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## TRANSMITTAL MEMORANDUM

**TO:** Insurance Compact Management Committee

**FROM:** Governance Committee

**DATE:** December 12, 2021

**SUBJECT:** Proposed Amendments to the Insurance Compact Bylaws

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The Governance Committee hereby transmits its recommendation for proposed amendments to the Bylaws of the Interstate Insurance Product Regulation Commission (Insurance Compact).

In 2020, the Insurance Compact, under the jurisdiction of the Governance Committee, conducted an independent governance review performed by Squire Patton Boggs LLC. The purpose of the independent governance review was to provide suggestions and recommendations to improve governance practices and mitigate risks associated with governance matters. As part of its recommendations, Squire Patton Boggs recommended several amendments to the Bylaws. The firm's Report and Recommendation is linked on the web page for the [Insurance Compact Compass Strategic Plan: 2020 - 2022](#).

In addition to the Squire Patton Boggs recommendations, the Governance Committee considered suggestions from the Compact Office for further changes to the Compact Bylaws to address practical issues in the operations of certain provisions of the current Bylaws.

In June, the Governance Committee published proposed amendments to the Bylaws for a minimum 60-day notice and comment period. Written comments were submitted by the Arizona Department of Insurance and Oregon Division of Financial Regulation as well as from a member of the Consumer Advisory Committee. The Governance Committee took these comments under consideration and further refined the proposed amendments to the Compact Bylaws. See Appendix 1. The Governance Committee published the final set of recommended amendments and held a conference call on December 1 to receive public comments.

The Governance Committee is proposing the following substantive or clarifying amendments, in addition to technical amendments:

1. Article I, Section 3: Clarifying that sending Bylaws to the member of the Insurance Compact satisfies the requirement to deliver the Bylaws to each Compacting State.
2. Article II: Clarifying the member's designated representative(s) role including that the member may limit type(s) of action on which the designated representative can vote.

3. Article III, Section A(2): Clarifying the mechanism and its goal for the rotational selection process for Management Committee representative of the Compacting States in Tier 2 by premium volume. Adding a process for when a state in this category wishes to waive its right to serve when its turn in the rotation happens.
4. Article III, Section 4(B) and Article VII, Section 5: Changing the requirements for when a roll call vote must be taken on an action item in a meeting where some or all members are participating telephonically or virtually. This change allows voice votes for most action items with the ability of a member to always request a roll call vote and defines the type of action items where a roll call vote must be taken such as with approval or adoption of Uniform Standards.
5. Article IV, Section 1: Modifying this provision to promote continuity in member leadership of the organization. If a Management Committee member was elected as Officer, such member can continue to serve as an Officer for concurrent terms even if the member is no longer on the Management Committee.
6. Article VII, Section 5: Requiring Commission action taken by electronic means be unanimous and aligning it with the same requirement for the Management Committee in Article III, Section 4(B).
7. Article IX, Section 5: Changing the “independence” requirement of the Audit Committee which currently provides members of the Management Committee cannot be members of the Audit Committee. The change would require a member of the Management Committee to serve on the Audit Committee.
8. Article XII: Clarifying the organization’s tax-exempt status even further to indicate distribution of assets, upon dissolution, would not include non-state members of the organization including the U.S. territories.

The Governance Committee forwards this recommendation to the Management Committee for it to further publish these suggested amendments on its website for a minimum of thirty (30) days as required under Article XI of the Bylaws.

## Suggestions and Comments for Bylaw Changes

<b><u>Recommendation 1:</u></b> Bylaw Change Related to Commissioner Designee
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**Bylaw Section:** Article II Membership

**Where Recommendation is Found:** Governance Review Appendix N

**Exposed Language:**

1. Pursuant to the Compact, each compacting state shall have and be limited to one Commission member. A member shall be a person qualified and selected to serve in that capacity according to the compacting state's laws. Each compacting state shall forward the name of its member to the Commission Chair. ~~A member may designate a person or persons to serve in place of the member as the member's designee with respect to Commission business, including attending Commission meetings, voting, and serving on one or more Commission committees, provided that the member's designee shall not have an affiliation, through employment or independent contract,~~ a member may designate a person or persons to serve under the direction of the member as the member's designee with respect to Commission business, including attending Commission meetings, voting, and serving on one or more Commission committees, except those actions which may only be taken by members under Article II, Section 2 of these bylaws. A member's designee shall not have an affiliation, through employment or otherwise, with any other member of the Commission or member of the legislative committee or advisory committees. At the beginning of each calendar year or any time during the calendar year a member must deliver to the secretary of the Commission a written notice identifying his or her designee(s) with the authority to act in the capacity of the member with respect to Commission business including specifying any limitations on authority. The written designation will be effective until December 31 in the calendar year it is authorized unless otherwise stated. A member may cast only one vote on any matter, and only on behalf of the compacting state he or she represents.

**Submitted Comments:** See Recommendation 2, below.

<b><u>Recommendation 1 Suggestion:</u></b>
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Suggestion is not to include Article II.2 and follow Oregon's suggestion to have the member Commissioner be the one determining the limitations on delegated authority to the Member's Designee. Suggested further changes in bold:

ARTICLE II MEMBERSHIP. ~~1.~~ Pursuant to the Compact, each compacting state shall have and be limited to one Commission member. A member shall be a person qualified and selected to serve in that capacity according to the compacting state's laws. Each compacting state shall forward the name of its member to the Commission Chair. ~~A member may designate a person or persons to serve in place of the member as the member's designee with respect to Commission business, including attending Commission meetings, voting, and serving on one or more Commission committees, provided that the member's designee shall not have an affiliation, through employment or independent contract,~~ **a member may designate a person or persons to**

serve under the direction of the member as the member's designee with respect to Commission business, including attending Commission meetings, voting, and serving on one or more Commission committees, ~~except those actions which may only be taken by members under article ii, section 2 of these bylaws.~~ A member's designee shall not have an affiliation, through employment or otherwise, with any other member of the Commission or member of the legislative committee or advisory committees. At the beginning of each calendar year or any time during the calendar year a member must deliver to the secretary of the Commission a written notice identifying his or her designee(s) with the authority to act in the capacity of the member with respect to Commission business including specifying any limitations on authority, **including the type of actions the designee is not authorized to vote on behalf of the member.** The written designation will be effective until December 31 in the calendar year it is authorized unless otherwise stated. A member may cast only one vote on any matter, and only on behalf of the compacting state he or she represents.

**Recommendation 2:** Bylaw Change Related to Commissioner Designee

**Bylaw Section:** Article II Membership

**Where Recommendation is Found:** Governance Review Appendix N

**Exposed Language:**

*New paragraph 2. Designees identified under Section 1 of this Article serve under the direction of the Commission member who designated them, and may vote on behalf of the Commission member, except designees may not vote on the actions below, and these actions may be voted on only by Commissioner members [suggested but not inclusive list]: a. authorization for the Commission to participate in litigation; b. adoption of uniform standards; c. hiring of executive director; d. staff compensation plans; e. addition of new lines of business or services to member states; f. financial decisions above threshold adopted by the Commission from time to time; g. amending Commission bylaws; h. adopting fees or obligations for compacting states; i. code of ethics issues involving the Executive Director or Commission members; j. indemnification and advancement of defense expenses; k. other actions which may be specified resolution by the Commission.*

**Submitted Comments:**

1) Erin Klug, Arizona Department of Insurance: Currently, the Director's proxy can vote on these types of decision. But, if I'm understanding correctly, this change would mean that the Director would have to participate in Compact meetings when such votes were occurring, even when s/he has granted proxy to someone who will vote in accordance with the Director's wishes? I presume this provision of bylaws applies to voting at the committee level as well as the Commission level. Can you provide some background on what is spurring this proposed change?

2) Oregon DBCS: Oregon is concerned with the suggested limitations on voting rights of delegated members. The limitations on delegated authority may prevent adequate state regulatory representation on important issues, including adoption of uniform standards and addition of new lines of business or services. We feel the "Other actions which may be specified resolution by the Commission" is also vague.

Oregon recommends allowing the Commissioners of each state to decide if limitations to the delegation of their vote are appropriate for their state. We also recommend removing "K. Other actions which may be specified resolution by the Commission."

**Recommendation 2 Suggestion**

*~~Do not insert new paragraph 2. Designees identified under section 1 of this article serve under the direction of the Commission member who designated them, and may vote on behalf of the Commission member, except designees may not vote on the actions below, and these actions may be voted on only by Commissioner members [suggested but not inclusive list]: a. Authorization for the Commission to participate in litigation; b. Adoption of uniform standards; c. Hiring of executive director; d. Staff compensation plans; e. Addition of new lines of business or services to member states; f. Financial decisions above threshold adopted by the Commission~~*

Suggestions and Comments for Bylaw Changes  
November 10, 2021

~~from time to time; g. Amending Commission bylaws; h. Adopting fees or obligations for compacting states; i. Code of ethics issues involving the executive director or Commission members; j. Indemnification and advancement of defense expenses; k. Other actions which may be specified resolution by the Commission.~~

**Recommendation 3:** Notice of Bylaws and Amendments Thereto

**Bylaw Section:** Article I Commission Purpose, Function and Bylaws, Section 3

**Where Recommendation is Found:** Governance Review Section IV(A)(III)(19)(A) Corporate Governance

**Exposed Language:**

The Commission should expressly articulate that providing notice and copies of amendments to the member Commissioner of each compacting state meets the requirement in compact statute Article I.3 that bylaws and bylaw amendments should be filed with "the appropriate agency or officer in each other the compacting states". The Compact office suggests the Governance Committee consider clarifications to Article II of the Bylaws to address this recommendation.

**Submitted Comments:** No comments received.

**Recommendation 3 Suggestion:**

Pursuant to the Compact, these Bylaws govern the Commission's management and operations. As adopted and subsequently amended, these Bylaws shall remain at all times subject to, and limited by, the Compact's terms. The Commission shall publish these Bylaws **and amendments thereto prominently on its website in a convenient form** and file a copy thereof and a copy of any amendments thereto, with the appropriate agency or officer in each of the compacting states. **Providing the bylaws, and any amendments thereto, to the member of each compacting state shall be the appropriate agency or officer unless the Commission is notified otherwise in writing by the compacting state.** ~~The Commission shall also provide a copy of these bylaws, and any amendments thereto, to the state insurance department and state legislature of each Compacting State and post them to the Commission's website.~~ Notwithstanding any other provision of these bylaws, a rulemaking process may be adopted upon: 1) recommendation to the Commission by a majority vote of the Management Committee, provided that at least thirty days prior to such recommendation, each member and the public was afforded the opportunity to comment on the proposed rulemaking process; and 2) approval by majority vote of all Commission members, following consideration of any comments received.

**Recommendation 4:** Rotation Process for Tier II Management Committee Members

**Bylaw Section:** Article III Management Committee, Section 1.A(2)

**Where Recommendation is Found:** Governance Review Appendix N

**Exposed Language:**

1. Composition of Management Committee. A. The Management Committee shall consist of no more than fourteen (14) members, selected as follows: (2) four (4) members from those compacting states with at least two percent (2%) of the market share based on the premium volume described above, other than the six (6) states described in paragraph (1), selected on a basis to ensure regular rotation of ideas and representation of the eligible 2% market share members. The states as a default can use a rotating basis according to the following method: 1) at the of the Commission in September of each year, all members in this category shall be ranked in ascending order by the date of enactment of the compact legislation providing membership in the Commission and alphabetically if members share the same date of enactment; and 2) identify the member in this category on the Management Committee with the highest rank. The four members to serve on the Management Committee the following year shall be the four members with the next highest ranks, cycling back to rank one when necessary; ~~provided that each compacting state in this category shall have an opportunity to be represented for the same number of terms on the Management Committee before any other compacting state in the same category is represented for an additional term.~~ The goal of the rotation process is to provide each compacting state in this category the opportunity to be represented for the same number of annual terms over time. However, from time to time a member may need to delay service on the Management Committee due to unusual circumstances. Therefore, a member state selected under this rank order rotation method may waive its right to join the Management Committee and the next ranking member can be invited.

**Submitted Comments:**

1) Yvonne Hunter, Consumer Advisory Committee Member: Is it the intent of the language that when a state that is up for appointment to the Management Committee takes a pass, that the state has to wait until the next rotation before consideration, or may the state put forth an interest in “reconsider station” the next time a vacancy occurs? Clarification on this may help a state determine whether it is in its best interests to take a pass on the rotation opportunity.

**Recommendation 4 Suggestion:**

This provision could benefit from the suggested clarifications and address Yvonne Hunter's comments:

1. Composition of Management Committee. A. The Management Committee shall consist of no more than fourteen (14) members, selected as follows: (2) four (4) members from those compacting states with at least two percent (2%) of the market share based on the premium volume described above, other than the six (6) states described in paragraph (1), selected on a basis to ensure regular rotation ~~of ideas and representation~~ of the eligible 2% market share members. As a starting point for each annual period, the 2% market share members eligible to serve on the Management Committee for the coming annual period shall be



~~identified as a default can use a rotating basis~~ according to the following method: 1) ~~at the of the Commission in September of each year~~, all members in this category shall be ranked in ascending order by the date of enactment of the compact legislation providing membership in the Commission and alphabetically if members share the same date of enactment; and 2) identify the member in this category on the Management Committee with the highest rank. The four members to serve on the Management Committee the following year shall be the four members with the next highest ranks, cycling back to rank one when necessary; provided that each compacting state in this category shall have an opportunity to be represented for the same number of terms on the Management Committee before any other compacting state in the same category is represented for an additional term. The goal of the rotation process is to provide each compacting state in this category the opportunity to be represented for the same number of annual terms over time. However, from time to time a member eligible to serve in this category for the coming annual period may need to delay pass over service on the Management Committee ~~due to unusual circumstances~~. Therefore, a member state selected under this rank order rotation method may waive its right to join the Management Committee for the coming annual period and the next ranking member ~~can~~ will be invited. A member state passing over their service on the Management Committee for an annual period shall remain in the rotation and be eligible to serve in future annual periods.

**Recommendation 5:** Process for Officer Elections

**Bylaw Section:** Article IV Officers, Section 1

**Where Recommendation is Found:** Governance Review Appendix N

**Exposed Language:**

ARTICLE IV. OFFICERS. SECTION 1. Election, succession and removal. The Commission's officers shall consist of a chair, vice chair, and treasurer. The officers shall be selected by the Commission members from membership of the Management Committee. Officers shall serve for one year, until the next annual meeting of the Commission, or under the Commissioner elects their successors, whichever is earliest to occur. An officer may be selected to serve as an officer for additional consecutive or non-consecutive one-year terms.

**Submitted Comments:**

1) Oregon DCBS: Oregon would like to see additional language added to the by-law to clarify that additional one-year terms may only be considered if no other members apply for the Officer position. We are concerned that without this clarification the additional one-year terms could be used to hinder a regular rotation of Members with new perspectives.

**Recommendation 5 Suggestion:**

By way of background, this provision was recommended to address the continuity situation where a current Officer may roll off the Management Committee, such as in Category 2, but the Commission wishes the Officer to continue their service. An example would be if a Category 2 state served on the Management Committee and served as Treasurer and Vice Chair and then in the next annual period rolls off the Management Committee. Under the current Bylaws, there is no provision allowing this state to be considered for Chair if not on the Management Committee. This provision could benefit from the suggested clarifications and address Oregon's comments:

The Commission's officers shall consist of a chair, vice chair, and treasurer. The officers shall be selected by the Commission members from membership of the Management Committee. Officers shall serve for one year, until the next annual meeting of the Commission, or until the Commission elects their successors, whichever is earliest to occur. For a member that will not be on the Management Committee for the upcoming annual period and has served as an officer in the current or preceding annual period, the member will be eligible to be selected by the Commission to serve as an officer for an additional one-year term. ~~An officer may be selected to serve as an officer for additional consecutive or non-consecutive one-year terms.~~

**Recommendation 6:** Add Language to Bylaws Specifying Commission May Act by Written Unanimous Action in Lieu of Meeting

**Bylaw Section:** Article VII Commission Meetings, Section 5, Voting

**Where Recommendation is Found:** Governance Review Appendix N

**Exposed Language:**

The Commission may also vote and take action by electronic means, in lieu of meeting, after notice of the issue raised for the vote, and provided such action is taken pursuant to unanimous written consent, via regular or electronic mail, facsimile or other electronic means, of all the members of the Commission. ~~and~~ If such action is taken, it shall be announced

**Submitted Comments:**

1) Oregon DCBS: It may be helpful to have the Compact add a timeframes specifying how much time Commission Members would have to submit a vote, so that all Commissioners have an agreed on reasonable and consistent time window to respond, and a timeframe for the announcement of the meeting to ensure all Members have adequate time to consider the proposal.

**Recommendation 5 Suggestion:**

Oregon raises a good point which is addressed in the following sentence further on in the existing Article VII, Section 5, where this recommendation appears, thus no further amendment is suggested other than as exposed: **The notice shall specify a time for responses of not less than twenty-four (24) hours.**

**Recommendation 7:** Address Dissolution Clause to Strengthen Tax Position

**Bylaw Section:** Article XII Dissolution of the Compact

**Where Recommendation is Found:** Governance Review Section IV(D) Tax

**Proposed Language:**

Address possible source of concern for IRS that income inure to states and not to non-state members (i.e., United States territories). Recommend adoption of a dissolution clause that excludes territories and possessions.

**Submitted Comments:** No comments received.

**Recommendation 7 Suggestion:**

ARTICLE XII. DISSOLUTION OF THE COMPACT.

The Compact shall dissolve effective upon the date of the compacting states' withdrawal or termination by default that reduces members in the compact to one compacting state.

Upon the Compact's dissolution, the Compact becomes null and void and is of no further force and effect, and the Commission's business and affairs shall be wound up. Any surplus funds remaining after payment of all obligations of the Commission shall be used for repayment of any identifiable start-up funds contributed; provided that if the funds are not sufficient, distribution shall be made on a pro rate basis.

Upon dissolution, any assets remaining after the payment of debts and satisfaction of liability are to be distributed either (1) in equal proportions, to the states or political divisions thereof, **other than non-state members including US territories**, for a public purpose provided they are members of the Commission upon dissolution or (2) to an organization whose income is excluded from gross income under section 115 of the code. Dissolution of the Commission shall not affect the validity of any actions taken by the Commission prior to its dissolution.

**Recommendation 8:** Roll Call Vote Requirement for Teleconferences

**Bylaw Section:** Article III Management Committee, Section 4B And Article VII, Section 5

**Where Recommendation is Found:** Compact Office Recommendation

**Proposed Language:**

Recommend members consider whether to amend the current roll call requirement on any vote at Management Committee or Commission meetings where a person participates by telephonic means. The current provisions read: *if one or more members attend a meeting by telephone or other means of telecommunications, any vote put to the [Commission][Management Committee] shall be taken by roll call of all members attending the meeting.* This requirement has proven cumbersome in practice and should be considered only to apply to certain types of votes instead of all such as being required to approve or adopt a uniform standard.

**Submitted Comments:**

1) Yvonne Hunter, Consumer Advisory Committee member: Recommend that roll call votes be required when Member state representatives appear telephonically at least. There is no way to record the members' vote without a verbal participation and even though the process is cumbersome, it creates a more accurate record of the proceeding and whether a member's designee voted in an unauthorized manner.

**Recommendation 8 Suggestion:**

Here is suggested language to permit any member to call for a roll call vote and to require a roll call vote on certain action items related to governance.

if one or more members attend a meeting by telephone or other means of telecommunication, ~~any vote put to the [Commission][Management Committee] shall be taken by roll call of all members attending the meeting~~ **any member may request a roll call vote of the [Commission][Management Committee] on an action item provided that votes on the following action items shall be taken by roll call vote of all members attending the meeting: 1) [adoption][approval] of uniform standards; 2) [adoption] [approval] of rules and operating procedures; and 3)[adoption] [approval] of bylaws.**

**Recommendation 9:** Independent Audit Committee

**Bylaw Section:** Article VIII Committees, Section 4E and Article IX Section 5

**Where Recommendation is Found:**

During strategic planning process, at least one member raised the question of whether to change the Bylaw requirement that the Audit Committee be independent, and members not serve on the Management Committee. The relevant Audit Committee provision in the current bylaws reads: members of the Audit Committee shall not be members of the Management Committee. This question does not appear addressed in the governance review or business assessment.

**Submitted Comments:**

1) In April 2021, the Audit Committee suggested that at least one member of the Management Committee either be appointed to serve on the Audit Committee or be assigned to regularly attend and participate in the Audit Committee meetings and activities.

2) Yvonne Hunter, Consumer Advisory Committee Member: Suggest that the Audit Committee have a member of the Management Committee serve on the Audit Committee. This creates the appearance of “authority” and credibility that the Management Committee will stand by the recommendations from the Audit Committee. It seems like the appropriate delegation of duty, while still holding the Management Committee “accountable” for an objective and relevant audit.

**Recommendation 9 Suggestion:**

ARTICLE IX. FINANCE SECTION 5. AUDIT COMMITTEE. The Management Committee shall create an **independent** Audit Committee of no fewer than three members of the Commission. **At least one member of the Management Committee shall serve on the audit committee. ~~Members of the audit committee shall not be members of the Management Committee.~~** The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the independent certified public accountant employed to conduct the audit required by ARTICLE XII SECTION 6 of the Compact.