Provide group-level perspective on risk and capital to supplement existing legal entity view

Key ORSA Requirements

- Insurers must periodically, no less than annually, conduct an ORSA to assess the adequacy of their risk management framework and current and estimated projected future solvency position
- Internally document the process and results of the assessment
- Provide a confidential high-level ORSA Summary Report annually to the lead state commissioner if the insurer is a member of an insurance group and, upon request, to the state regulator



Form F – Enterprise Risk Report

- Form F is meant to evaluate enterprise risk
 - Must be completed annually, and is filed with the lead state regulator of the insurance group
- Form F filings should contain:
 - Information on strategy, internal audit findings, compliance, or risk management
 - Any changes of 10% shareholders in system
 - 12 month business plan and strategies of the system
 - System capital resources and material distribution patterns
 - Discussions with rating agencies that may cause negative movement in system's credit ratings
 - Material activity or developments in the system that, in the opinion of senior management, could adversely affect system



Form F – Industry Concerns

- Control and disclosure based on 10% ownership anywhere within holding company system
 - Accurate information may be unavailable
- Some information is very sensitive, trade secret, or involves subjective internal assessments
- Rating agency discussions could be very expansive
- Senior management must make forward-looking subjective assessments



Confidentiality & Corporate Governance

Form F/ Enterprise Risk Report	ORSA	CGAD
<p>Information in the possession or control of the commissioner that are <u>obtained by or disclosed to the commissioner</u>...shall be:</p> <ul style="list-style-type: none"> • Confidential and privileged • Not subject to open records laws • Shall not be subject to subpoena • Shall not be subject to discovery or admissible in evidence in any private civil action. <p>Neither the Commissioner nor persons acting for the commissioner may be permitted or required to testify in any private civil action</p>	<p>Information in the possession or control of the DOI that are <u>obtained by, created by or disclosed to the commissioner</u> is proprietary and contains trade secrets. The documents are:</p> <ul style="list-style-type: none"> • Confidential and privileged • Not subject to open records laws • Not subject to subpoena • Not subject to discovery or admissible in evidence in any private civil action <p>Neither the Commissioner nor persons acting for the commissioner may be permitted or required to testify in any private civil action</p>	<p>Same as ORSA language</p>



Information Sharing

Form F/ Enterprise Risk Report	ORSA	CGAD
<p>The commissioner may:</p> <ul style="list-style-type: none"> • Use the information in the furtherance of any regulatory or legal action brought <u>as part of the commissioner's official duties.</u> • Share with state, federal and international financial regulatory agencies, the NAIC and state, federal and international law enforcement • Recipient must provide written verification of ability to maintain confidentiality • Must enter into agreement with the NAIC to share information 	<p>Same as Form F/Enterprise Risk Report (as part of Insurance Holding Company System Regulatory Act)</p>	<p>Same as Form F/Enterprise Risk Report (as part of Insurance Holding Company System Regulatory Act) <i>for sharing with state federal and international authorities.</i></p> <p><u>Add'l provisions re:</u></p> <p>NAIC and third party consultants</p> <ul style="list-style-type: none"> • Consultants are purely advisory • NAIC and consultants subject to same confidentiality standards as the commissioner • Consultants must verify lack of conflict of interest and internal monitoring for conflicts • Written agreements required



Lead State

Form F/ Enterprise Risk Report	ORSA	CGAD
<p>The ultimate controlling person ...shall file an annual enterprise risk report... The report shall be filed <u>with the lead state commissioner of the insurance holding company system</u> as determined by the procedures within the Financial Analysis Handbook...</p>	<p>Upon the commissioner's request ...an insurer shall submit to the commissioner an ORSA Summary Report... Notwithstanding any request from the commissioner, ...the insurer shall submit the report...<u>if the commissioner is the lead state commissioner of the insurance group...</u></p>	<p>An insurer...shall no later than June 1 of each calendar year, submit ...a Corporate Governance Annual Disclosure... {T}he insurer shall submit the report required ...<u>to the Commissioner of the lead state for the insurance group...</u></p>



Heightened Role of Board with Cybersecurity

- Addressing Cybersecurity risks can be unfamiliar territory for Directors
- Board must implement policies and oversight processes that focus on impending cyber threats and emerging regulatory developments

Scope of Risks

- Internet-exposed infrastructure (Companies & Vendors)
- Legal Defensibility Strategies
- Effective Business Continuity Plans - Are systems in place to deal with evolving threats?
 - “Red Teaming” - Cybersecurity firm identifies shortcomings before an attack occurs
 - Preemptive efforts to signal that board and management are paying attention to these risks



Focus On Enterprise-wide Digital Footprint

- Data entry-point: Who gets the data?
 - Employees, third-party vendors, etc.
- What kind of data is obtained?
 - More private information is publicly available
- How is information used?

Key Take-aways

- State Regulators
 - More oversight of corporate structure and risk
 - Identification and mitigation
- Insurance and Insurance Groups
 - Structure and controls
- New regulation

Questions?

Contact Information

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