Friend or Foe:
Corporate Governance Annual Disclosure Model Regulation

by **Debra Thompson**
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Friend or Foe? Really? How could anyone suggest that a government mandate could be anything but an administrative foe? June Rhee, Co-Editor of the Harvard Law School Forum on Corporate Governance and Financial Regulation observes "Corporate scandals and financial crises ceaselessly spawn new disclosure laws: the Securities Act of 1933, the Truth-in-Lending laws of the 60s and 70s, Sarbanes-Oxley in 2002, and, recently, Dodd-Frank."[1] These laws, along with the reporting burden they create, achieve no real benefit for the cost. On the other hand, Sean Griffith, Associate Professor at the University of Connecticut Law School advocated that the Security and Exchange Commission require the disclosure of Directors and Officers Insurance premiums as the cost of these policies can be compared and are a good indication of the quality of corporate governance.

Corporate governance best practices are your "friend."

The objective of corporate governance is to promote strong, viable, competitive corporations that are accountable to stakeholders. Broadly speaking, the term describes the processes, practices and structures through which a company manages its business and affairs and works to meet its financial, operational and strategic objectives and achieve long-term sustainability.[2] Last year, the National Association of Insurance Commissioners (NAIC) voted to adopt the model Corporate Governance Annual Disclosure Act and Regulation (CGAD) at its summer meeting. Tennessee requires that the first filing of the CGAD begins in June 2016. Acredula, counsel for boards and executives, forecasted in September, 2014, that as the state commissioners analyze the data submitted, they will become more prescriptive and add requirements. These could include, and not be limited to, annual board evaluations and recruitment of specific expertise to the board (i.e., financial expertise.)[3]

There are numerous benefits to strong governance practices that support sustainability including:

- high performing Boards of Directors;
- accountable management and strong internal controls;
- increased stakeholder engagement;
- better managed risk; and
- effectively monitored and measured performance.

The items that must be disclosed represent an excellent "checklist" of the best practices in corporate governance that will improve business performance. Insurance companies would benefit from viewing this mandate as an opportunity to incorporate these best practices into their operations, even if preparing for the submission requires short-term effort.

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[1] Rhee, June. 2014, May 6. "More Than You Wanted to Know: Failure of Mandated Disclosure." Retrieved from http://blogs.law.harvard.edu/corpgov/2014/05/06/more-than-you-wanted-to-know-failure-of-mandated-disclosure/
[2] Keys, Colleen. 2014, September 17. "The Top 5 Corporate Governance Practices that Benefit Every Company. Retrieved from http://www.mondaq.com/canada/x/340672/Corporate+Governance/The+Top+5+Corporate+Governance+Best+Practices+That+Benefit+Every+Company
[3] 2014, September 23. Insurance Companies Will Soon Have to Disclose Corporate Governance Pratices on an Annual Basis. Retrieved from http://www.acredula.com/details.aspx?id=119

Companies are required to disclose:

- Governance framework and structure including the board and various committees, and the rationale for the current board size and structure.
- Duties of the board and each of its committees, how they are governed, how the board leadership is structured and the roles of the Chief Executive Officer (CEO) and board chair
- Policies and practices of the board and committees including qualifications, expertise and experience and how each meets the needs of the insurer; how independence is maintained
- The number of board and committee meetings and information on attendance
- The nominations process, term limits, election/re-election process and diversity policy
- Processes in place for the board and committees to evaluate their performance and recent measures to improve performance
- Policies and practices for directing Senior Management, including whether officers and key persons in control functions have appropriate background, experience and integrity to fulfill their roles including suitability standards
- Code of business conduct and ethics
- Processes for performance evaluation, compensation and corrective action to ensure effective management
- Board's role in overseeing management compensation programs and practices and how compensation is determined and calculated and related to performance over time and whether they include risk adjustments, risk management incentives and clawback provisions
- Processes by which the board ensures oversight of critical risk areas
- How the board is kept informed of strategic plans and associated risks and how reporting responsibilities are organized
- Description of the policies and practices for directing senior management related to: risk management processes, actuarial function, investment decision-making processes, reinsurance decision-making processes, business strategy/finance decision-making processes, compliance function, financial reporting/internal auditing; and market conduct decision-making processes.

If you do not have all these items in place, the reporting process can seem daunting. But it doesn't have to be a long, arduous process. Assistance, training and support to adhere to all of these regulations is available through trade associations and consultants skilled in board governance practices. Your company will benefit if you take advantage of the resources available.

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