

Vermont Department of Financial Regulation

Regulation C-2012-2 (Revised)

Risk Retention Group Holding Company Systems

Section 1: Authority

This regulation is promulgated under the authority granted to the commissioner by Title 8 V.S.A. § 15, Title 8 V.S.A. § 6015, and Title 8 V.S.A. § 6052(e), to implement the provisions of the Vermont Insurance Holding Companies Act, Title 8 V.S.A. Chapter 101, Subchapter 13, §§3681 et. seq. (the “Holding Companies and Subsidiaries Act” or “Act”), with respect to risk retention groups chartered in Vermont.

Section 2: Scope and purpose of regulation

(a) The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of 8 V.S.A. chapter 101, Subchapter 13, which relates to holding companies and subsidiaries with respect to risk retention groups chartered in this state.

(b) This regulation applies to risk retention groups chartered in this State unless specifically exempted under subsection (c) set forth below or as otherwise provided in the Act. Except as specifically incorporated by reference into this regulation, risk retention groups are not subject to Regulation 71-2, or to any successor regulation or order, which are in effect as of the effective date of this regulation. Any exemption provided in this regulation shall not be construed to exempt, limit, or modify a risk retention group’s obligations to comply with the provisions of 8 V.S.A. Chapters 141 and 142 and any regulation or order of the commissioner applicable to risk retention groups, and this regulation shall not be construed to limit or modify the commissioner’s powers to enforce such provisions with respect to any risk retention group.

(c) The commissioner may exempt:

- (1) Any risk retention group or class of risk retention groups from any provision of this regulation, when the commissioner deems the exemption consistent with the purposes of this regulation; or
- (2) Upon request of the person required to supply information or perform an act, that person from any provision of this regulation when the commissioner deems the exemption consistent with the purposes of this regulation; or
- (3) Any risk retention group not otherwise exempt or excepted from the requirements of 8 V.S.A. § 3684 pursuant to a written request by such risk retention group to the commissioner, setting forth its reasons for requesting exemption. Any such exemption given by the commissioner may, at a later date, be withdrawn by the commissioner by giving written notice to the risk retention group, provided the risk retention group is not otherwise exempt under the law.

(d) The purposes of this regulation include:

- (1) Exercising surveillance over the acquisition of a risk retention group, to ensure that in the process of making it part of an insurance holding company system, the interests of policyholders, shareholders, and the public are not subject to undue risk; and
- (2) Providing the regulatory monitoring of those intercorporate relationships and transactions among affiliates within an insurance holding company system that may affect the solvency of risk retention groups.

Section 3: Severability clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

Section 4: Forms - general requirements

Any reference in this regulation to "Form A," "Form B," "Form C," "Form D," or "Form F" shall mean such forms as described in Regulation 71-2 and as promulgated by the Department.

(a) Forms A, B, C, D, and F are intended to be guides in the preparation of the statements required by 8 V.S.A. Chapter 101, Subchapter 13. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) One copy of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or mail addressed to: Captive Insurance Division of the State of Vermont, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101, or as a single unsecured Adobe PDF file sent via e-mail to CaptiveMail@state.vt.us. A copy of Form C shall be filed in each state in which a risk retention group has registered to do business, if the Commissioner of that state has notified the risk retention group of its request in writing, in which case the risk retention group has 30 days from receipt of the notice to file such form. The statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to 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.

(c) Statements should be prepared on paper 8-1/2" x 11" or 8-1/2" x 14" in size 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. All copies of any statement, 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 as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and

monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

Section 5: Forms - incorporation by reference, summaries and omissions

(a) Information required by any item of Form A, Form B, Form D, or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B Form D, or Form F provided such information substantially satisfies the requirements of Form A, Form B, Form D, or Form F, and provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

(b) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) 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 need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents, a copy of which is filed. The commissioner may at any time in his or her discretion require the filing of copies of any omitted documents.

Section 6: Forms - information unknown or unavailable and extension of time to furnish

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Commissioner a separate document:

- A. Identifying the information, document, or report in question;
- B. Stating why the filing thereof at the time required is impractical; and
- C. Requesting an extension of time for filing the information, document, or report to a specified date.

Section 7: Forms - additional information and exhibits

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, and Form F, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, or F shall include on the top of the cover page the phrase: Change

No.[insert number] to and shall indicate the date of the change and not the date of the original filing.

Section 8: Definitions

As used in this regulation and for purposes of preparing any filing on Forms A, B, C D, or F,:

(a) All definitions set forth in 8 V.S.A. § 3681, as amended from time to time, are incorporated into this regulation, unless specifically defined otherwise in this regulation.

(b) “Association” has the meaning set forth in 15 U.S.C. § 3901(a)(4)(E)(ii).

(c) “Controlled unaffiliated business” means any person:

(1) that is not in the corporate system of any member of the risk retention group or such member’s affiliates;

(2) that has an existing contractual relationship with a member of the risk retention group or one of such member’s affiliates; and

(3) whose risks are managed by a risk retention group in accordance with 8 V.S.A. §6019.

(d) For purposes of the definition of “control” as set forth in 8 V.S.A. § 3681(3):

(1) a risk retention group’s authorized captive insurance management company, and any employee of such management company, shall not be deemed to have any control with respect to a risk retention group if such management company does not own any voting security in the risk retention group.

(2) if any person, acting alone, has the power (either directly or through control of an association that is the sole member/owner of the risk retention group) to elect or remove a majority or more of the members of a risk retention group’s governing board, such person shall be deemed to have control with respect to the risk retention group.

(3) any person who owns less than 10% of the voting securities of a risk retention group shall not be deemed to have control of the risk retention group, unless such person otherwise has the power to direct or cause the direction of the management of the risk retention group other than by virtue of the person’s position as a member of the governing board or as an officer of the risk retention group.

(4) if an association is the sole member/owner of a risk retention group, and no single person has control of the association, the association shall not be deemed to control the risk retention group.

(e) “Enterprise Risk” means any activity, circumstance, event or series of events involving one or more affiliates of a risk retention group that, if not remedied promptly, is likely to have a

material adverse effect upon the financial condition or liquidity of the risk retention group or its insurance holding company system as a whole, including, but not limited to, anything that would cause the risk retention group's Risk-Based Capital to fall into company action level as set forth in 8 V.S.A. § 8301(12)(A) or would cause the risk retention group to be in hazardous financial condition (as set forth in Regulation 93-2).

(f) "Executive officer" means any individual charged with active management and control in an executive capacity, including a president, vice president, treasurer, secretary, controller, and any other individual performing for a person, whether incorporated or unincorporated, functions corresponding to those performed by the foregoing officers.

(g) "Foreign insurer" includes an alien insurer except where clearly noted otherwise.

(h) "Governing board" of a risk retention group means:

(1) in the case of a stock corporation or a mutual corporation, the board of directors;

(2) in the case of a manager-managed limited liability company, the individuals elected or appointed as managers; or

(3) in the case of a reciprocal risk retention group, the subscribers advisory committee.

(i) "Member" of a risk retention group means:

(1) in the case of a stock corporation, a shareholder of the corporation;

(2) in the case of a mutual corporation formed as a nonprofit corporation, a member of the corporation, and in the case of a mutual corporation formed as a mutual insurance company, a policyholder of the company;

(3) in the case of a limited liability company, a member of the company;

(4) in the case of a reciprocal insurer, a subscriber to the insurer; and

(5) in the case of a risk retention group owned by an association, each of the member/owners of said association.

(j) "Voting securities" of a risk retention group means:

(1) in the case of a stock corporation, any stock or other security that includes the right to vote in the election of any member of the governing board, or to vote for the removal of any member of the governing board;

(2) in the case of a limited liability company, an ownership interest that includes the right to vote in the election of any member of the governing board, or to vote for the removal of any member of the governing board;

(3) in the case of a mutual corporation, as defined in 8 V.S.A. § 6001(12), an ownership interest that includes the right to vote in the election of any member of the governing board, or to vote for the removal of any member of the governing board;

(4) in the case of a reciprocal risk retention group, a subscriber interest that includes the right to vote in the election of a member of the governing board, or to vote for the removal of any member of the governing board.

The number of voting securities owned by a person shall be determined based on the number of votes that such person is entitled to cast in the election of each member of the risk retention group's governing board. The determination shall be made without regard to such person's rights to operating or liquidating distributions by the risk retention group. An individual who has the power to appoint or elect an officer of the risk retention group pursuant to his or her position as an officer of the risk retention group shall not be deemed to own voting securities of the risk retention group solely because of such office.

(k) "Ultimate controlling person" means that person within an insurance holding company system which is not controlled by any other person.

Section 9: Subsidiaries of domestic risk retention groups

The authority to invest in the types of subsidiaries set forth in 8 V.S.A. 3682(a) is in addition to any authority to invest in subsidiaries as set forth in 8 V.S.A. 3682(b) or as set forth in other provisions of the law applicable to insurance companies.

Section 10: Obtaining Commissioner's approval to invest in subsidiaries

Any domestic insurance company which proposes to invest in any security of a subsidiary pursuant to 8 V.S.A. 3682(b)(4) shall request in writing the commissioner's approval to make such investment. Such request shall be made at least sixty (60) days prior to the date it is proposed that such investment be made and shall set forth complete facts concerning the proposed investment, which shall include, but not be limited to, complete financial information about the corporation, the securities of which are to be acquired and a pro forma balance sheet of the acquiring insurance company showing the effect of such investment. The commissioner may require such additional information as he or she may deem necessary to make a determination hereunder.

Section 11: Acquisition of control - statement filing

A person required to file a statement pursuant to 8 V.S.A. 3683, acquisition of control of, or merger with, domestic risk retention group, shall furnish the required information on Form A, hereby made a part of this regulation.

Section 12: Amendments to Form A

The applicant shall, within seven days after it learns of any change in the information so furnished, advise the commissioner of any such changes arising subsequent to the date upon which such information was furnished, but prior to the commissioner's disposition of the application.

Section 13: Registration of risk retention groups - annual statement filing

Any risk retention group required to file a statement pursuant to 8 V.S.A. 3684, and not exempted from registration pursuant to the regulation or 8 V.S.A. 3684(h), shall furnish the required information on Form B, hereby made a part of these regulations.

Section 14: Summary of registration - statement filing

Any risk retention group required to file an annual registration statement pursuant to 8 V.S.A. 3684 is also required to furnish information required on Form C.

Section 15: Amendments to Form B

(a) An amendment to Form B shall be filed within fifteen 15 days after the end of any month in which the following occurs:

(1) there is a change in the control of the registrant, in which case the entire Form B shall be made current;

(2) there is a material change in the information given in Item 5 or Item 6 of Form B in which case the respective item shall be made current.

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

Section 16: Alternative and consolidated registration

Any risk retention group may file a registration statement on behalf of any affiliated risk retention group or risk retention groups which are required to register under 8 V.S.A. 3684. A registration statement may include information regarding any risk retention group in the insurance holding company system even if such risk retention group is not registered in this State. In lieu of filing a registration statement on Form B, the risk retention group may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided the statement or report contains substantially similar information required to be furnished on Form B.

Section 17: Disclaimers and termination of registration

(a) A disclaimer of affiliation pursuant to 8 V.S.A. 3684(i) or a request for termination of registration pursuant to 8 V.S.A. 3684(e) claiming that a person does not, or shall not upon the taking of some proposed action, control another person (hereinafter referred to as the subject) shall contain the following information:

(1) the number of authorized, issued and outstanding voting securities of the subject;

(2) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;

(3) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and

(4) a statement explaining why such person should not be considered to control the subject.

(b) A request for termination of registration shall be deemed to have been granted unless the commissioner, within ten (10) days after receiving the request, notifies the registrant otherwise.

(c) The Commissioner shall require any risk retention group chartered in this state, which has been granted a disclaimer of affiliation pursuant to 8 V.S.A. 3684(i), to file a copy of the disclaimer as a change in plan of operation with all other states in which the risk retention group is registered.

Section 18: Transactions subject to prior notice

(a) Any risk retention group required to give notice of a proposed transaction pursuant to 8 V.S.A. 3685 shall furnish the required information on Form D, hereby made a part of these regulations. Notwithstanding the provisions of 8 V.S.A. 3685, no risk retention group domiciled in Vermont shall pay any dividend or make any distribution to its shareholders or policyholders without the prior written consent of the commissioner.

(b) Agreements for cost sharing services and management services 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 risk retention group to the affiliate except to pay for services defined in the agreement;

(5) State that the risk retention group will maintain oversight for functions provided to the risk retention group by the affiliate and that the risk retention group will monitor services annually for quality assurance;

(6) Define books and records of the risk retention group to include all books and records developed or maintained under or related to the agreement;

(7) Specify that all books and records of the risk retention group are and remain the property of the risk retention group and are subject to control of the risk retention group;

(8) State that all funds and invested assets of the risk retention group are the exclusive property of the risk retention group, held for the benefit of the risk retention group and are subject to the control of the risk retention group;

(9) Include standards for termination of the agreement with and without cause;

(10) Include provisions for indemnification of the risk retention group in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(11) Specify that, if the risk retention group is placed in receivership or seized by the Commissioner under 8 V.S.A. chapter 145:

A. all of the rights of the risk retention group under the agreement extend to the receiver or Commissioner; and,

B. all books and records will immediately be made available to the receiver or the Commissioner, and shall be turned over to the receiver or Commissioner immediately upon the receiver or the Commissioner's request;

(12) Specify that the affiliate has no automatic right to terminate the agreement if the risk retention group is placed in receivership pursuant to 8 V.S.A. chapter 145; and

(13) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner under 8 V.S.A. chapter 145, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Section 19: Enterprise Risk Report

The ultimate controlling person of a risk retention group required to file an enterprise risk report pursuant to 8 V.S.A. § 3684(m) shall furnish the required information on Form F, hereby made a part of these regulations. The Commissioner shall require any risk retention group chartered in this state, which is a member of a holding company system, in cases in which this state is not the lead state, to furnish a copy of Form F filed by such risk retention group chartered in this state. The lead state commissioner of the insurance company holding system is as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

Section 20. Adequacy of Surplus

The factors set forth in 8 V.S.A. § 3685(b) 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 instead will consider the net effect of all of the factors specified in 8 V.S.A. § 3685(b), as well as 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 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.