

CHAPTER 23. PROXIES, CONSENTS AND AUTHORIZATIONS

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Authority

The provisions of this Chapter 23 issued under The Insurance Company Law of 1921 (40 P. S. § 432.1), unless otherwise noted.

Source

The provisions of this Chapter 23 adopted August 13, 1969, unless otherwise noted.

Subchapter A. GENERAL PROVISIONS

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§ 23.1. References.

The definitions and instructions contained in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, applies to this chapter, unless the context or the provisions of § 23.2 (relating to definition of “solicit” and “solicitation”) clearly indicates otherwise.

§ 23.2. Definition of “solicit” and “solicitation.”

(a) When used in this chapter, the terms “solicit” and “solicitation” includes the following meanings, unless the context clearly indicates otherwise:

- (1) Any request for a proxy, whether or not accompanied by or included in a form of proxy.
- (2) Any request to execute or not to execute, or to revoke, a proxy.
- (3) The furnishing of a form of proxy or any other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

(b) When used in this chapter, the terms “solicit” and “solicitation” do not include any of the following:

- (1) Any solicitation by a person with respect to securities of which he is the beneficial owner.
- (2) Actions by a broker or by any other person with respect to securities carried in his name or in the name of his nominee, which involve forwarding solicitative material from the insurer to the beneficial owner.
- (3) Impartial instructions from the broker or any other person to the beneficial owner to forward proxies to any persons to whom the owner might desire to give proxies.
- (4) Impartial requests from the broker or any other person regarding instructions from the beneficial owner as to the authority to be conferred by the proxy, and which state that a proxy will be given if the instructions are received by a certain date.
- (5) Furnishing forms of proxy to a security holder in response to an unsolicited request by the security holder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

Cross References

This section cited in 31 Pa. Code § 23.1 (relating to references).

§ 23.3. Applicability.

- (a) This chapter shall apply to every domestic stock insurer which has any class of equity security held of record by 100 or more persons.
- (b) This chapter shall not apply to any insurer if 95% or more of its equity securities are owned or controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than 500 persons.
- (c) A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents, and authorizations complying with the requirements of the Securities Act of 1933, as amended (15 U.S.C.A. § 77(a) et seq.), and the applicable regulations promulgated thereunder, shall be exempt from the provisions of this chapter with respect to any class of securities subject to SEC jurisdiction.

Cross References

This section cited in 31 Pa. Code § 23.4 (relating to illegal solicitations).

§ 23.4. Illegal solicitations.

No domestic stock insurer or any director, officer, or employe of any insurer, or any other person subject to § 23.3 (relating to the applicability) shall solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity security of the insurer held of record by 100 or more persons in contravention of this chapter and Schedules A

and B, the completion of which is explained in detail in Subchapter F (relating to required information for Schedules A and B).

§ 23.5. Disclosure of equivalent information.

(a) Unless proxies, consents, or authorizations of any class of equity security of a domestic insurer are solicited by or on behalf of the management of such insurer from the holders of record of the securities prior to any meeting of the security holders, the insurer shall file with the Insurance Department, and shall transmit to all security holders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

(b) The insurer shall transmit a written information statement containing the information specified in § 23.24 (relating to information statement to security holders) to every security holder who is entitled to vote on a matter to be acted upon at the meeting and from whom a proxy is not solicited on behalf of the management of the insurer.

(c) In the case of a class of securities in unregistered or bearer form, the statement may be transmitted to only those security holders whose names and addresses are known to the insurer.

Cross References

This section cited in 31 Pa. Code § 23.24 (relating to information statement to security holders).

§ 23.6. False or misleading statements.

No proxy statement, form of proxy, notice of meeting, information statement or any other written or oral communication subject to the provisions of this chapter shall contain any statement which at the time and in light of the circumstances is false or misleading with respect to any material fact, or which fails to state a fact necessary to make the statement true, or which fails to correct a statement in any earlier communication with respect to the same meeting which has become false or misleading.

§ 23.7. Prohibition of undated solicitations.

No person making a solicitation which is subject to this chapter shall solicit any undated or post-dated proxy, or any proxy which provides that it shall be deemed to be dated after the date on which it is actually signed by the security holder.

**Subchapter B. INFORMATION FURNISHED TO SECURITY
HOLDERS PRIOR TO SOLICITATIONS**

- Sec.
23.21. Required information prior to solicitations.
23.22. Financial statements accompanying proxies.
23.23. Copies for Insurance Department.
23.24. Information statement to security holders.

§ 23.21. Required information prior to solicitations.

No solicitation subject to this chapter shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule A, as described in Subchapter F (relating to required information for Schedules A and B).

Cross References

This section cited in 31 Pa. Code § 23.22 (relating to financial statements accompanying proxies); 31 Pa. Code § 23.53 (relating to filing requirements for initial solicitations); and 31 Pa. Code § 23.67 (relating to solicitations prior to written proxy statements).

§ 23.22. Financial statements accompanying proxies.

(a) If a solicitation is made on behalf of the management of the insurer relating to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished under § 23.21 (relating to required information prior to solicitations) shall be accompanied or preceded by an annual report, in preliminary or final form, to the security holders, containing whatever financial statements for the last fiscal year are referred to in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, under the heading “Financial Reporting to Stockholders.”

(b) Subject to the requirements in subsection (a) with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the management.

Cross References

This section cited in 31 Pa. Code § 23.24 (relating to information statement to security holders); and 31 Pa. Code § 23.54 (relating to annual reports).

§ 23.23. Copies for Insurance Department.

Two copies of each report sent to the security holders under the provisions of this subchapter shall be mailed to the Insurance Department, not later than the date on which the report is first sent or given to the security holders or the date on which preliminary copies of solicitation material are filed with the Insurance Department pursuant to § 23.41 (relating to preliminary copies of information statements), whichever date is later.

Cross References

This section cited in 31 Pa. Code § 23.54 (relating to annual reports).

§ 23.24. Information statement to security holders.

(a) If no solicitation is being made by the management of the insurer with respect to an annual meeting, or other meeting, the insurer shall mail to every security holder of record, at least 20 days prior to the meeting date, an information statement as required by § 23.5 (relating to disclosure of equivalent information) containing the information called for by Schedule A, as described in Subchapter F (relating to required information for Schedules A and B), other than Items 1, 3 and 4 thereof, which would be applicable to any matter to be acted upon at the meeting if proxies were solicited in connection with the meeting.

(b) If the information statement relates to an annual meeting at which directors are to be elected, it shall be accompanied by an annual report to those security holders in the form provided in § 23.22 (relating to financial statements accompanying proxies).

Cross References

This section cited in 31 Pa. Code § 23.5 (relating to disclosure of equivalent information); and 31 Pa. Code § 23.54 (relating to annual reports).

Subchapter C. PROXY AND INFORMATION STATEMENTS

- Sec.
23.31. Form of proxies.
23.32. Means for voting proxy statements.
23.33. Withholding voting authority on proxies.
23.34. Conferring discretionary authority on other matters.
23.35. Authority forbidden in proxies.
23.36. Recording of specific votes.
23.37. Presentation of materials in the statement.

§ 23.31. Form of proxies.

(a) Proxy forms shall indicate in bold-face type whether the proxy is solicited on behalf of the management, shall provide a specifically designated blank space for dating the proxy, and shall clearly and impartially identify each matter or group of related matters intended to be acted upon whether proposed by the management or the security holders.

(b) No reference need be made to proposals for which discretionary authority is conferred pursuant to § 23.34 (relating to conferring discretionary authority on other matters).

§ 23.32. Means for voting proxy statements.

(a) Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office.

(b) A proxy may confer discretionary authority with respect to matters as to which a choice is not specified if the form of proxy states in bold-face type how it is intended to vote the shares or authorization represented by the proxy in each case.

Cross References

This section cited in 31 Pa. Code § 23.36 (relating to recording of specific votes).

§ 23.33. Withholding voting authority on proxies.

A form of proxy which provides both for elections to office and for action on other specified matters shall be prepared so as to clearly provide, by a box or otherwise, means by which the security holder may withhold authority to vote for elections to office. Any such form of proxy which is executed by the security holder in a manner so as not to withhold authority to vote for elections to office shall be deemed to grant that authority, provided the form of proxy so states in bold-face type.

§ 23.34. Conferring discretionary authority on other matters.

A proxy may confer discretionary authority with respect to other matters which may come before the meeting if the persons on whose behalf the solicitation is made are not aware a reasonable time before the solicitation is made that any other matters are to be presented for action at the meeting, and if a specific statement to that effect is made in the proxy statement or in the form of proxy.

Cross References

This section cited in 31 Pa. Code § 23.31 (relating to form of proxies).

§ 23.35. Authority forbidden in proxies.

No proxy shall confer authority in either of the following instances:

- (1) A vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement.
- (2) A vote at any annual meeting, other than the next annual meeting or an adjournment thereof, to be held after the date on which the proxy statement and the form of proxy are first sent or given to the security holders.

§ 23.36. Recording of specific votes.

The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy shall be voted and that whenever the person solicited specifies, by means of the ballot provided under § 23.32 (relating to

means for voting proxy statements), a choice with respect to any matter to be acted upon, the vote shall be recorded pursuant to the specifications so made.

§ 23.37. Presentation of materials in the statement.

The information included in the proxy statement or information statement shall be clearly presented and the statements made shall be divided into groups according to subject matter, with appropriate headings. All printed proxy statements or information statements shall be clearly and legibly presented.

Subchapter D. MATERIALS TO BE FILED WITH THE INSURANCE DEPARTMENT

- Sec.
- 23.41. Preliminary copies of information statements.
- 23.42. Preliminary copies of additional soliciting material.
- 23.43. Definitive copies of statements and soliciting material.
- 23.44. Amended materials.
- 23.45. Replies to inquiries and requests excepted.
- 23.46. Definitive copies of soliciting material in the form of public statements.

§ 23.41. Preliminary copies of information statements.

Two preliminary copies of the information statement or the proxy statement and form of proxy, as well as any other soliciting material to be furnished to security holders at the same time, shall be filed with the Insurance Department at least ten days prior to the date definitive copies of the material are first sent or given to security holders, or within any shorter period which the Insurance Department may authorize upon a showing of good cause.

Cross References

This section cited in 31 Pa. Code § 23.23 (relating to copies for Insurance Department); and 31 Pa. Code § 23.46 (relating to definitive copies of soliciting material in the form of public statements).

§ 23.42. Preliminary copies of additional soliciting material.

Two preliminary copies of any additional soliciting material relating to the same meeting or any subject matter to be furnished to security holders subsequent to the proxy statements shall be filed with the Insurance Department at least 2 days (exclusive of Saturdays, Sundays or holidays) prior to the date copies are to be sent or given to security holders, or within any shorter period prior to that date which the Insurance Department may authorize upon a showing of good cause.

Cross References

This section cited in 31 Pa. Code § 23.46 (relating to definitive copies of soliciting material in the form of public statements).

§ 23.43. Definitive copies of statements and soliciting material.

Two definitive copies of the information statement or the proxy statement, the form of proxy, and all other soliciting material, in the form in which the material is to be furnished to security holders, shall be filed with or mailed for filing to the Insurance Department not later than the date on which the material is first sent or given to the security holders.

Cross References

This section cited in 31 Pa. Code § 23.46 (relating to definitive copies of soliciting material in the form of public statements).

§ 23.44. Amended materials.

If any information statement or proxy statement, form of proxy or any other material filed under this subchapter is amended or revised, two of the copies shall be marked to clearly show those changes.

§ 23.45. Replies to inquiries and requests excepted.

Copies of replies to inquiries from security holders requesting additional information and copies of communications which merely request that forms of proxy theretofore solicited be signed and returned need not be filed.

§ 23.46. Definitive copies of soliciting material in the form of public statements.

(a) Copies of soliciting material in the form of speeches, press releases, and radio and television scripts may, but need not, be filed with the Insurance Department prior to use or publication. Definitive copies, however, shall be filed with or mailed to the Insurance Department as required by § 23.43 (relating to definitive copies of statements and soliciting material) not later than the date such material is used or published.

(b) Sections 23.41 and 23.42 (relating to preliminary copies of information statements; preliminary copies of additional soliciting material) as well as § 23.67 (relating to solicitations prior to written proxy statements) shall apply to any reprints or reproductions of all or part of the materials.

Subchapter E. ELECTION CONTESTS**GENERAL PROVISIONS**

Sec.	
23.51.	Definition of "participant" and "participant in a solicitation."
23.52.	Applicability.
23.53.	Filing requirements for initial solicitations.
23.54.	Annual reports.

FILING INFORMATION REQUIRED BY SCHEDULE B

- 23.61. Duplicate information.
- 23.62. Reports subsequent to solicitation.
- 23.63. Opposition solicitation.
- 23.64. Information as to additional participants.
- 23.65. Material changes.
- 23.66. Public files.
- 23.67. Solicitations prior to written proxy statements.

Cross References

This subchapter cited in 31 Pa. Code § 23.73 (relating to persons making solicitations not subject to election contest provisions—Item 3).

GENERAL PROVISIONS

§ 23.51. Definition of “participant” and “participant in a solicitation.”

(a) When used in this subchapter, the terms “participant” and “participant in a solicitation” shall include the following meanings, unless the context clearly indicates otherwise:

- (1) The insurer.
- (2) Any director of the insurer and any nominee for whose election as a director proxies are solicited.
- (3) Any other person, acting alone or with one or more other persons, committees, or groups, in organizing, directing, or financing the solicitation.

(b) When used in this subchapter, the terms “participant” and “participant in a solicitation” shall not include any of the following:

- (1) A bank broker or dealer who in the ordinary course of business lends money or executes orders for the purchase or sale of securities but who is not otherwise a participant.
- (2) Any person or organization retained or employed by a participant to solicit security holders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties.
- (3) Any person employed in the capacity of attorney, accountant, or advertising, public relations, or financial adviser, and whose activities are limited to the performance of his duties in the course of the employment.
- (4) Any person regularly employed as an officer or employe of the insurer or any of its subsidiaries or affiliates but who is not otherwise a participant.
- (5) Any officer or director, or any person regularly employed by any other participant, if the officer, director or employe is not otherwise a participant.

§ 23.52. Applicability.

The provisions of this subchapter shall apply to any solicitation made by any person or group in order to oppose any other solicitation issued under this chapter with respect to the election or removal of directors at any annual or special meeting of security holders.

§ 23.53. Filing requirements for initial solicitations.

Two copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by § 23.21 (relating to required information prior to solicitations) shall be filed with the Insurance Department in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the security holders, or within any shorter period which the Insurance Department may authorize upon a showing of good cause.

§ 23.54. Annual reports.

(a) Notwithstanding the provisions of §§ 23.22 and 23.24 (relating to financial statements accompanying proxies; information statement to security holders), two copies of any portion of the annual report referred to in § 23.23 (relating to copies for Insurance Department), which comments upon or refers to any solicitation or which refers to any participant in such a solicitation, other than solicitations by the management, shall be filed with the Insurance Department as proxy material subject to the provisions of this chapter.

(b) The portion of the report specified in subsection (a) shall be filed with the Insurance Department in preliminary form at least 5 days prior to the date copies of the report are first sent or given to security holders.

FILING INFORMATION REQUIRED BY SCHEDULE B**§ 23.61. Duplicate information.**

No solicitation subject to this subchapter shall be made by any person other than the management of an insurer unless, at least five business days beforehand (or any shorter period which the Insurance Department may authorize upon a showing of good cause), there has been filed with the Insurance Department by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Schedule B, as described in Subchapter F (relating to required information for Schedules A and B), and a copy of any material proposed to be distributed to security holders in the furtherance of such solicitation. If preliminary copies of any materials are filed, distribution to security holders shall be deferred until the comments of the Insurance Department have been received and complied with.

Cross References

This section cited in 31 Pa. Code § 23.64 (relating to information as to additional participants).

§ 23.62. Reports subsequent to solicitation.

Within 5 business days after a solicitation subject to this subchapter is made by the management of an insurer (or any longer period which the Insurance Department may authorize upon a showing of good cause), there shall be filed with the Insurance Department by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Schedule B, as described in Subchapter F (relating to required information for Schedules A and B).

Cross References

This section cited in 31 Pa. Code § 23.64 (relating to information as to additional participants); and 31 Pa. Code § 23.67 (relating to solicitations prior to written proxy statements).

§ 23.63. Opposition solicitation.

If any solicitation on behalf of management or any other person has been made or if proxy material is ready for distribution prior to an opposition solicitation subject to this subchapter, a statement in duplicate containing the information specified in Schedule B, as described in Subchapter F (relating to required information for Schedules A and B), shall be filed with the Insurance Department by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the opposing solicitation.

Cross References

This section cited in 31 Pa. Code § 23.64 (relating to information as to additional participants); and 31 Pa. Code § 23.67 (relating to solicitations prior to written proxy statements).

§ 23.64. Information as to additional participants.

If, subsequent to the filing of the statements required by §§ 23.61—23.63 (relating to duplicate information; reports subsequent to solicitation; opposition solicitation), additional persons become participants in a solicitation, there shall be filed with the Insurance Department by or on behalf of each person a statement in duplicate containing the information specified by Schedule B, as described in Subchapter F (relating to required information for Schedules A and B), within 3 business days after the person becomes a participant (or within any longer period the Insurance Department may authorize upon a showing of good cause).

§ 23.65. Material changes.

If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the Insurance Department.

§ 23.66. Public files.

Each statement and amendment filed according to the provisions of this Subchapter shall be part of the public files of the Insurance Department.

Cross References

This section cited in 31 Pa. Code § 23.67 (relating to solicitations prior to written proxy statements).

§ 23.67. Solicitations prior to written proxy statements.

Solicitations subject to this subchapter may be made prior to furnishing security holders with written proxy information, as described in Subchapter F (relating to required information for Schedules A and B), if the following conditions are met:

- (1) The statements required by § 23.66 (relating to public files) shall be filed by or on behalf of each participant in such a solicitation.
- (2) No form of proxy shall be furnished to security holders prior to the time the written proxy statement required by § 23.21 (relating to required information prior to solicitations) is furnished to such persons. This paragraph shall not apply if a proxy statement then meeting the requirements of Schedule A has been furnished to security holders.
- (3) At least the information specified in §§ 23.62 and 23.63 (relating to reports subsequent to solicitation; and opposition solicitation) or an appropriate summary shall be included in each communication sent or given to security holders in connection with the solicitation.
- (4) A written proxy statement containing the information specified in Schedule A with respect to a solicitation shall be sent or given to security holders at the earliest practicable date.

Cross References

This section cited in 31 Pa. Code § 23.46 (relating to definitive copies of soliciting material in the form of public statements).

Subchapter F. REQUIRED INFORMATION FOR SCHEDULES A AND B

SCHEDULE A

- Sec.
- 23.71. Revocability of proxy—Item 1.
 - 23.72. Rights of appraisal of dissenters—Item 2.
 - 23.73. Persons making solicitations not subject to election contests provisions—Item 3.
 - 23.74. Interest of certain persons to be acted upon—Item 4.
 - 23.75. Voting securities—Item 5.
 - 23.76. Nominees and directors—Item 6.
 - 23.77. Remuneration and other transactions—Item 7.
 - 23.78. Bonus, profit-sharing, and other remuneration plans—Item 8.
 - 23.79. Pension and retirement plans—Item 9.
 - 23.80. Options, warrants, or rights—Item 10.
 - 23.81. Authorization or issuance of securities—Item 11.
 - 23.82. Mergers, consolidations, acquisitions, and similar matters—Item 12.
 - 23.83. Restatement of accounts—Item 13.
 - 23.84. Matters not required to be submitted—Item 14.
 - 23.85. Amendment of charter, bylaws, and other documents—Item 15.

SCHEDULE B

- 23.91. Coverage.
- 23.92. Insurer—Item 1.
- 23.93. Identity and background—Item 2.
- 23.94. Interest in securities of the insurer—Item 3.
- 23.95. Other matters generally—Item 4.
- 23.96. Signature.

Cross References

This Subchapter cited in 31 Pa. Code § 23.4 (relating to illegal solicitations); 31 Pa. Code § 23.21 (relating to required information prior to solicitations); 31 Pa. Code § 23.24 (relating to information statement to security holders); 31 Pa. Code § 23.61 (relating to duplicate information); 31 Pa. Code § 23.62 (relating to reports subsequent to solicitation); 31 Pa. Code § 23.63 (relating to opposition solicitation); 31 Pa. Code § 23.64 (relating to information as to additional participants); and 31 Pa. Code § 23.67 (relating to solicitations prior to written proxy statements).

SCHEDULE A

§ 23.71. Revocability of proxy—Item 1.

It shall be stated whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, the limitation or procedure shall be briefly described.

§ 23.72. Rights of appraisal of dissenters—Item 2.

Rights of appraisal or similar rights of dissenting security holders shall be outlined briefly with respect to any matter to be acted upon, and any statutory procedure required to be followed by the security holders in order to perfect their rights shall be indicated. If such rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment, or some other similar act, it shall be stated whether the person solicited will be notified of that date.

§ 23.73. Persons making solicitations not subject to election contests provisions—Item 3.

(a) For persons making solicitations not subject to Subchapter E (relating to election contests), it shall be stated whether the solicitation is made by the management of the insurer. The name of any director of the insurer who has informed the management in writing that he intends to oppose any action intended to be taken by the management shall be stated. The action which he intends to oppose shall also be indicated.

(b) If the solicitation is made by other than the management of the insurer, the names and addresses of the persons by whom and on whose behalf it is made, as well as the names and addresses of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly, shall be stated.

(c) If the solicitation is to be made by specially engaged employees or paid solicitors, the following information shall be stated:

- (1) The material features of any contract or arrangement for the solicitation and identification of the parties.
- (2) The cost or anticipated cost thereof.

§ 23.74. Interest of certain persons to be acted upon—Item 4.

Any substantial interest, whether direct or indirect, shall be described briefly as to security holdings or otherwise if held by a director, nominees for election to director, or officers and, if the solicitation is made other than on behalf of management, as to each person on whose behalf the solicitation is made in any matter to be voted on, other than elections to office.

§ 23.75. Voting securities—Item 5.

(a) The number of shares outstanding and the number of votes to which each class is entitled shall be stated as to each class of voting securities of the insurer entitled to be voted at the meeting.

(b) The date of determination of the record list of security holders entitled to vote shall be stated. If the right to vote is not limited to security holders of record on that date, the conditions under which other security holders may be entitled to vote shall be indicated.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, a statement shall be made that they have those rights, and a brief statement as to the conditions precedent to the exercise of the cumulative voting rights.

§ 23.76. Nominees and directors—Item 6.

If action is to be taken with respect to the election of directors, all of the following information shall be given, in tabular form to the extent practicable, with respect to each person nominated for election as a director and every other person whose term of office as a director will continue after the meeting:

(1) The name of each such person, the date when his term of office or the term of office for which he is a nominee will expire, and all other positions and offices with the insurer presently held by him, as well as the names of those persons who are nominees for election as directors at the meeting.

(2) The present principal occupation or employment of such person and the name and principal business of any corporation or other organization in which his employment is carried on. Similar information shall be furnished as to all of his principal occupations or employments during the last five years, unless at present he is a director and was elected to his present term of office by a vote of security holders at a meeting for which proxies were solicited under the provisions of this chapter.

(3) If the person is or has been a director for the insurer, the period or periods during which he served as director.

(4) As of the most recent practicable date, the approximate amount of each class of equity securities of the insurer or any of its parents, subsidiaries, or affiliates, other than directors' qualifying shares owned beneficially, either directly or indirectly, by the person in question. If he is not the beneficial owner of the stated securities, a statement shall be made to that effect.

§ 23.77. Remuneration and other transactions—Item 7.

(a) Information shall be furnished as reported or required in Item 1 of Schedule SIS, as promulgated by the National Association of Insurance Commissioners, under the heading "Information Regarding Management and Directors," if action is to be taken with respect to any of the following:

(1) The election of directors.

(2) Any remuneration plan, contract, or arrangement in which any director, nominee for election as a director, or officer of the insurer will participate.

(3) Any pension or retirement plan in which any such person will participate.

(4) The granting or extension to any such person of any options, warrants, or rights to purchase any securities, other than warrants or rights issued to security holders as such on a pro rata basis.

(b) If the solicitation is made on behalf of persons other than the management, information shall be furnished only as to Item 1-A of the heading in Schedule SIS indicated in subsection (a) of this section.

Cross References

This section cited in 31 Pa. Code § 23.78 (relating to bonus, profit-sharing, and other remuneration plans—Item 8); 31 Pa. Code § 23.79 (relating to pension and retirement plans—Item 9); and 31 Pa. Code § 23.80 (relating to options, warrants, or rights—Item 10).

§ 23.78. Bonus, profit-sharing, and other remuneration plans—Item 8.

If action is to be taken with respect to any bonus, profit-sharing, or other remuneration plan of the insurer, all of the following information shall be furnished:

- (1) A brief description of the material features of the plan, each class of persons who will participate in the plan, the approximate number of persons in each class, and the basis of their participation.
- (2) The amounts which would have been distributable to the following people under the plan during the last calendar year:
 - (i) Each person named in Item 7 of Schedule A, as described in § 23.77 (relating to remuneration and other transactions—Item 7).
 - (ii) All directors and officers as a group.
 - (iii) All other employees as a group, if the plan had been in effect.
- (3) If the plan to be acted upon may be amended (other than by a vote of security holders) in a manner which would materially increase its cost to the insurer or to materially alter the allocation of the benefits as between the groups specified in paragraph (2), the nature of the amendments shall be specified.

§ 23.79. Pension and retirement plans—Item 9.

If action is to be taken with respect to any pension or retirement plan of the insurer, the following information shall be furnished:

- (1) A brief description of the material features of the plan, each class of persons who will participate in the plan, the approximate number of persons in each class, and the basis of their participation. Such description shall include all of the following:
 - (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which the amount is to be paid, and the estimated annual payments necessary to pay the total amount over that period.
 - (ii) The estimated annual payment to be made with respect to current services.
 - (iii) The amount of the annual payments to be made for the benefit of each person named in Item 7 of Schedule A, as described in § 23.77 (relat-

ing to remuneration and other transactions—Item 7), directors and officers as a group, and employes as a group.

(2) If the plan to be acted upon may be amended (other than by a vote of security holders) in a manner which would materially increase its cost to the insurer or to materially alter the allocation of the benefits as between the groups as specified in paragraph (1)(iii) the nature of the amendments shall be specified.

§ 23.80. Options, warrants, or rights—Item 10.

(a) When used in this section, the term “warrants” means any options, warrants or rights.

(b) If action is to be taken with respect to the granting or extension of any warrants to purchase securities of the insurer or any subsidiary or affiliate, other than warrants issued to all security holders on a pro rata basis, all of the following information shall be furnished:

(1) The title and amount of securities called for or to be called for, as well as the prices, expiration dates, and other material conditions upon which the warrants may be exercised, the consideration received or to be received by the insurer, subsidiary, or affiliate for the granting or extension of the warrants, and the market value of the securities called for or to be called for by the warrants as of the latest practicable date.

(2) If known, the total amount of securities called for or to be called for by warrants received or to be received by the following persons, naming each person:

(i) Each person named in Item 7 of Schedule A, as described in § 23.77 (relating to remuneration and other transactions—Item 7).

(ii) Each other person who will be entitled to acquire 5.0% or more of the securities called for or to be called for by the warrants.

(3) If known, the total amount of securities called for or to be called for by such warrants, received or to be received by all directors and officers of the company as a group and all employes, without naming them.

§ 23.81. Authorization or issuance of securities—Item 11.

(a) If action is to be taken with respect to the authorization or issuance of any securities of the insurer, the title, amount and description of the securities to be authorized or issued shall be furnished.

(b) If the securities are other than additional shares of common stock of a class outstanding, a brief summary of the following shall be furnished, if applicable:

(1) Dividend, voting, liquidation, preemptive, and conversion rights.

(2) Redemption and sinking fund provisions.

(3) Interest rate and date of maturity.

(c) If the securities to be authorized or issued are other than additional shares of common stock of a class outstanding, the Insurance Department may require financial statements comparable to those contained in the annual report.

§ 23.82. Mergers, consolidations, acquisitions, and similar matters—Item 12.

(a) If action is to be taken with respect to a merger, consolidation, acquisition, or any similar matter, all of the following information shall be furnished in brief outline form:

- (1) The rights of appraisal or similar rights of dissenters with respect to any matters to be acted upon. The procedures required to be followed by dissenting security holders in order to perfect such rights shall be indicated.
- (2) The material features of the plan or agreement.
- (3) The business done by the company to be acquired or whose assets are being acquired.
- (4) If available, the high and low sales prices for each quarterly period within 2 years.
- (5) The percentage of outstanding shares which must approve the transaction before it is consummated.

(b) For each company involved in a merger, consolidation, or acquisition, the following financial statements shall be furnished:

- (1) A comparative balance sheet as of the close of the last two fiscal years.
- (2) A comparative statement of operating income and expenses for each of the last 2 fiscal years and, as a continuation of each statement, a statement of earnings per share after related taxes and cash dividends paid per share.
- (3) A pro forma combined balance sheet and income and expenses statement for the last fiscal year giving effect to the necessary adjustments with respect to the resulting company.

§ 23.83. Restatement of accounts—Item 13.

If action is to be taken with respect to the restatement of an asset, capital, or surplus account of the insurer, all of the following information shall be furnished:

- (1) The nature of the restatement and the date on which it is to be effective.
- (2) A brief outline of the reasons for the restatement and for the selection of the particular effective date.
- (3) The name and amount of each account effected by the restatement and the effect of the restatement thereon.

§ 23.84. Matters not required to be submitted—Item 14.

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, the nature of the matter shall be stated, as well as the reason for submitting it to a vote of security holders and the action

intended to be taken by the management in the event of a negative vote on the matter by the security holders.

§ 23.85. Amendment of charter, bylaws, and other documents—Item 15.

If action is to be taken with respect to any amendment of the charter, bylaws, or other documents of the insurer, the reasons for and general effect of such an amendment, as well as the vote needed for its approval, shall be stated briefly.

SCHEDULE B

§ 23.91. Coverage.

Schedule B shall deal with information to be included in statements to be filed by or on behalf of a participant (other than the insurer) in a proxy solicitation in an election contest.

§ 23.92. Insurer—Item 1.

The name and address of the insurer shall be stated.

§ 23.93. Identity and background—Item 2.

(a) All of the following information shall be stated:

- (1) The name and business address.
- (2) The present principal occupation or employment and the name, principal business, and address of any corporation or other organization in which such employment is carried on.
- (3) The residence address.
- (4) Information as to all material occupations, positions, offices or employments during the last 10 years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other business organization in which each occupation, position, office or employment was carried on.

(b) A statement shall be furnished as to whether the person filling out the form is or has been a participant in any other proxy contest involving the company of employment or any other companies within the past 10 years. If so, the principals, the subject matter, the person's relationship to the parties, and the outcome shall be stated.

(c) A statement shall be included of any convictions in a criminal proceeding during the past 10 years (excluding traffic violations or similar misdemeanors). If any, the dates, nature of the conviction, the name and location of the court, and the penalty or other disposition of the case shall be stated. If there have been no convictions, such fact need not be stated in the proxy statement or other party soliciting material.

§ 23.94. Interest in securities of the insurer—Item 3.

(a) The amount of each class of the securities of the insurer owned by the person filling out the form, either beneficially, directly or indirectly, shall be stated.

(b) The amount of each class of securities of the insurer owned of record but not beneficially shall be stated.

(c) As to all securities of the insurer purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each date shall be stated.

(d) If any part of the purchase price or market value of any of the securities specified in subsection (c) is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, that fact shall be stated as well as the amount of the indebtedness as of the latest practicable date. If the funds were borrowed or obtained in any other way than by a margin account or bank loan in the regular course of business of a bank, broker, or dealer, the transaction shall be briefly described and the names of the parties shall be stated.

(e) The person filling out the form shall state whether he is a party to any contracts, arrangements, or understandings with any person with respect to any securities of the insurer, including but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against losses or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The persons with whom such contracts, arrangements, or understandings exist and the details shall be stated.

(f) The person filling out the form shall state the amount of the insurer's securities owned beneficially either directly or indirectly, by each of his associates, and the name and address of each associate.

(g) The amount of securities of each class shall be stated if owned by any parent, subsidiary, or affiliate of the insurer, but which the person filling out the form owns beneficially, whether directly or indirectly.

§ 23.95. Other matters generally—Item 4.

All of the following information shall be stated, relevant to the person to whom Schedule B pertains:

(1) A description of the time and circumstances under which that person became a participant in the solicitation, as well as the nature and extent of his activities or proposed activities as a participant.

(2) A brief description and, if practicable, a statement of the approximate amount of any material interest, whether direct or indirect, of the person and his associates in any material transactions since the beginning of the company's last fiscal year, or in any material proposed transactions to which the company or any of its subsidiaries or affiliates was or is to be a party.

(3) A statement as to whether the person or any of his associates have any arrangement or understanding with any person with respect to any future employment by the insurer or its subsidiaries or affiliates or with respect to any future transactions to which the insurer or any of its subsidiaries or affiliates will or may be a party. A description of any such arrangement or understanding and a statement of the names of the parties thereto shall be included.

§ 23.96. Signature.

The statement shall be dated and signed in the following manner:

“I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.”

(Date)

(Signature of participant or
authorized representative)

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