

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 25]

Insurance Holding Company Systems

The Insurance Department (Department) proposes to amend Chapter 25 (relating to rules and procedural requirements for insurance holding company systems) to read as set forth in Annex A. The rulemaking is proposed under the authority of section 337.8 and Article XIV of The Insurance Company Law of 1921 (act) (40 P. S. §§ 459.8 and 991.1401—991.1413). The chapter sets forth rules, procedural requirements and reporting forms relating to acquisitions of control of or mergers with insurers and transactions within insurance holding company systems.

Purpose

In 1994, the act was amended to: (1) bring health maintenance organizations within the scope of the act; and (2) update provisions relating to dividends and other material transactions within an insurance holding company system to meet minimum financial regulation standards adopted by the National Association of Insurance Commissioners (NAIC). See the act of February 17, 1994, (P. L. 92, No. 9). This rulemaking includes revisions needed to update the chapter to reflect the 1994 amendments to the act.

The rulemaking also includes a prescribed form for providing notice of the potential competitive impact of a proposed merger or acquisition under section 1403 of the act (40 P. S. § 991.1403). The new form (Form E) is consistent with a model form adopted by the NAIC and will provide the Department with information needed to determine whether a proposed merger or acquisition would violate the competitive standard of section 1403(d) of the act.

In addition, this rulemaking includes amendments to clarify a number of existing procedural and reporting requirements and eliminate other requirements deemed to be unnecessary or duplicative.

Therefore, the proposed rulemaking will update the chapter to be consistent with current Commonwealth law and the NAIC reporting standards and improve upon the clarity and efficiency of reporting requirements relating to insurance holding company systems.

Explanation of Regulatory Requirements

Section 25.1 (relating to definitions) is being amended to add a definition of "surplus." Terms used in statutory accounting are not consistent for all types of insurers subject to the act. Therefore, a definition of "surplus" is needed to provide a common meaning of that term for purposes of compliance with this chapter. A definition for the "NAIC—National Association of Insurance Commissioners" has been added for ease of reference in using the chapter.

Section 25.2 (relating to purpose) is being deleted because it does not provide information that is necessary to understand the meaning and intent of the provisions of the chapter.

Section 25.11 (relating to expenses) is being amended to include standards relating to costs of outside experts retained to assist the Department in the evaluation of

filings made under the chapter. The standards are consistent with Chapter 12 (relating to costs of examinations) and the Commonwealth's procedures for retaining the services of outside parties.

Section 25.12(b) (relating to forms—general requirements) is being amended to eliminate the requirement to file duplicate copies of insurance holding company registration forms and forms providing notice of material transactions. However, because applications for the Department's approval of an acquisition of control of an insurer are available for public inspection, duplicate copies of the forms used for those applications (Forms A and E) will still be required. A new § 25.12(c) has been added to provide instructions relating to assertions of confidentiality, privilege or trade secret with respect to information included or referenced within Form A and E filings. The new section is consistent with a Department Notice published at 27 Pa.B. 2216 (May 3, 1997). Section 25.12(b) is also being amended to permit filings by facsimile or other form of electronic transmission acceptable to the Department. The additional language will allow the Department to accept electronic filings as soon as the required technology and procedures are in place.

Section 25.14(b)(3) (relating to forms—information unknown or unavailable and extension of time to furnish) is being amended to eliminate the requirement that the Commissioner enter a formal order to deny a request for an extension of time for filing required information. The amendment would allow a request for extension of time to be deemed granted unless denied in writing by the Department within 30 days of receipt.

Section 25.15 (relating to forms—additional information and exhibits) is being amended to clarify that the Commissioner may require the person filing a form to provide additional information as may be necessary to make the filing not misleading or to determine compliance with the act.

Under sections 1402(f)(1)(ii) and 1403(d) of the act (40 P. S. §§ 991.1402(f)(1)(ii) and 991.1403(d)), the Department may enter an order disapproving a merger or acquisition if there is substantial evidence that the effect of the transaction would be to substantially lessen competition or tend to create a monopoly in insurance in this Commonwealth. Section 1403(c)(2) of the act provides for information relating to the competitive impact of a proposed merger or acquisition to be furnished in a form as prescribed by the NAIC. Section 25.16(a) and (c) (relating to acquisition of control—statement filing) are being amended to include Form E as the prescribed form for providing the required information. Form E is consistent with a model form adopted by the NAIC. In addition § 25.16(d) is being added to clarify section 1403(c)(2) of the act relating to information in addition to that furnished on Form E that may be required to determine the competitive impact of a proposed merger or acquisition in this Commonwealth. The information may include an opinion of an economist, accompanied by a summary of the economist's education and experience.

Section 25.16(b) (relating to acquisition of control—statement filings) is being amended to clarify that Form A is not required when filing a request for an exemption from section 1402 of the act.

Under section 1402(d) of the act, material changes in the facts in Form A or E shall be filed with the Department within 2 business days after the person filing

the forms learns of the change. Section 25.16(e) is being added to clarify that, if the acquiring person is not an individual, a material change includes changes in directors, executive officers or owners of 10% or more of the voting securities of the acquiring person. Section 25.16(d) is also being amended to allow an amendment disclosing all other changes to be filed within 5 business days. The 5-day requirement is being added in recognition that, while the Department must be aware of any changes in information provided in Forms A and E, the 2-day requirement should apply only to changes that may have a material effect on the Commissioner's disposition of the filing.

Section 25.17(c) (relating to annual registration of insurers—statement filing) is being amended to eliminate the requirement to file an amendment to an annual registration statement (Form B) if a material change in the information provided in the statement has already been properly reported as a dividend, other distribution to shareholders or other transaction under the regulation. This change will allow for adequate reporting of material transactions without duplicative filings.

Section 25.18 (relating to summary of registration—statement filing) requires an insurer to file a copy of Form C with another jurisdiction within 15 days from receipt of a written request from the chief insurance regulatory official of the jurisdiction. The section is being amended to require the insurer to file the requested form by the date instructed by the requesting official or no later than 15 days from receipt of the request. These amendments will recognize the discretion of a regulatory official in another jurisdiction to request the filing within a shorter time frame.

Under section 1405(a)(2) of the act (40 P. S. § 991.1405(a)(2)), an insurer may not enter into certain material transactions unless the insurer has provided at least 30 days notice to the Department of its intention to enter into the transaction and the Department has not disapproved the transaction. Section 25.21 (relating to transactions subject to prior notice—notice filing) requires notice of these transactions to be furnished on Form D as prescribed by the chapter. Section 25.21(b) is being added to require a material change in the information furnished on Form D to be reported as an amendment to Form B, the annual registration statement. The addition of § 25.21(b) in conjunction with the amendment to § 25.17 will eliminate duplicative reporting requirements. An insurer is currently required to provide 30 days prior notice of certain transactions on Form D and then report the same transaction 15 days after the end of the month in which it occurs as an amendment to Form B. The proposed amendments eliminate the requirement to file both a Form D and an amendment to Form B, unless there is a change in the information initially provided on Form D. Finally, § 25.21(c) is being added to provide notice that the Department may withdraw its prior approval of a transaction or take other regulatory action as a result of a material change in the information furnished on Form D.

Section 25.22 (relating to all dividends and other distributions) currently applies to only extraordinary dividends or other extraordinary distributions reported under section 1405(b) of the act. The section is being amended to broaden its application to all types of dividends and other distributions reported under the act. Section 25.22(a) is being added to provide instructions for reporting all dividends and other distributions under section 1404(e) of the act. Section 25.22(b) is being added to

provide instructions for requesting the Department's approval to pay dividends and other distributions from other than unassigned funds (surplus) under section 337.8 of the act. Section 25.22(c) is being amended to refer to the section of the act relating to extraordinary dividends or other extraordinary distributions. Section 25.22(c) lists information required to be included in reports and requests filed with the Department under the section and is being amended to apply to all types of dividends and other distributions and to reflect the 1994 amendments to the act. Section 25.22(d) and (e) are being added to provide format and procedural requirements for reports of dividends and other distributions consistent with requirements relating to Form D filings. These provisions are needed to establish consistent reporting standards for all types of transactions under the act. Finally, § 25.22(f) is being added to provide notice that the Department may withdraw its prior approval of a dividend or other distribution and require the transaction to be reversed or take other regulatory action as a result of a material change in information reported under the section.

Transactions within an insurance holding company system are subject to standards in section 1405(a) of the act. One of the standards (section 1405(a)(v) of the act) is whether the insurer's surplus after the transaction will be reasonable in relation to its outstanding liabilities and adequate to its financial needs. Section 1405(d) of the act lists factors that the Department will consider in determining whether the standard in section 1405(a)(v) of the act has been met. Section 25.23 (relating to adequacy of surplus) is being amended to clarify for users of the chapter that the factors in section 1405(d) of the act relate to the standard in section 1405(a)(v) of the act.

Form A, Item 3 (relating to identity and background of individuals associated with the applicant) and Form B, Item 4 (relating to biographical information) are being amended to eliminate the need to include a biographical affidavit with the forms if an affidavit furnished within the immediately preceding 3 years is currently on file with the Insurance Commissioner. These amendments will eliminate unnecessary filings while assuring that the Department has current information.

Form B, Item 5 (relating to transactions and agreements) is being amended to clarify that annual registration statements shall include extraordinary dividends and other material transactions that have occurred during the last calendar year. Interim amendments to Form B will no longer be required for transactions and dividends reported under §§ 25.21 and 25.22. Therefore, this amendment is needed to clarify that the next annual registration statement shall include all transactions that have occurred during the past year, including transactions for which prior notice was required.

Form B, Item 8 (relating to financial statements and exhibits) is being amended to include current Department policy relating to financial statements for controlling persons who are individuals. The policy was published as *Insurance Department Notice No. 1993-19* and provides that individuals may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards published by the American Institute of Certified Public Accountants.

Form C-Summary Registration Statement is being amended to require descriptions of items that have changed from the prior year's annual registration statement to include the date and dollar amount of the change

and to identify any previous filings made as a result of the change. This information is needed to permit the Department to properly identify and evaluate related filings under the act.

Forms A—C are being amended to require persons filing the forms to include the NAIC code numbers of the affected insurers. The inclusion of the NAIC number will facilitate the Department's use of electronic data in reviewing the forms.

Form D, Item 2.B. (relating to description of the transaction) is being amended to better define what is required in a description of the nature of a proposed material transaction. The amendment provides for the description to include the purpose of the transaction and its anticipated immediate and long-term effect on the financial condition of the insurer. This information is needed for the Department to determine whether the transaction meets the standards under section 1405 of the act including whether the insurer's surplus after the transaction will be reasonable in relation to its outstanding liabilities and adequate to its financial needs.

Form D, Items 3—5 (relating to sales, purchases, exchanges, loans, extensions of credit, guarantees, investments or contributions to surplus; loans or extensions of credit to a nonaffiliate; and reinsurance) are being amended to update these items consistent with language in the 1994 amendments to the act.

A new Form E is being added to prescribe the form for providing notice of the potential competitive impact of a proposed merger or acquisition under section 1403 of the act. Form E requires information relating to the competitive impact of the transaction on the insurance market in this Commonwealth. The form is consistent with a model form adopted by the NAIC.

Further amendments have been made to §§ 25.12—25.17, 25.19, 25.20 and Forms A—D to improve upon the clarity and readability of the chapter.

External Comments

In drafting this proposed rulemaking, the Department requested comments from The Insurance Federation of Pennsylvania, Inc., and the Pennsylvania Association of Mutual Insurance Companies. The comments received in response to the Department's request were considered in the development of this rulemaking.

Fiscal Impact

The proposed reporting requirements in this rulemaking will impose no significant costs on persons filing applications to merge with or acquire control of insurers transacting business in this Commonwealth or on domestic insurance companies in insurance holding company systems. This proposed rulemaking will reduce current costs imposed on regulated parties to the extent that it eliminates duplicative filing requirements. Department costs associated with the review of applications and statements filed under Chapter 25 will not increase as a result of this rulemaking. This rulemaking will not impact on costs to political subdivisions. While this rulemaking has no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of this rulemaking enhances the efficiency and effectiveness of the Commonwealth's regulation of domestic insurers in insurance holding company systems under the act.

Paperwork

Because this proposed rulemaking updates the chapter consistent with requirements imposed and implemented under the 1994 amendments to the act, this proposed rulemaking will impose no additional paperwork requirements on domestic insurers or other persons subject to the act. This proposed rulemaking reduces paperwork by eliminating duplicative filings relating to biographical information, reporting forms and notices of proposed material transactions. The disclosure and review requirements in the proposed amendments are necessary for the Department to evaluate whether proposed mergers, acquisitions and material transactions within an insurance holding company system are fair and reasonable and do not have an adverse impact on the interests of policyholders or the financial stability of a domestic insurer.

Persons Regulated

This proposed rulemaking applies to persons filing applications to merge with or acquire control of an insurer transacting business in this Commonwealth, domestic insurers (including health maintenance organizations) in insurance holding company systems and other domestic insurers filing reports of dividends and other distributions with the Department.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Questions or comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 5, 1999, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-182. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 31. INSURANCE
PART I. GENERAL PROVISIONS
Subpart B. SECURITIES AND STOCK
TRANSACTIONS
CHAPTER 25. RULES AND PROCEDURAL
REQUIREMENTS FOR INSURANCE HOLDING
COMPANY SYSTEMS

§ 25.1. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

NAIC—The National Association of Insurance Commissioners, or successor organization.

Surplus—Total assets less total liabilities as calculated and reported in accordance with the annual statement instructions and accounting practices and procedures manuals adopted by the NAIC as required by the Commissioner.

Ultimate controlling person—[That] A person which is not controlled by another person. An ultimate controlling person may be one or more of the following: individual, corporation, limited liability corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or combination of the foregoing who directly or indirectly controls the registrant.

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§ 25.2. [Purpose] (Reserved).

[(a) The purpose of this chapter is to set forth the rules and procedural requirements which the Commissioner deems necessary to carry out the act. The information required by this chapter is necessary and appropriate in the public interest and for the protection of the policyholders of this Commonwealth.

(b) The practice of acquisition of a controlling interest in an insurance company without an advance disclosure of intentions to the insurance company itself shall be regarded as incompatible with the responsibility of the Department to protect the interests of policyholders and the public and to assure itself as to the present and continuing financial stability of the insurance company.

(c) The Department will exercise the powers accorded it by the insurance laws of the Commonwealth to require the disclosure of pertinent information with regard to proposed acquisitions and transactions within a holding company system so that the Department may make an informed and reasoned evaluation of the impact of the proposed acquisition upon the interests of the policyholders and the public and upon the financial stability of the insurance company.]

§ 25.11. Expenses.

[Expenses incurred by the Department in the evaluation of a filing under this chapter related to expert testimony and consulting services, including legal advice, may be assessed by the Commissioner in his discretion to the person filing the statements prescribed in this chapter.]

(a) Under sections 1402(f)(3) and 1405(a)(4) of the act (40 P. S. §§ 991.1402(f)(3) and 991.1405(a)(4)), the Department may retain attorneys, actuaries, accountants and other experts not otherwise a part of the Department's staff as may be reasonably necessary to assist the Department in the evaluation of a filing under this chapter.

(b) The cost of experts retained by the Department will be charged to and paid by the person filing the statements or a designee of the person acceptable to the Department.

(c) The Department will require that per diem charges for experts retained by the Department be comparable to prevailing rates for the services.

(d) Charges for travel, lodging and food expenses of experts retained by the Department will be made in accordance with provisions set forth in letters of engagement.

§ 25.12. Forms—general requirements.

(a) Forms [A—D] A—E are intended to be guides in the preparation of the statements required by sections 1402[, 1404 and]—1405 of the act (40 P. S. §§ 991.1402[, 991.1404 and]—991.1405). They are not intended to be blank forms which are to be filled in. The [statements] forms filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers are prepared in a manner that indicates clearly the scope and coverage of the items. Instructions, whether appearing under the items of the form or elsewhere therein, shall be omitted. Unless expressly provided otherwise, if an item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) Two [complete] copies of [each statement] Forms A and E and one copy of Forms B—D, including exhibits and other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery [or], mail, facsimile or other form of electronic transmission acceptable to the Department. [A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the Commissioner of that state has notified the insurer of its request in writing. The insurer has 15 days from receipt of the notice to file the form.] At least one [of the copies] copy shall be [manually] signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of a person is affixed under a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the [statement] form.

(c) One of the filed copies of Forms A and E will be available for public inspection as of the date the initial filing is made. Form A or E filings may contain or reference materials that are confidential, proprietary or privileged under statute, regulation, case law, administrative or court order or other authority. If a person filing a Form A or E wishes to assert that materials included or referenced within the filing are confidential, proprietary or privileged and should not be available for public inspection, the person shall notify the Department at the time the initial filing is made as follows:

(1) Identify the specific information, document, report or other material that is asserted to be confidential, proprietary or privileged.

(2) State the basis upon which the assertion of confidentiality, proprietary or privilege is premised.

(3) Identify the person to whom inquiries regarding the issue of confidential treatment should be directed.

(4) Submit one copy of the filing with the materials asserted to be confidential, proprietary or privileged physically separate from the remainder of the filing, or as otherwise instructed by the Department.

(d) [Statements] Forms shall be prepared on 8 1/2" x 11" paper and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. Copies of [statements] forms, financial statements or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so that they are clearly distinguishable on photocopies.

[(d) Statements] (e) Forms shall be completed in the English language and monetary values shall be stated in United States currency. If [an] a financial statement, exhibit or other paper or document filed with the [statement] form is in a foreign language, it shall be accompanied by a translation into the English language and monetary value shown in a foreign currency normally shall be converted into United States currency utilizing the conversion rate in effect as of the financial statement date.

§ 25.13. Forms—incorporation by reference, summaries and omissions.

(a) Information required by an item [of Form A, Form B or Form D] in Form A, B, D or E may be incorporated by reference in answer or partial answer to another item. Information contained in a financial statement, annual report, proxy statement, statement filed with a governmental authority or another document may be incorporated by reference in answer or partial answer to an item [of Form A, Form B or Form D] in Form A, B, D or E if the document or paper is filed as an exhibit to the [statement] form. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within the immediately preceding 3 years need not be attached as exhibits if there has been no change in the information already on file. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in answer to the item. Matter may not be incorporated by reference if the incorporation would [render] make the [statement] information provided in the form incomplete, unclear or confusing.

(b) If an item requires a summary or outline of the provisions of a document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the brief statement, the summary or outline may incorporate by reference particular parts of an exhibit or document currently on file with the Commissioner which was filed within the immediately preceding 3 years and may be qualified in its entirety by that reference. [If] When two or more documents required to be filed as exhibits are substantially identical in all

material respects, except as to the parties thereto, the dates of execution or other details, a copy of only one of the documents needs be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the [documents a copy of] document which is filed.

[(c) When Form A and Form B require background information on individuals, the information shall be presented in the form of biographical affidavits signed in the original and notarized.]

§ 25.14. Forms—information unknown or unavailable and extension of time to furnish.

(a) Information required need be given only insofar as it is known or reasonably available to the person filing the [statement] form. If required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions. The person filing shall:

* * * * *

(b) If it is impractical to furnish required information, document or report at the time it is required to be filed, there may be filed with the Commissioner a separate document:

* * * * *

(3) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within 30 days after receipt thereof [enters an order denying] denies the request.

§ 25.15. Forms—additional information and exhibits.

(a) In addition to the information expressly required to be included in Forms [A—D, there shall be added] A—E, the person filing shall provide further material information, if any, as necessary to make the information contained [therein] in the form not misleading. The person filing may also file exhibits as desired in addition to those expressly required by the [statement] form. The exhibits shall be marked to indicate clearly the subject matters to which they refer. The Commissioner may require the person filing the form to provide additional information as may be necessary to determine compliance with the act.

(b) Changes to Form A, B, C [or], D or E shall include on the top of the [cover] first page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

§ 25.16. Acquisition of control—statement filings.

(a) A person required to file a statement under section 1402 of the act (40 P.S. § 991.1402) shall furnish the required information on Form A as prescribed by this chapter. If the information requirements in section 1403(c)(2) and the criteria in section 1403(d)(2) of the act (40 P.S. § 991.1403(c)(2) and (d)(2)) apply to a Form A filing, the person shall also furnish the required information on Form E as prescribed by this chapter.

(b) [The applicant shall advise the Commissioner within 5 business days of changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.] A person filing a request under section 1402(g) of the act (40 P.S. § 991.1402(g)) for an exemption from the provisions of section 1402 of the act is not required to file a Form A as prescribed by this chapter but shall provide information deemed by the Commissioner as necessary to determine that an offer, request, invitation, agreement or acquisition has not been made or entered into for the purpose and will not have the effect of changing or influencing the control of a domestic insurer or otherwise is not comprehended within the purposes of section 1402 of the act.

(c) A person required to file a preacquisition notification under section 1403(b) for an acquisition not subject to a Form A filing under section 1402 of the act shall file Form E as prescribed by this chapter.

(d) Under section 1403(c)(2) of the act, the Department may require material and information in addition to the information required by Form E as reasonably necessary to determine whether the proposed acquisition, if consummated, would exceed the competitive standard of section 1403(d) of the act. The additional information required may include an opinion of an economist as to the competitive impact in this Commonwealth of an acquisition that would exceed the competitive standard of section 1403(d) of the act. The opinion shall be obtained by the person filing the form and shall be accompanied by a summary of the economist's education and experience indicating the economist's ability to render an informed opinion.

(e) Under section 1402(d) of the act, a person shall file with the Department and send to the insurer an amendment disclosing a material change in the information furnished on Forms A and E within 2 business days after the person learns of the change. If the acquiring person is not an individual, a material change includes changes in directors, executive officers or owners of 10% or more of the voting securities of the acquiring person. In addition, the person shall file with the Department and send to the insurer within 5 business days an amendment disclosing a change other than a material change in the information furnished on Forms A and E arising after the date on which the form was filed but before a determination is made on the filing.

(f) If the person being acquired is deemed to be a "domestic insurer" [solely because of] under section 1402(a)(2) of the act, the name of the domestic insurer on the [cover] first page of Forms A and E shall be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

[(d)] (g) If a [section 1402(a)(2) insurer] person deemed to be a "domestic insurer" under section 1402(a)(2) of the act is being acquired, references to "the insurer" [contained] in [Form] Forms A and E shall refer to both the domestic subsidiary insurer and the person being acquired.

§ 25.17. Annual registration of insurers—statement filing.

* * * * *

(c) An amendment to Form B shall be filed within 15 days after the end of a month in which there is a material change to the information provided in the annual registration statement, including changes in officers or directors listed in Item 4 of Form B. **An amendment to Form B is not required if a material change has been reported as a dividend, other distribution to shareholders, or other transaction under §§ 25.21 and 25.22 (relating to transactions subject to prior notice—notice filing; and all dividends and other distributions), and there has been no change in the reported information.**

(d) Amendments shall be filed in the Form B format with only items which are being amended reported. Each amendment shall include at the top of the [cover] first page "Amendment No. (insert number) to Form B for (insert year of most recent filing)" and shall indicate the date of the [change] amendment and not the date of the original filing.

§ 25.18. Summary of registration—statement filing.

An [insurer required to file an] annual registration statement filed under section 1404 of the act (40 P.S. § 991.1404) [is also required to furnish] shall include the information required on Form C as prescribed by this chapter. [An insurer shall file a] A copy of Form C shall be filed in [each state] any jurisdiction in which an insurer is authorized to do business, if [requested by the Commissioner of that state] chief insurance regulatory official of the jurisdiction has notified the insurer of its request in writing, in which case the insurer shall file the form by the date required by the requesting chief insurance regulatory official or within 15 days from receipt of the notice to file the form, whichever is later.

§ 25.19. Alternative and consolidated registrations.

(a) [An authorized] Under section 1404(i) of the act (40 P.S. § 991.1404(i)), an insurer authorized to do business in this Commonwealth may file a registration statement on behalf of an affiliated insurer which is required to register under section 1404 of the act [(40 P.S. § 991.1404)]. A registration statement may include information [not required by the act] regarding an insurer in the insurance holding company system even if the insurer is not authorized to do business in this Commonwealth. In lieu of filing a registration statement on Form B, [the authorized insurer] an insurer authorized to do business in this Commonwealth may file a copy of the registration statement or similar report which it is required to file in its state of domicile, if:

* * * * *

(b) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact [and an]. An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts [which will] to substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

* * * * *

(d) An insurer may take advantage of the provisions of section 1404(h) or (i) of the act without obtaining the prior approval of the Commissioner. The Commissioner reserves the right to require individual filings if **[it is deemed] the Commissioner deems** that the filings are necessary in the interest of clarity, ease of administration or the public good.

§ 25.20. Disclaimers and termination of registration.

(a) A disclaimer of affiliation or a request for termination of registration **under section 1404(g) and (k) of the act (40 P. S. § 991.1404(g) and (k))** claiming that a person does not, or will not upon the taking of some proposed action, control another person, referred to as the "subject" within this chapter, shall contain the following information:

* * * * *

(b) A request for termination of registration shall be deemed to have been granted unless the **[Commissioner] Department**, within 30 days after **[he receives] receipt** of the request, notifies the registrant otherwise.

§ 25.21. Transactions subject to prior notice—notice filing.

(a) * * *

(b) The insurer shall file an amendment to Form B reporting a material change in the information furnished on Form D, including a change in the effective date of the transaction, within 15 days after the end of a month in which the transaction is effectuated.

(c) The Department may withdraw its prior approval of a transaction and require the transaction to be reversed or take other regulatory action as a result of a material change in information furnished on Form D.

§ 25.22. [Extraordinary] All dividends and other distributions.

(a) Under section 1404(e) of the act (40 P. S. § 991.1404(e)), a registered insurer is required to report to the Department all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 days, commencing from the date of receipt by the Department, prior to payment thereof. The report shall include the information in section 1404(e) of the act and subsection (c)(1)—(5). Upon the insurer's request, the Commissioner may grant a waiver from providing the information in subsection (c)(5) for dividends other than dividends reported under section 1405(b) of the act (40 P. S. § 991.1405(b)) and dividends and other distributions filed under section 337.8 of the act (40 P. S. § 459.8).

(b) Under section 337.8 of the act, a domestic insurance company, association or exchange may pay dividends and other distributions to shareholders only out of unassigned funds (surplus) or upon approval of the Commissioner. Information filed with the Commissioner under section 337.8 of the act shall include the information in subsection (c)(1)—(5).

(c) Requests for approval of extraordinary dividends or another extraordinary distribution **[, jointly**

referred to as "dividend" in this section,] to shareholders **under section 1405(b) of the act** shall include the following:

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

(2) The date established for payment of the dividend **or other distribution**.

(3) A statement as to whether the dividend **or other distribution** 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) A copy of the calculations determining that the proposed dividend **or other distribution** is **or is not** extraordinary. The work paper shall include the following information **with respect to the domestic insurer**:

(i) The amounts, dates and form of payment of **[dividends, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year] all dividends and other distributions made within the previous 12 consecutive months ending on the date fixed for payment of the proposed dividend and commencing on the day after the same day of the same month in the last preceding year**.

(ii) Surplus **[as regards policyholders]**, total capital and surplus, as of the 31st day of December next preceding.

(iii) **[The net gain from operations as described in section 1405 of the act (40 P. S. § 991.1405) for the 12-month period ending the 31st day of December next preceding, if the insurer is a life insurer.]** The net income for the 12-month period ending the 31st of December next preceding.

[(iv) The net investment income earned before net realized capital gains or losses as described in section 1405 of the act for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods, if the insurer is not a life insurer.

(v) The dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding 2 calendar years, if the insurer is not a life insurer.

(6)] (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 **or other distribution** approval is submitted.

[(7)] (6) A statement demonstrating the transaction's compliance with section 1405(d) of the act by describing the effect of the proposed dividend **or other distribution** 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.

[(b) Under section 1405(b)(1)(i) of the act, a registered insurer shall provide written notice to the Commissioner of all dividends to shareholders

within 15 business days following the declaration thereof, including the same information required by subsection (a)(4)(i)—(v).]

(d) Reports of dividends and other distributions under this section shall include on the top of the first page the phrase: "Notice of Dividend or Other Distribution" and the name of the insurer.

(e) The insurer shall report changes in information furnished under subsection (c) within 15 days after the end of a month in which the dividend or other distribution is paid. If the dividend or other distribution is required to be reported on Form B, the insurer shall report the changes as an amendment to Form B. If the dividend or other distribution is not subject to a Form B filing, the report of changes shall state on the top of the first page the phrase: "Change No. (insert number) to," and shall include the date of the change, date of declaration, amount paid, payment date, form of payment and the nature of and reason for the change.

(f) The Department may withdraw its prior approval of a dividend or other distribution and require the transaction to be reversed or take other regulatory action as a result of a material change in information furnished under this section.

§ 25.23. Adequacy of surplus.

[(a)] The factors in section 1405(d) of the act (40 P. S. § 991.1405(d)) to be considered in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling. The Commissioner will consider the net effect of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company [and in]. In determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

(Name of Domestic Insurer)

BY: (Name of Acquiring Person ([Applicants] Applicant))

Filed with the Insurance Department of the Commonwealth of Pennsylvania

Dated:

Name, title, address and telephone number of individual to whom notices and correspondence concerning this [statement] form should be addressed:

Item 1. Insurer and Method of [acquisition] Acquisition

State the name, NAIC code number and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

Item 2. Identity and Background of the Applicant

* * * * *

C. Furnish a chart or listing clearly presenting the identities and the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of [the] an ultimate controlling person affiliated with the applicant. Indicate in the chart or listing the percentage of voting securities of each person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

Item 3. Identity and Background of Individuals Associated with the Applicant

[State the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.] Furnish a biographical affidavit for (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Biographical affidavits filed with the Department within the immediately preceding 3 years need not be included if there has been no change in the information already on file.

Biographical affidavits shall be signed in the original, notarized and shall include the following:

* * * * *

Item 4. Nature, Source and Amount of Consideration

* * * * *

C. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, [he] the applicant must specifically request that the identity be kept confidential.

* * * * *

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the Commonwealth of Pennsylvania by (Name of Registrant) on behalf of the following insurance companies:

Name Address
NAIC Code Number State of Domicile
Date: _____, _____

Name, title, address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

* * * * *

Item 2. Organizational Chart

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affli-

ate need be shown if its total assets are equal to less than 1/2 of 1% of the total assets of [the] an ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding \$5,000,000. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate.

If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in the chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

Item 3. [The] Ultimate Controlling Person

As to [the] an ultimate controlling person in the insurance holding company system furnish the following information:

* * * * *

Item 4. Biographical Information

Furnish the following information for the directors and executive officers of [the] an ultimate controlling person in the form of biographical affidavits signed in the original and notarized: the individual's name and address, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years. Biographical affidavits filed with the Department within the immediately preceding 3 years need not be included if there has been no change in the information already on file.

Item 5. Transactions and Agreements

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year, including extraordinary dividends and other material transactions reported under §§ 25.21 and 25.22 of this chapter, between the Registrant and its affiliates:

* * * * *

[No information need be disclosed if such information is not material for purposes of Section 1404 of the Act.]

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material and need not be disclosed.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the effective date, nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to [such] the transaction, and relationship of the affiliated parties to the Registrant.

Item 6. Litigation or Administrative [proceedings] Proceedings

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which [the] an ultimate controlling person or any of its directors or executive officers was a party or of which the property of [the] an ultimate controlling person or any

of its directors or executive officers is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

* * * * *

B. Proceedings which may have a material effect upon the solvency or capital structure of [the] an ultimate [holding company] controlling person including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

* * * * *

Item 8. Financial Statements and Exhibits

* * * * *

B. The financial statements shall include the annual financial statements of [the] any ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year. Financial statements are required for an ultimate controlling person who is an individual as well as a corporation or other type of business organization.

If a holding company system includes more than one ultimate controlling person, annual financial statements are required for each ultimate controlling person unless the Commissioner, in the Commissioner's discretion, finds that annual financial statements for one or more of the ultimate controlling persons are not necessary to carry out the act.

* * * * *

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of [the] an ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If [the] an ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer filed with the chief insurance [department] regulatory official of the insurer's domiciliary [state] jurisdiction and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that [state] jurisdiction. Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

C. Exhibits shall include copies of the latest annual reports to shareholders of [the] an ultimate controlling person and proxy material used by [the] an ultimate controlling person; and any additional documents or papers required by this Chapter.

* * * * *

FORM C

SUMMARY OF REGISTRATION STATEMENT

Filed with the Insurance Department of the Commonwealth of Pennsylvania by (Name of Registrant) on behalf of the following insurance companies:

Name Address
NAIC Code Number State of Domicile
Date: _____, _____

* * * * *

Furnish a brief description, including a reference to any amendments filed in the intervening year, of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall include the date and dollar amount of each change, identify any previous filings as a result of the change by amendment number or by type and date of filing, be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B, insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where the changes are ones which result in ownership or holdings of ten (10) percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of [the] an ultimate controlling person; a director or executive officer terminates his or her responsibilities with [the] an ultimate controlling person; or in the event an individual is named president of [the] an ultimate controlling person.

* * * * *

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the Commonwealth of Pennsylvania by (Name of Registrant) on behalf of the following insurance companies:

Name Address
NAIC Code Number State of Domicile
Date: _____, _____

* * * * *

Item 1. Identity of [parties] Parties to Transaction

Furnish the following information for each of the parties to the transaction:

* * * * *

G. [Where] If the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

Item 2. Description of the Transaction

Furnish the following information for each transaction for which notice is being given:

* * * * *

B. A [statement of the nature] description of the nature and purpose of the transaction, including the anticipated immediate and long-term effect of the transaction on the financial condition of the insurer.

* * * * *

Item 3. Sales, Purchases, Exchanges, Loans, Extensions of Credit, Guarantees, Investments or Contributions to Surplus

* * * * *

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than [(a) in the case of non-life insurers, the lesser of 5% of the insurer's admitted assets or 35% of surplus as regards policyholders or (b) in the case of life insurers, 3% of the insurer's admitted assets, each] 5% of the insurer's admitted assets or 25% of its surplus as of the 31st day of December next preceding.

Item 4. Loans or Extensions of Credit to a Non-Affiliate

* * * * *

No notice need be given if the loan or extension of credit is one which equals less than [, in the case of non-life insurers, the lesser of 5% of the insurer's admitted assets or 35% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each] 5% of the insurer's admitted assets or 25% of its surplus as of the 31st day of December next preceding.

Item 5. Reinsurance

If the transaction is a reinsurance agreement or modification thereto, as described by Section 1405(a)(2)(iii) of the Act, [and a domestic insurer has experienced a decline in policyholder surplus in an amount of 10% or more for two consecutive years and net loss from operations in both those years,] furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium [or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding] is less than 5% of the insurer's surplus as of the 31st day of December next preceding; or the change in the insurer's liabilities or any transfer of assets required to fund the transaction equals or exceeds 25% of the insurer's surplus as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer.

* * * * *

FORM E

**PRE-ACQUISITION NOTIFICATION STATEMENT
OF THE POTENTIAL COMPETITIVE IMPACT OF A
PROPOSED MERGER OR ACQUISITION**

(Name of Applicant)

**(Name of Other Person Involved in Merger or
Acquisition)**

Filed with the Insurance Department of the Commonwealth of Pennsylvania

Date:

Name, title, address and telephone number of person completing this statement:

Item 1. Name and Address

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in control.

Item 2. Name and Addresses of Affiliated Companies

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

Item 3. Nature and Purpose of Proposed Merger or Acquisition

State the nature and purpose of the proposed merger or acquisition.

Item 4. Nature of Business

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

Item 5. Market and Market Share

State specifically what market and market share the persons identified in Item 1 and Item 2 currently enjoy in this Commonwealth in each insurance market which, under section 1403(b)(2)(v) of the act (40 P. S. § 1403(b)(2)(v)), causes the proposed merger or acquisition not to be exempted from Article XIV of the act. Provide historical market and market share data for each person identified in

Item 1 and Item 2 for the past 5 years, or for the number of years the person and any predecessors thereof have been transacting business if less than 5 years, and identify the source of the data.

For purposes of this item, market means direct written insurance premium in this Commonwealth for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this Commonwealth.

Item 6. Signature and Certification

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 1402 of the act has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, _____.

(SEAL)

Name of Applicant

BY (Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, _____, for and on behalf of (Name of Applicant); that (s)he is the (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

[Pa.B. Doc. No. 99-1744. Filed for public inspection October 15, 1999, 9:00 a.m.]
