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3901-3-03

Transactions subject to prior notice - notice filing.

(A) Purpose

The purpose of this rule is to establish the form and content an insurer must use ~~in~~ in ~~order~~ to give notice of a proposed transaction under section 3901.341 of the Revised Code.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.341 of the Revised Code.

(C) Definitions

Terms found in this regulation are used as defined in the Insurance Holding Company Systems Regulatory Act, sections 3901.32 to 3901.37 of the Revised Code, and rule 3901-3-02 of the Administrative Code.

(D) Written notice

In giving notice to the superintendent of a proposed transaction pursuant to section 3901.341 of the Revised Code, the insurer shall use the form set forth in this paragraph.

Form D

Prior notice of a transaction

Filed with the insurance department of the state of Ohio

By

Name of registrant

On behalf of the following insurance companies

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Date: _____, 20____

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

Item 1. Identity of parties to transaction

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

- (a) Name.
- (b) Home office address.
- (c) Principal executive office address.
- (d) The organizational structure, e.g. corporation, partnership, individual, trust, etc.
- (e) A description of the nature of the parties' business operations.
- (f) Relationship to the insurer of other parties to the transaction, if any, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer, or by the insurer in the affiliated parties.
- (g) Where 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 in electronic form prescribed by the superintendent for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of section 3901.341 of the Revised Code.
- (b) A statement of the nature of the transaction and a complete copy of the agreement to include amendments if applicable.
- (c) A statement of how the transaction meets the "fair and reasonable" standard of division (B) of section 3901.341 of the Revised Code.

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(d) The proposed effective date of the transaction.

Item 3. Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments

If notice is being given under division (A)(1) of section 3901.341 of the Revised Code, furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange of assets, loan, extension of credit, guarantee, or investment. If any securities are involved in the transaction, provide a description of the terms of the securities.

If consideration for the transaction is other than cash, describe the consideration, its cost, and fair market value, and explain the basis for evaluation.

If the transaction involves a loan, extension of credit, or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's 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 three ~~pereent per cent~~ of the insurer's admitted assets or twenty-five ~~pereent per cent~~ of surplus as regards policyholders or, (b) in the case of life insurers, three ~~pereent per cent~~ of the insurer's admitted assets, each as of the thirty-first day of December next preceding.

Item 4. Loans or extensions of credit to a non-affiliate

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an

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explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

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 three ~~percent~~ per cent of the insurer's admitted assets or twenty-five ~~percent~~ per cent of surplus as regards policyholders or, with respect to life insurers, three ~~percent~~ per cent of the insurer's admitted assets, each as of the thirty-first day of December next preceding.

Item 5. Reinsurance

If the transaction is a reinsurance agreement or modification thereto, as described by division (A)(3) of section 3901.341 of the Revised Code, 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 five ~~percent~~ per cent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding.

Item 6. Management agreements, service agreements, cost-sharing arrangements, and tax allocation agreements.

For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed.
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement.
- (b) A description of the period of time during which the agreement is to be in effect.

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- (c) A brief description of each party's expenses or costs covered by the agreement.
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;~~and~~
- (f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable;~~and~~
- (g) A statement regarding compliance with the national association of insurance commissioners (NAIC) "Accounting Practices and Procedures Manual" regarding expense allocation.

For tax allocation agreements furnish:

- (1) A brief description of the purpose of the agreement.
- (2) A description of the period of time during which the agreement is to be in effect.
- (3) A brief description of each party's expenses or costs covered by the agreement.
- (4) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.
- (5) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus.

Item 7. Signature and certification

Signature and certifications required as follows:

Signature

Pursuant to the requirements of section 3901.341 of the Revised Code, _____ has caused this notice to be duly signed on its behalf in the city of _____ and state of _____ on the _____ day of _____, 20____.

(Seal)

Name of applicant

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By _____

(Name) (Title)

Attest:

(Signature of officer)

(Title)

Certification

The undersigned deposes and says that ~~(s)he~~ the undersigned has duly executed the attached notice dated _____, 20____, for and on behalf of _____ (Name of applicant); that ~~(s)he~~ the undersigned is the _____ (Title title of officer) of such company and that ~~(s)he~~ the undersigned is authorized to execute and file such instrument. Deponent further says the ~~(s)he~~ the undersigned is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of ~~his/her~~ the undersigned's knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

(E) ~~Agreements for cost~~ Cost sharing services agreements, tax allocation agreements that include a cost sharing arrangement, and management services agreements shall at a minimum and as applicable:

- (1) Identify the person providing services and the nature of such services;
- (2) Set forth the methods to allocate costs;
- (3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the NAIC "Accounting Practices and Procedures Manual";
- (4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

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- (5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
- (6) Define records and data of the insurer to include all records and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;
- (7) Specify that all records and data of the insurer are and remain the property of the insurer, and:
 - (a) Are subject to control of the insurer;
 - (b) Are identifiable; and
 - (c) Are segregated from all other persons' records and data or are readily capable of segregation at no additional cost to the insurer.
- (8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
- (9) Include standards for termination of the agreement with and without cause;
- (10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in paragraphs (E)(11), (E)(12), (E)(13), (E)(14) and (E)(15) of this rule;
- (11) Specify that, if any action is taken against the insurer pursuant to the insurers supervision, rehabilitation, and liquidation act:
 - (a) All of the rights of the insurer under the agreement extend to the rehabilitator or the superintendent to the extent permitted by Ohio law;

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- (b) All records and data of the insurer shall be identifiable and segregated from all other persons' records and data or readily capable of segregation at no additional cost to the rehabilitator or superintendent;
- (c) A complete set of records and data of the insurer will immediately be made available to the rehabilitator or the superintendent, shall be made available in a usable format immediately upon request, and the cost to transfer data to the rehabilitator or the superintendent shall be fair and reasonable; and
- (d) The affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the rehabilitator or superintendent.

(12) Specify that the affiliate has no automatic right to terminate the agreement if any action is taken against the insurer pursuant to the insurers supervision, rehabilitation, and liquidation act; and

(13) Specify that the affiliate will provide the essential services for a minimum period of time specified in the agreement after termination of the agreement, if any action is taken against the insurer pursuant to the insurers supervision, rehabilitation, and liquidation act. Performance of the essential services will continue to be provided without regard to pre-rehabilitation unpaid fees, so long as the affiliate continues to receive timely payment for post-rehabilitation services rendered, unless released by the rehabilitator, superintendent or supervising court.

(14) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding any action being taken against the insurer pursuant to the insurers supervision, rehabilitation, and liquidation act, and will make them available to the rehabilitator or the superintendent as ordered or directed by the rehabilitator or superintendent for so long as the affiliate continues to receive timely payment for post-rehabilitation services rendered, and unless released by the rehabilitator, superintendent or supervising court; and

(15) Specify that, in furtherance of the cooperation between the rehabilitator and the affected guaranty association(s) and subject to the rehabilitator's authority over the insurer, if any action is taken against the insurer pursuant to the insurers supervision, rehabilitation, and liquidation act, and portions of the insurer's policies or contracts are eligible for coverage by one or more

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guaranty associations, the affiliate's commitments under paragraphs (E)(11), (E)(12), (E)(13), and (E)(14) of this rule will extend to such guaranty association(s).

(F) Severability

~~If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgement shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect. If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.~~