

Corporate Governance Insights

With companies soon facing new enterprise risk and corporate governance requirements, this alert discusses whether companies are prepared for state implementation and outlines new NAIC actions relating to conducting an internal risk assessment. This guidance builds on the information provided last year in our Insurance Corporate Governance Workshops and is the latest installment in our alert series.

Enterprise Risk Corporate Governance – A Reality Check: Is your company prepared to comply with new corporate governance requirements focused on enterprise risk? For many insurers, their perception of their readiness is not reality based on a recent PricewaterhouseCoopers survey.

As the effective date for these changes approaches, the PricewaterhouseCoopers (PwC) survey shows there is a gap between perceived and actual readiness for compliance. Eighty-two percent of the respondents believed that their current enterprise risk management processes were largely or already adequate. However, 35 percent of the respondents indicated that they do not have a fully operational risk appetite with tolerances linked to business strategy. Moreover, 38 percent of company boards are reported to be either not engaged or only passively engaged in risk management.

PwC concluded that significant investment is still required by many insurance companies in their risk management processes. Similarly, a recent survey by Alix Partners suggested that 51 percent of companies surveyed thought that corporate governance processes were no better now than in 2009.

Meanwhile, the NAIC continues to press its increased focus on corporate governance. A NAIC working group recently proposed the drafting of a new model act to formalize the reporting of corporate governance activities.

ORSA Guidance Manual Gets Guidance – NAIC Subgroup Adopts New Revisions: Has your insurance company already started getting ready to assess internal risk with the Own Risk and Solvency Assessment (ORSA)? If so, be aware that a NAIC subgroup has updated the guidelines for reporting on the ORSA.

The ORSA is one of the key components of new risk-based corporate governance requirements. This confidential internal assessment examines an insurance company's material and relevant risks associated with its current business plan and the sufficiency of capital resources to support those risks.

ORSA is not a "one-off" requirement; instead it will be a continuous process and will become an essential element of an insurance company's risk management system. Currently, large companies and groups meeting certain premium requirements will be required to provide an ORSA in 2015.

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In November 2011, the NAIC released a Guidance Manual for reporting on the ORSA. The Guidance Manual is deliberately non-prescriptive, because each ORSA will be unique and will vary depending on risks that are unique to each carrier. In late March 2013, a subgroup of the NAIC approved an updated version of the Guidance Manual. The revised version includes clarifications and changes recommended by insurance companies participating in pilot programs. In the revised version, some of the most significant new requirements are as follows:

1. The insurer must disclose its basis for accounting used in the ORSA (GAAP, SAP or IFRS).
2. The scope of the ORSA must be described, specifically which entities are included in the report.
3. The insurer must identify material changes to its ORSA from the previous year.
4. The insurer should provide a comparative view of group capital from the prior year.

In addition to the requirements above, changes were made to synchronize the guidance in the manual with the statutory requirements proposed by the NAIC. Also, general clean-up edits were made and a glossary of terms was added in the appendix. The proposed changes must still go through the NAIC approval process.

If your company is one of the 38 percent that has not yet implemented any board-level corporate governance procedures designed to evaluate enterprise risk, or is required to provide an ORSA in 2015, and still has questions regarding the new NAIC and state requirements, please contact James S. Gkonos at (215) 972-8667 or jgkonos@saul.com or any of the attorneys listed on this update.