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TO: All Insurers Transacting Insurance Business in the State of South Carolina

FROM: Raymond G. Farmer
Director of Insurance 

RE: Corporate Governance Standards for Risk Retention Groups Are Effective January 1, 2017

DATE: December 16, 2016

I. Purpose

This Bulletin serves as a reminder that the corporate governance standards for Risk Retention Groups (RRGs) are effective January 1, 2017. The South Carolina General Assembly enacted the new standards in 2016. The new corporate governance standards may be found in Section 38-87-30(D). Section 38-90-160 provides that the new corporate governance standards specified in Section 38-87-30(D) also apply to risk retention groups organized as captive insurance companies. Please review the legislation in its entirety. A brief summary of some of the more significant standards is set forth below.

A. Independent Directors

The new corporate governance standards require a majority of the board of directors be independent of any management or vendor relationship with the RRG. Independence means there is no material relationship. As a general rule, a person that is a direct or indirect owner of or subscriber in the RRG – or is an officer, director, or employee of such owner and insured – is deemed to be independent *unless that officer, director or employee has some other position with the RRG that constitutes a material relationship.*

Material relationship includes, but is not limited to, receipt of compensation of more than five percent (5%) of the annual gross written premium or two percent (2%) of the surplus in any 12-month period. It also includes an affiliation or employment by a current or former auditor of the RRG.

B. Service Provider Contracts

Additionally, material service provider relationships cannot exceed five (5) years. The contracts must be approved by a majority of the RRG's independent board members and the South Carolina Department of

Insurance. "Material service providers" include captive managers, auditors, accountants, actuaries, investment advisors, attorneys, underwriters, or similar service providers whose aggregate annual contract fees are equal to or greater than 5% of the RRG's annual gross written premium or 2% of its surplus.

C. Plan of Operations

Moreover, RRGs are required to have a written plan of operation for the board of directors requiring the board to:

- a. Provide evidence of ownership to each member;
- b. Develop governance standards;
- c. Oversee the evaluation of management;
- d. Review and approve the amount to be paid under material service provider contracts; and
- e. At least annually, review and approve:
 1. the RRG's goals and objectives relevant to the compensation of officers and service providers;
 2. the performance of officers and service providers as measured against the RRG's goals and objectives; and
 3. the continued engagement of officers and material service providers.

D. Governance Standards

Each RRG's board must adopt governance standards that include:

- a. A process by which the members elect directors;
- b. Director qualifications, responsibilities, and compensation;
- c. Director orientation and continuing education requirements;
- d. A process allowing the board access to management and, as necessary and appropriate, independent advisors;
- e. Policies and procedures for management succession; and
- f. Policies and procedures providing for an annual performance evaluation of the board.

These governance standards must be available to the members through electronic or other means and provided to the members upon request.

E. Code of Business Conduct and Ethics

The board of each RRG must adopt a code of business conduct and ethics applicable to the RRG's directors, officers, and employees. This code of conduct must address:

- a. Conflicts of interest;

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- b. Matters covered under the corporate opportunities doctrine of the state of domicile;
- c. Confidentiality;
- d. Fair dealing;
- e. Protection and proper use of RRG assets;
- f. Standards for complying with applicable laws, rules, and regulations; and
- g. Mandatory reporting of illegal or unethical behavior affecting the operation of the group.

The business' code of conduct and ethics must be available to the members through electronic or other means and provided to the members upon request.

All existing risk retention groups must be in compliance with the governance standards contained in Section 38-87-30(D) by January 1, 2018. New risk retention groups licensed after January 1, 2017, must be in compliance with the standards at the time of licensure.

II. QUESTIONS

Please direct any questions that you may have concerning the new corporate governance requirements to the attention of Michael Shull at mshull@doi.sc.gov

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