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# BULLETIN

**TO:** All Tennessee Domestic Insurance Companies and Health Maintenance Organizations Licensed to Do Business in Tennessee

**FR:** Paula A. Flowers, Commissioner Paula A. Flowers
Department of Commerce and Insurance

**RE:** Financial Statements for Natural Person Ultimate Controlling Persons

**DT:** June 30, 2005

This Bulletin is meant to inform you of the position of the Tennessee Department of Commerce and Insurance ("Department") concerning Tenn. Code Ann. § 56-11-205(b), and the rules promulgated thereunder. Tenn. Code Ann. § 56-11-205(b) states the following:

> **Tenn. Code Ann. § 56-11-205. Registration of insurers and health maintenance organizations – Statements – Disclaimer of affiliation.**
>
> ...(b) INFORMATION AND FORM REQUIRED. Every insurer and every health maintenance organization subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:
>
> (1) The capital structure, general financial condition, ownership and management of the insurer or health maintenance organization and any person controlling the insurer or health maintenance organization...

Tenn. Comp. R. & Regs. Tit. Dep't of Commerce and Ins., ch. 0780-1-67-.12 provides that:

> **0780-1-67-.12 Annual registration of insurers – statement filing.**
>
> An insurer required to file an annual registration statement pursuant to Tennessee Code Annotated Section 56-11-205 shall furnish the required information on Form B, hereby made a part of this Chapter.

Instructions to Item 8 of the Form B sets out the requirements for the financial statements which are to be included as an appendix to the Form B.

**ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS.**

> ...(b) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year...Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with the generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law...

Tenn. Code Ann. § 56-11-201(a)(3) states that "control" is to be presumed to exist if any person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of an insurance company or a health maintenance organization.

The above definitions of "control" and "ultimate controlling person" are such that a natural person may find that he/she may need to be identified as such in an insurance company's registration statement, and, thus, be required to file financial statements pursuant to the above rule and instructions. It is the Department's understanding that it maybe extremely difficult for a natural person to have an accountant agree to audit the person's financial condition. In light of the difficulty which natural persons may experience in obtaining such certified financial statements, the Department is willing to accept financial statements reviewed by a certified public accountant in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or the following financial information, in lieu of certified or audited financial statements:

1. A balance sheet which sets out the amount of assets and liabilities of the natural person ultimate controlling person;

2. An income statement which sets out an itemized list of the assets and liabilities of the natural person ultimate controlling person. Such income statement should be done with sufficient specificity as to allow the Department to identify and value each such item listed;

3. A true and exact copy of the previous year's federal income tax return of the natural person ultimate controlling person;

4. An affidavit whereby the natural person swears to the accuracy of the information set forth in the former three (3) documents. Such affidavit should contain a notarized signature;

5. A signed letter from the natural person ultimate controlling person authorizing the Department to request a credit report for such person and to conduct a background check of such person; and

6. The audited financial statement of the company in the holding company system of which the ultimate controlling person has direct control, or the ultimate controlling company. This company will mostly be the company at the top of the organizational chart required by the Form B.

In order for a natural person to be able to file these documents in lieu of an audited financial statement, the natural person must file sufficient evidence that it would be impossible to obtain an audited financial statement from a certified public accountant. Such should be provided in a form such as an affidavit from a certified public accountant attesting to as much.

Please note that the Department reserves the right to request, and have provided to it, any other such information that the Department might wish to see after reviewing the natural person's submission(s) as discussed above.

Should you have any questions concerning the position set forth in this Bulletin, or its application, please contact the Tennessee Insurance Division.