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410-141-5000. FINANCIAL SOLVENCY REGULATION: Definitions

(1) When used and not otherwise defined in OAR 410-141-5005 through OAR-141-5535, the following terms shall have the meaning give in this section:

(2) “Acquiring party” means a person that acquires or attempts to acquire control of a domestic MCE, that enters into an agreement to merge with or otherwise acquire control of a domestic MCE as described in OAR 410-141-5320 or that engages in an activity described in OAR 410-141-5320, or an intermediary or subsidiary corporation that holds, directly or indirectly, the assets or voting securities or assumes the liabilities of an MCE or other corporation.

(3) “Acquisition” means an agreement, arrangement or activity that results in a person acquiring control of another person, directly or indirectly, including but not limited to an acquisition of voting securities, a merger, an acquisition of assets or bulk reinsurance.

(4) AICPA” means the American Institute of Certified Public Accountants.

(5)“Applicable Law” means (i) S.B. 1041, (ii) OAR 410-141-5000 to OAR-141-5535, and (ii) any other state or federal laws, rules, regulations or regulatory guidance applicable to the operations of MCEs in this state.

(6) “Assumption Reinsurance Agreement” means a contract that (i) transfers obligations or risks of existing or in-force Member Contracts from a cedent MCE to a reinsurer that acquires the obligations or risks from the cedent, and (ii) is intended to effect a novation of the transferred Member Contracts with the result that the reinsurer becomes directly liable to the Members of the transferor and the transferor’s contract obligations to the Members are extinguished.

(7) “Authority” means the Oregon Health Authority.

(8)“Capitated Subcontractor” means a third-party provider that enters into a Sub-capitation Arrangement with an MCE for any portion of the health care services covered by the MCE’s agreement with the Authority.

(9) “CGAD Report” means the corporate governance annual disclosure report described at OAR 410-141-5045.

(10)“DCBS” means the Department of Consumer and Business Services.

(11) “Domestic MCE” means an MCE formed under the laws of this state or a person that controls an MCE formed under the laws of this state.

(12) “Loss Protection Program” means a program or set of arrangements maintained by an MCE that collectively are designed and operate to protect the MCE against catastrophic and unexpected loss or expenses related to capitated services the MCE is obligated to provide to its Members.

(13) “MCE Board” or “MCE’s Board” means the board of directors or other equivalent governing body of an MCE.
(14) “Member” means an individual covered by, and entitled to managed health care services under, an MCE’s contract with the Authority.

(15) “Member Contract” means the MCE’s agreement to provide managed health care services to a Member pursuant to the MCE’s contract with the Authority.

(16) “NAIC” means the National Association of Insurance Commissioners.

(17) “NAIC Forms and Instructions” means the current financial statement blanks, forms and instructions for health insurers as published and as revised by the NAIC from time to time.

(18) “Qualified United States Financial Institution” means an institution that (i) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers, and (ii) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(19) “Primary Reserve” means the primary Restricted Reserve Fund required by OAR 410-141-5250.

(20) “Restricted Reserve Account” means the reserve account required by OAR 410-141-5250.

(21) “Restricted Reserve Funds” means the funds required to be deposited and maintained in the Restricted Reserve Account under OAR 410-141-5250.

(22) “Restricted Reserve” means the Restricted Reserve Account, the Primary Reserve, the Secondary Reserve and the Restricted Reserve Funds required by OAR 410-141-5250.

(23) “Secondary Reserve” means the secondary Restricted Reserve Fund required by OAR 410-141-5250.


(25) “Significant portion” means, when acquired in one transaction or in a related or integrated series of transactions within any consecutive twelve-month period, ten percent or more of (i) the assets of the MCE, or (ii) the MCE’s in-force benefit contracts.

(26) “Statutory Accounting Principles” means generally accepted statutory accounting principles for health insurers as prescribed, adopted or otherwise approved by DCBS for the financial and solvency regulation of domestic health insurers under Oregon law, as supplemented by generally accepted statutory accounting principles prescribed, adopted or otherwise approved by the NAIC, including without limitation, those accounting practices, principles and procedures set forth in the NAIC’s Accounting Practices and Procedures Manual.

(27) “Sub-Capitated Arrangement” means a contract or other arrangement between the MCE and a Sub-Capitated Counterparty under which the Sub-Capitated Counterparty agrees to provide, as subcontractor to the MCE, certain of the health care services required of the MCE under its agreement with the Authority in return for a fixed capitation payment, the effect of which is to transfer claim frequency and utilization risk to the third-party provider.
(28) “Sub-Capitated Counterparty” means the third-party provider under a Sub-Capitated Arrangement with an MCE.

(29) “SVO” means the Securities Valuation Office of the NAIC.
410-141-5005. FINANCIAL SOLVENCY REGULATION: Oregon Health Plan Managed Care Entity Financial Solvency Requirements

(1) An MCE shall assume the risk for providing capitated services under its agreements with the Authority.

(2) Each MCE must demonstrate that it is able to provide coordinated care services efficiently, effectively, and economically. MCEs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports as provided in these rules.

(3) An MCE shall comply with the applicable solvency requirements of Division 141 of Chapter 410 and as specified in the MCE’s agreements with the Authority. Solvency requirements shall include the following components:

(a) Maintenance of Restricted Reserve Funds as required by OAR 410-141-5250 and by the MCE’s agreements with the Authority.

(b) Protection against catastrophic and unexpected loss or expenses related to capitated services for MCEs ("Loss Protection Program"). An MCE’s Loss Protection Program (i) may include stop loss insurance coverage, reinsurance or such other alternative protection(s) as may be approved by the Authority, (ii) shall be described in the MCE’s agreement with the Authority, and (iii) shall be subject to the Authority’s review and approval. Any material change to an MCE’s Loss Protection Program shall be submitted to the Authority in writing and shall be subject to the Authority’s review and approval.

(c) Maintenance of professional liability coverage of not less than $1,000,000 per person per incident and not less than $1,000,000 in the aggregate either through binder issued by an insurance carrier or by self-insurance with proof of same acceptable to the Authority, except to the extent that the Oregon Tort Claims Act, ORS 30.260 to 30.300 is applicable.

(d) Management systems, practices and procedures that capture, compile, and evaluate information and data concerning financial operations. Such systems shall include, without limitation, the following features and functionalities:

(A) Determination of future budget requirements for the next three quarters.

(B) Determination of incurred but not reported expenses.

(C) Tracking additions and deletions of Members and accounting for capitation payments.

(D) Tracking claims payment.

(E) Tracking all monies collected from third party resources on behalf of Members.

(F) Documentation of, and reports on the use of, incentive payment mechanisms, risk-sharing, and risk-pooling, as applicable.

(1) The Authority shall determine financial solvency of an MCE in accordance with OAR 410-141-5010 through OAR 410-141-5520, and the MCE contract. In implementing OAR 410-141-5010 to OAR 410-141-5520, the Authority may enter into a cooperative agreement with the DCBS to carry out these provisions. For purposes of obtaining necessary information to determine financial solvency, any reference to the Authority in these rules shall include DCBS when DCBS is working cooperatively with the Authority to implement these provisions. However, only the Authority may take enforcement action or other regulatory sanctions related to the implementation of OAR 410-141-5010 to OAR 410-141-5535 and the MCE contract.

(2) Where these rules specify that the Authority may request or receive information or provide a response or take any action, DCBS may act on behalf of the Authority. A response to DCBS under these rules shall be considered a response to the Authority on the matter, consistent with the objective of providing a single point of reporting by MCEs.

(3) The Authority shall collaborate with DCBS to review MCE financial reports and evaluate financial solvency. MCEs are not required to file financial reports with both the Authority and DCBS except as may otherwise be provided in the MCE contract.

(4) Applicants for an MCE contract shall submit all required information to the Authority as part of the application process, and the Authority shall transmit certain information to DCBS for its review. In making its determination about the qualifications of the applicant, the Authority shall consult with DCBS about the financial materials and reports submitted with the application.

(5) For purposes of these financial reporting and solvency rules, DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with these rules. If quarterly reports or other evidence suggest that an MCE’s financial solvency is in jeopardy, the Authority shall act as necessary to protect the public interest.

(6) The Authority may address inquiries to an MCE or its officers in relation to the activities or condition of the MCE or any other matter connected with its transactions. All such persons shall promptly and truthfully reply to the inquiries using the form of communication requested by the Authority. The reply shall be timely, accurate, and complete and, if the Authority requires, verified by an officer of the MCE. A reply is subject to the provisions of ORS 731.260.

(7) MCEs may be required to use specific required reporting forms or items in order to supply information related to financial responsibility, financial solvency, and financial management. The Authority or DCBS, as applicable, shall provide supplemental instructions about the use of these forms.

(8) The Authority may require an MCE to produce books, records, accounts, papers, documents, and computer and other electronic or digital records in the possession, custody or control of the MCE or the MCE’s affiliates that are needed to determine the MCE’s financial condition or compliance with Applicable Law, or which are needed to determine the MCE’s compliance with the MCE’s contracts and agreements with the Authority.

(9) The standards established in OAR 410-141-5005 through OAR 410-141-5535 are intended to be consistent with and may utilize procedures and standards common to MCEs and to DCBS in its
administration of financial reporting and solvency requirements. Any reference in these rules to the Insurance Code or to rules or regulations adopted by DCBS under the Insurance Code shall not make an MCE subject to regulation as an insurer, but instead shall be construed to adopt and incorporate such rules by reference as Authority rules applicable to MCEs.
410-141-5015. FINANCIAL SOLVENCY REGULATION: Financial Statement Reporting

(1) An MCE shall submit the following financial reports to the Authority:

(a) On or before April 30 of each year, an MCE shall submit an unaudited financial statement for the year ending December 31 immediately preceding.

(b) On or before May 31, August 31, and November 30 of each year, an MCE shall submit an unaudited financial statement for the quarter ending March 31, June 30 and September 30, respectively.

(c) On or before June 30 of each year, an MCE shall submit an audited financial statement for the year ending December 31 immediately preceding.

(2) Except as otherwise allowed or required by the Authority, all annual and quarterly financial statements filed by an MCE with the Authority shall (i) follow and be presented in accordance with Statutory Accounting Principles, (ii) use NAIC Forms and Instructions, (iii) be verified by the oaths of the president and secretary of the MCE or, in their absence, by two other duly authorized and acting principal officers; and (iv) include the additional information listed in subsections (3), (4) and (5) of this section. Audited annual financial statements shall be subject to, and shall comply with, the additional requirements set forth in ORA 410-141-5020 through ORA 410-141-5040. NAIC Forms and Instructions are available for inspection at the office of the Authority. Any person interested in inspecting the NAIC Forms and Instructions may contact the Authority at actuarial.services@dhsoha.state.or.us. An MCE shall be responsible for purchasing the current software version of the NAIC Forms and Instructions from the NAIC as required to prepare the financial statement filings required by these rules.

(3) An MCE shall include the following as supplements to the MCE’s quarterly and annual financial statement filings, using forms and templates prescribed by the Authority:

(a) A Supplemental Compensation Exhibit, as published by the NAIC, disclosing the compensation of the three officers or employees having the highest total compensation for the period. This exhibit shall be required only with the MCE’s annual financial statement filing.

(b) A report of Health-Related Services (as defined by OAR 410-141-3150 and as described in Oregon’s Medicaid 1115 Waiver for 2017 – 2022) and additional supplemental information, including care coordination, case management, flexible services, and community benefit expenses.

(A) MCEs shall comply with the following additional requirements regarding Health-Related Services (as defined by OAR 410-141-3150 and as described in the CMS section 1115 Waiver):

(i) Health Related Services shall be considered in the rate setting consistent with the current 1115 Waiver.

(ii) Health Related Services shall be included as Activities that Improve Health Care Quality in the Minimum Medical Loss Rebate Calculation report.

(c) A certification of compliance with financial and encounter data reporting requirements.

(d) A report of fee-for-service liabilities and medical and hospital expenses that are covered by risk-sharing arrangements.
(e) A report of third-party resources collections (MCE contractor).

(f) A report of Corporate Relationships of Contractors (FCHPs, DCOs, and PCOs) and Incentive Plan Disclosure and Detail (MCEs).

(g) MCE-specific utilization reports.

(h) Any other supplemental information deemed necessary by the Authority and specified in Exhibit L to the MCE’s contract with the Authority.

(4) An MCE shall report the following information in respect of the MCE’s Restricted Reserve, using forms and templates prescribed by the Authority:

(a) Identification of custodians, account balances and assets comprising Restricted Reserve Funds held by a third-party.

(b) A certification from each custodian of Restricted Reserve Funds of the account balance or aggregate fair market value of the assets comprising the Restricted Reserve Funds held by the custodian.

(c) Documentation of the liability that would be owed to creditors in the event of the MCE’s insolvency.

(d) Documentation of the dollar amount of that liability that is covered by any identified risk-adjustment mechanisms.

(5) An MCE shall report the following information in respect of any Sub-Capitation Arrangements to which the MCE is a party, using forms and templates prescribed by the Authority:

(a) An MCE that sub-capitates any work described in its agreements with the Authority shall require the Sub-Capitated Counterparty to report financial information as specified in the MCE’s agreements with the Authority.

(b) MCEs that make sub-capitation payments in an annual amount greater than 0.5 percent of an MCE’s annual gross revenues shall submit to the Authority on an annual basis the following financial reports with respect to each of the MCE’s Sub-Capitated Counterparties:

(A) Statements of revenue, expenses and net income.

(B) Restricted Reserve Account documentation.

(C) Certification of compliance with financial and encounter data reporting requirements.

(D) Any supplemental information deemed necessary by the Authority.

(6) Following termination of the MCE contract, the annual reports described in this section are due for the last calendar year during which the MCE operated, and its quarterly reports are due until its last annual report has been filed.

(7) The MCE shall make such additional filings with the Authority as are required by the MCE’s agreement with the Authority and as otherwise may be determined by the Authority from time to time to be necessary under the circumstances.
410-141-5020. FINANCIAL SOLVENCY REGULATION: Annual Audited Financial Statements and Auditor’s Report

(1) Annual audited financial statements shall report the financial position of the MCE as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in accordance with the form and content requirements of ORA 410-141-5015.

(2) The audit of the MCE’s annual financial statements shall be performed by an independent accounting firm and shall include, but not limited to:

(a) A report of the independent accounting firm that meets the requirements of this section.

(b) A written statement of opinion by the independent accounting firm based on the firm’s audit regarding the MCE’s annual financial statements.

(c) A written statement of opinion by an independent actuarial firm with respect to the assumptions and methods used in determining the MCE’s loss reserves, actuarial liabilities and related items, and the consistency of those assumptions and methods with generally accepted actuarial standards and practices for such matters.

(3) Each MCE required to file an annual audited financial report, must register with the Authority in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit. An MCE shall register under this rule on or before the later of sixty (60) days following (i) the effective date of this section and (ii) the date on which the MCE first becomes subject to this section.

(4) An MCE shall obtain a letter from the accountant retained by the MCE stating that the accountant is aware of the provisions of these rules that relate to MCE accounting and financial matters and affirming that the accountant will express the opinion of the accountant on the financial statements in terms of their conformity with the Statutory Accounting Principles, specifying exceptions that the accountant believes appropriate. The MCE shall file a copy of the letter with the Authority.

(5) If the accountant who was the certified public accountant for the immediately preceding filed audited financial report is dismissed or resigns, the MCE shall so notify the Authority not later than the fifth business day after the dismissal or resignation. The MCE shall also do the following:

(a) Notify the Authority in a separate letter, not later than the 10th business day after the date of the notice of dismissal or resignation, whether in the 24 months preceding the engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure that, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to the subject matter of the disagreement in connection with the accountant’s opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant’s satisfaction and those not resolved to the former accountant’s satisfaction and are those disagreements that occur at the decision-making level, between personnel of the MCE responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.
(b) Request the former accountant, in writing, to furnish a letter addressed to the MCE stating whether the accountant agrees with the statements contained in the MCE’s letter and, if not, stating the reasons for which the accountant does not agree.

(c) Furnish the Authority the letter received from the former accountant under subsection (b) of this section together with a response by the MCE to that letter.
410-141-5025. FINANCIAL SOLVENCY REGULATION: Qualifications of Independent Certified Public Accountant

(1) The Authority shall not recognize any person as a qualified independent certified public accountant for the purposes of OAR 410-141-5020 if the person:

(a) Is not in good standing with the AICPA and in all states in which the person is licensed to practice as a certified public accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or a release from liability (collectively referred to as indemnification) with respect to the audit of the MCE.

(2) Except as otherwise provided in this section, the Authority shall recognize an independent certified public accountant as qualified as long as the certified public accountant conforms to the standards of the certified public accountant profession, as contained in the Code of Professional Ethics of the AICPA and the rules and the Code of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(3) A qualified independent certified public accountant may enter into an agreement with an MCE to have disputes relating to an audit resolved by mediation or arbitration. In the event of a delinquency proceeding commenced against the MCE, however, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The partner or other person is disqualified from acting in that or a similar capacity for the same MCE or its subsidiaries or affiliates for a period of five consecutive years. An MCE may apply to the Authority for relief from the rotation requirement of this section on the basis of unusual circumstances. An MCE must apply for relief at least 30 days before the end of the calendar year. The Authority may consider the following factors in determining whether the relief should be granted:

(a) The number of partners, the expertise of the partners or the number of MCE and insurance clients in the currently registered firm.

(b) The capitated revenue volume of the MCE.

(c) The number of jurisdictions in which the MCE transacts business.

(5) The Authority shall not recognize an individual as an independent certified public accountant, or accept an annual audited financial report required by OAR 410-141-5020 that is prepared in whole or part by an individual, if the individual:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the laws of this state with respect to any previous reports submitted under OAR 410-141-5020; or
(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in any report filed under OAR 410-141-5020.

(6) The Authority may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the accountant's opinion on the financial statements in the annual audited financial report made pursuant to OAR 410-141-5020 and require the MCE to replace the accountant with another accountant who is qualified with respect to the MCE as provided in this section.

(7) The Authority may not recognize an accountant as a qualified independent certified public accountant or accept an annual audited financial report prepared in whole or in part by the accountant if the accountant provides to an MCE, contemporaneously with the audit, any of the following non-audit services:

(a) Bookkeeping or other services related to the accounting records or financial statements of the MCE.

(b) Financial information systems design and implementation.

(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.

(d) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an MCE in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the MCE's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an MCE's reserves if all of the following conditions have been met:

(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.

(B) The MCE has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility.

(C) The accountant's actuary tests the reasonableness of the reserves after the MCE's management has determined the amount of the reserves.

(e) Internal audit outsourcing services.

(f) Management functions or human resources.

(g) Broker or dealer, investment adviser or investment banking services.

(h) Legal services or expert services unrelated to the audit.

(i) Any other services that the Authority has determined by rule to be impermissible.

(8) In general, the principles of independence with respect to services provided by a qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot
function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the MCE.

(9) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subsection (7) and that do not conflict with subsection (8) only if the activity is approved in advance by the MCE’s audit committee in accordance with subsection (10).

(10) All auditing services and non-audit services provided to an MCE by a qualified independent certified public accountant of the MCE shall be preapproved by a duly constituted audit committee of the MCE’s Board. The preapproval requirement is waived with respect to non-audit services if all of the following conditions are met:

(a) The aggregate amount of all such non-audit services provided to the MCE constitutes not more than five percent of the total amount of fees paid by the MCE to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided.

(b) The services were not recognized by the MCE at the time of the engagement to be non-audit services.

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee.

(11) The Authority may not recognize an independent certified public accountant as qualified for a particular MCE if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer or any person serving in an equivalent position for that MCE was employed by the independent certified public accountant and participated in the audit of that MCE during the one-year period preceding the date that the most current statutory opinion is due. This section applies only to partners and senior managers involved in the audit. An MCE may apply to the Authority for relief from the requirement of this subsection on the basis of unusual circumstances.
410-141-5030. FINANCIAL SOLVENCY REGULATION: Notification of Adverse Financial Condition

(1) An MCE required to furnish an annual audited financial report shall require the independent certified public accountant to report in writing to the MCE’s Board, or to the audit committee of the MCE, any determination by the independent certified public accountant that the MCE has materially misstated its financial condition as reported to the Authority as of the date of the balance sheet currently under audit or that the MCE does not meet the minimum capital and surplus requirements under these rules or if the MCE’s risk based capital, as determined in accordance with OAR 410-141-5260 to 5285 is below the Company Action Level threshold for the MCE. The MCE shall require the independent certified public accountant to submit the report not later than the fifth business day after the independent certified public accountant makes such a determination. An MCE that has received a report under this section shall forward a copy of the report to the Authority not later than the fifth business day after receiving the report and shall provide the independent certified public accountant with evidence that the report was furnished to the Authority. If the independent certified public accountant does not receive such evidence within the required period, the independent certified public accountant shall furnish to the Authority a copy of its report not later than the fifth business day after the end of the period within which the MCE was required to submit the report.

(2) An independent certified public accountant shall not be liable to any person for any statement made in connection with the requirements of subsection (1) if the statement is made in good faith and in compliance with subsection (1).

(3) If the accountant, after the date of the audited financial report filed pursuant to OAR 410-141-5020, becomes aware of facts that might have affected the report, the Authority notes the obligation of the accountant to act as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.
410-141-5035. FINANCIAL SOLVENCY REGULATION: Accountant’s Letter of Qualifications

(1) An accountant shall furnish the MCE, in connection with and for inclusion in the filing of the annual audited financial report, a letter stating the following:

(a) That the accountant is independent with respect to the MCE and conforms to the standards of the accounting profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(b) The background and experience in general, and the experience in audits of MCEs, of the staff assigned to the engagement and whether each is an independent certified public accountant.

(c) That the accountant understands that the annual audited financial report and the opinion of the accountant thereon must be filed in compliance with OAR 410-141-5020 and that the Authority will rely on the information contained in the report and opinion in the monitoring and regulation of the financial position of MCEs.

(d) That the accountant consents to the requirements of OAR 410-141-5020 and that the accountant agrees to make the workpapers described in OAR 410-141-5040 available for review by the Authority, or the Authority’s designee or appointed agent.

(e) A representation that the accountant is currently licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(f) A representation that the accountant is in compliance with OAR 410-141-5025.

(2) This section does not prohibit an independent certified public accountant from using such staff as the accountant determines appropriate when use of the staff is consistent with the standards prescribed by generally accepted auditing standards.
410-141-5040. FINANCIAL SOLVENCY REGULATION: Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers

(1) For the purpose of this section, workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the accountant's audit of the financial statements of an MCE. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of an MCE and which support the accountant's opinion.

(2) An MCE that is required to file an audited financial report pursuant to OAR 410-141-5020 shall require the accountant to make available for review by the Authority, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the MCE, at the offices of the MCE, at the Authority's offices or at any other reasonable place designated by the Authority. The MCE shall require that the accountant retain the audit workpapers and communications until the Authority has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(3) In the conduct of a periodic review by the Authority's examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Authority. Any such review by the Authority's examiners is an investigation and all working papers and communications obtained during the course of such an investigation must be given the same confidentiality as other examination workpapers generated by the Authority.
410-141-5045. FINANCIAL SOLVENCY REGULATION: Corporate Governance Annual Disclosure Filing.

(1) An MCE shall file a corporate governance annual disclosure report with the Authority, as described in this section, no later than June 1 of each calendar year. An MCE that is not subject to the requirement under this section to submit a CGAD Report shall nevertheless submit a CGAD Report at the Authority’s request.

(2) A CGAD Report shall contain the following information:

(a) The CGAD Report shall describe the MCE’s corporate governance framework and structure including consideration of the following:

(A) The MCE’s Board and the various committees thereof that are ultimately responsible for overseeing the MCE and the level(s) at which that oversight occurs (e.g. ultimate control level, intermediate holding company, legal entity, etc.). The CGAD Report shall describe and discuss the rationale for the current MCE Board size and structure.

(B) The duties of the MCE Board and each of its significant committees and how they are governed (e.g. bylaws, charters, informal mandates, etc.), as well as how the MCE Board’s leadership is structured, including a discussion of the roles of Chief Executive Officer and Chairman of MCE Board, as applicable, within the organization.

(b) The CGAD Report shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(A) How the qualifications, expertise and experience of each MCE Board member meet the needs of the MCE.

(B) How an appropriate amount of independence is maintained on the MCE Board and its significant committees.

(C) The number of meetings held by the MCE Board and its significant committees over the past year as well as information on director attendance.

(D) How the MCE or its controlling affiliate nominates, and elects members to the MCE Board and its committees. The discussion should include, for example:

(i) Whether a nomination committee is in place to identify and select individuals for consideration.

(ii) Whether term limits are placed on directors.

(iii) How the election and re-election processes function.

(iv) Whether an MCE Board diversity policy is in place and if so, how it functions.

(E) The processes in place for the MCE Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).
(c) The CGAD Report shall describe the MCE Board’s policies and practices for directing senior management, including a description of the following factors:

(i) Any processes or practices (i.e. suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(1) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(2) Any changes in an officer's or key person's suitability as outlined by the MCE’s standards and procedures to monitor and evaluate such changes.

(ii) The MCE’s code of business conduct and ethics, the discussion of which considers, for example:

(1) Compliance with laws, rules and regulations.

(2) Proactive reporting of any illegal or unethical behavior.

(iii) The MCE’s processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Authority to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

(1) The Board's role in overseeing management compensation programs and practices.

(2) The various elements of compensation awarded in the MCE’s compensation programs and how the MCE determines and calculates the amount of each element of compensation paid.

(3) How compensation programs are related to both company and individual performance over time.

(4) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.

(5) Any claw back provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.

(6) Any other factors relevant in understanding how the MCE monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(iv) The MCE’s plans for senior management succession.

(d) The CGAD Report shall describe the processes by which the MCE Board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the MCE’s business activities, including a discussion of:
(A) How oversight and management responsibilities are delegated between the MCE Board, its committees and senior management.

(B) How MCE Board is kept informed of the MCE’s strategic plans, the associated risks and steps that senior management is taking to monitor and manage those risks.

(C) How reporting responsibilities are organized for each critical risk area. The description should allow the Authority to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the MCE Board. This description may include, for example, the following critical risk areas of the insurer:

(i) Risk management processes.

(ii) Actuarial function.

(iii) Investment decision-making processes.

(iv) Reinsurance decision-making processes.

(v) Business strategy/finance decision-making processes.

(vi) Compliance function.

(vii) Financial reporting/internal auditing.

(viii) Market conduct decision-making processes.

(3) The chief executive officer or corporate secretary of an MCE shall sign the CGAD Report and attest that to the best of the officer's or secretary's belief and knowledge the MCE has implemented the corporate governance practices identified in the CGAD Report and that the MCE’s Board or other governing body, or an appropriate committee of the MCE’s Board or other governing body, has received a copy of the disclosure.

(4) An MCE that submits a CGAD Report under subsection (1) of this section may provide information in the disclosure at any of the following levels:

(a) At the level of the MCE, an intermediate holding company or any controlling affiliate, depending on how the MCE and its controlling affiliates have structured corporate governance.

(b) At the level at which the MCE or any controlling affiliate oversees or coordinates and exercises supervision over the MCE's earnings, capital, liquidity operations and reputation.

(c) At the level at which legal liability for failing in the duties of general corporate governance would occur.

(5) An MCE shall identify the level at which its CGAD Report is presented and explain the basis on which that level was determined to be appropriate. An MCE also shall explain any subsequent changes in the level of reporting.
(6) The MCE shall have discretion regarding the appropriate format for providing the information required by this section and is permitted to customize the CGAD Report to provide the most relevant information necessary to permit the Authority to gain an understanding of the corporate governance structure, policies and practices utilized by the MCE.

(7) Each year following the initial filing of the CGAD Report, the MCE shall file an amended version of the previously filed CGAD Report indicating where changes have been made. If no changes were made in the information or activities reported by the MCE, the filing should so state.

(8) Upon written application of an MCE, the Authority may grant an exemption from compliance with the CGAD Report filing requirement under this section if the Authority finds upon review of the application that compliance would constitute a financial or organizational hardship upon the MCE. An exemption may be granted at any time and from time to time for a specified period or periods. Not later than the 10th day after denial of an MCE’s written request for an exemption under this section, the MCE may request in writing a hearing on its application for an exemption.
410-141-5050. FINANCIAL SOLVENCY REGULATION: Requirements for Reinsurance

(1) Except with the prior written approval of the Authority, an MCE may not reinsure risks written or insured by other MCEs or other insurers.

(2) An MCE may cede and reinsure risks, on an indemnity reinsurance basis, to another MCE authorized to transact such business in this state or with a health insurer authorized to reinsure such risks provided that (i) such other MCE or such other health insurer has been approved or accepted by the Authority to act as a reinsurer of the MCE and (ii) the reinsurance qualifies for financial statement credit to the cedent MCE under this section. The Authority shall not approve or accept any such reinsurance by the cedent MCE in an unauthorized MCE or unauthorized health insurer, or which the Authority finds for good cause would otherwise be contrary to the interests of the Members of the cedent MCE.

(3) Credit shall not be allowed, as an asset or as a deduction from liability, to any cedent MCE for reinsurance unless the reinsurance contract provides, in substance, that in the event of the insolvency of the cedent MCE, the reinsurance shall be payable on the basis of reported claims allowed by the court hearing the liquidation proceeding, without diminution because of the insolvency of the cedent MCE. Such payments shall be made directly to the cedent MCE or to its domiciliary liquidator except when the reinsurer, with the consent of the Authority, has assumed the policy obligations of the cedent MCE as direct obligations of the reinsurer and in substitution for the obligations of the cedent MCE.

(4) For the purposes of subsection (3) of this section, the reinsurance agreement may provide that the domiciliary liquidator of the insolvent cedent MCE shall, within a reasonable time after the claim is filed in the liquidation proceeding, give written notice to the reinsurer of the pendency of a claim against the cedent MCE on the risk reinsured. During the pendency of the claim, the reinsurer may investigate the claim and interpose, at its own expense, in the proceeding in which the claim is to be adjudicated any defenses that the reinsurer determines to be available to the cedent MCE or its liquidator. The reinsurer's expense in doing so may be filed as a claim against the insolvent cedent MCE to the extent of a proportionate share of the benefit that may accrue to the cedent MCE solely as a result of the defense undertaken by the reinsurer. When two or more reinsurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the cedent MCE.

(5) The Authority may disallow financial statement credit for reinsurance that would otherwise be allowed if the Authority determines that allowing credit would be contrary to accurate financial reporting or proper financial management or may be hazardous to Members of the MCE or the public generally.

(6) A cedent MCE promptly shall inform the Authority in writing of the cancellation of, or any other material change to, any of its reinsurance agreements or arrangements.
410-141-5055. FINANCIAL SOLVENCY REGULATION: Requirements for Obtaining Credit for Reinsurance

(1) The Authority shall not allow financial statement credit for reinsurance to a cedent MCE as either an asset or a reduction from liability on account of reinsurance ceded unless the reinsurance meets the requirements of subsection (2) or (3) of this section.

(2) Credit shall be allowed when the reinsurance is ceded to an authorized assuming MCE or an authorized health insurer that has been approved and accepted by the Authority to act as a reinsurer of the cedent MCE in accordance with OAR 410-141-5050. The Authority shall not allow credit to a cedent MCE if the approval or acceptance of the reinsurer has been revoked by the Authority after notice and opportunity for hearing.

(3) The Authority shall allow a reduction from liability for reinsurance ceded by an MCE to an assuming reinsurer not meeting the requirements of subsection (2) in an amount not exceeding the liabilities carried by the cedent MCE. The reduction shall be in the amount of funds held by or on behalf of the cedent MCE, including funds held in trust for the exclusive benefit of the cedent MCE, under a reinsurance contract with such reinsurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by and under the exclusive control of the cedent MCE insurer or, in the case of a trust, held in a Qualified United States Financial Institution. The security may be in the form of any of the following:

(a) Cash.

(b) Securities listed by the SVO.

(c) Clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a Qualified United States Financial Institution effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the cedent MCE on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(d) Any other form of security acceptable to the Authority.

(4) An allowed asset or a reduction from liability for reinsurance ceded to an unauthorized reinsurer pursuant to subsection (3) of this section shall be allowed only when the applicable requirements of OAR 410-141-5050 to OAR 410-141-5070 are satisfied.
410-141-5060. FINANCIAL SOLVENCY REGULATION: Trust Agreements Qualified under OAR 410-141-5050.

(1) As used in this section:

(a) “Beneficiary” includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.

(b) “Grantor” means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unauthorized or unlicensed unaccredited reinsurer.

(c) “Obligations” as used in subsection (2) means:

(A) Reinsured losses and allocated loss expenses paid by the cedent MCE, but not recovered from the reinsurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned capitated revenue.

(2) The following are required conditions applicable to the trust agreement:

(a) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee that must be a Qualified United States Financial Institution.

(b) The trust agreement shall create a trust account into which assets must be deposited.

(c) All assets in the trust account shall be held by the trustee at the trustee’s office in the United States.

(d) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under subsection (l) of this section.

(e) The trust agreement shall be established for the sole benefit of the beneficiary.

(f) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;
(B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of, but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement shall provide that at least 30 days but not more than 45 days prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(h) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(i) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commissions to or reimbursing the expenses of the trustee.

(j) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the Authority, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(k) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which such a draw would be required shall be deemed to be negligence or willful misconduct, or both.

(l) The trust agreement may provide that the cedent MCE shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the cedent MCE or the reinsurer, only for the following purposes:

(A) To pay or reimburse the cedent MCE for the reinsurer’s share under the reinsurance agreement of any losses and allocated loss expenses paid by the cedent MCE, but not recovered from the reinsurer, or for unearned capitated revenue due to the cedent MCE if not otherwise paid by the reinsurer;
(B) To pay the reinsurer any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the reinsurer’s obligations under the reinsurance agreement; or

(C) When the cedent MCE has received notification of termination of the trust account and if the reinsurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account held apart from its general assets, in the name of the cedent MCE in any Qualified United States Financial Institution, in trust for such uses and purposes specified in paragraphs (A) and (B) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

(3) The following are permitted conditions applicable to the trust agreement:

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice, and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, except that such a resignation or removal shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor’s name.

(c) The trustee may be given authority to invest and accept substitutions of any funds in the account, except that an investment or substitution shall not be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn.

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such a transfer may be conditioned upon the trustee receiving other specified assets prior to or simultaneously with the transfer.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall be delivered to the grantor with written approval by the beneficiary.

(4) The following are additional conditions applicable to reinsurance agreements:

(a) A reinsurance agreement may contain provisions that:

(A) Require the reinsurer to enter into a trust agreement and to establish a trust account for the benefit of the cedent MCE, and specify what the agreement is to cover.
(B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars; certificates of deposit issued by a United States bank and payable in United States dollars; and investments permitted by OAR 410-141-5100 to 410-141-5230 or any combination thereof, except that investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments.

(C) Require the reinsurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the cedent MCE, or the trustee upon the direction of the cedent MCE, may whenever necessary negotiate these assets without consent or signature from the reinsurer or any other entity.

(D) Require that all settlements of account between the cedent MCE and the reinsurer be made in cash or its equivalent.

(E) Stipulate that the reinsurer and the cedent MCE agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the cedent MCE at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be used and applied by the cedent MCE or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the cedent MCE, without diminution because of insolvency on the part of the cedent MCE or the reinsurer, only for the following purposes:

(i) To pay or reimburse the cedent MCE for:

1. The reinsurer’s share under the specific reinsurance agreement of unearned capitated revenue returned, but not yet recovered from the reinsurer.

2. The reinsurer’s share of benefits or losses paid by the cedent MCE pursuant to the provisions of the Member Contracts reinsured under the reinsurance agreement.

3. Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the cedent MCE.

(ii) To make payment to the reinsurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the cedent MCE.

(b) The reinsurance agreement may also contain provisions that:

(A) Give the reinsurer the right to seek the cedent MCE’s approval, which the cedent MCE shall not unnecessarily or arbitrarily withhold, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the reinsurer. The right to seek approval under this paragraph must be subject to one of the following requirements:

(i) The reinsurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

(B) Provide for:

(i) The reinsurer’s return of any amount withdrawn in excess of the actual amounts required under subsection (2)(l)(B) of this section; and

(ii) Interest payments at a rate not in excess of the prime rate of interest on the amounts held in trust pursuant to this section.

(iii) Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) Court or arbitration costs;

(2) Attorney fees; and

(3) Any other reasonable expenses.

(c) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized reinsurer in financial statements required to be filed with the Authority in compliance with the provisions of ORA 410-141-5010 to 5020 when established on or before the date of filing of the financial statement of the cedent MCE. The reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
FINANCIAL SOLVENCY REGULATION: Letters of Credit Qualified under OAR 410-141-5055.

(1) A letter of credit for purposes of OAR 410-141-5055 must be clean, irrevocable, unconditional and issued or confirmed by a Qualified United States Financial Institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

(2) The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities.

(3) As used in this section, “beneficiary” means the domestic MCE for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(4) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(5) The letter of credit shall contain a statement to the effect that the obligation of the Qualified United States Financial Institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(6) The term of the letter of credit shall be for at least one year and shall contain an “evergreen clause” that prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of not less than 30 days’ notice prior to expiration date or nonrenewal.

(7) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a Qualified United States Financial Institution.

(8) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500, or any successor publication, occur.

(9) The letter of credit shall be issued or confirmed by a Qualified United States Financial Institution authorized to issue letters of credit.

(10) The following apply to reinsurance agreement provisions:

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions described in this subsection. All of the provisions of this subsection must be applied without diminution because of insolvency on the part of the cedent MCE or reinsurer. The provisions are as follows:
(A) A provision requiring the reinsurer to provide letters of credit to the cedent MCE and specify what they are to cover.

(B) A provision stipulating that the reinsurer and cedent MCE agree that the letter of credit provided by the reinsurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be used by the cedent MCE or its successors in interest only for one or more of the following reasons:

(i) To pay or reimburse the cedent MCE for:

(1) The reinsurer's share under the specific reinsurance agreement of unearned capitated revenue returned, but not yet recovered from the reinsurers;

(2) The reinsurer's share, under the specific reinsurance agreement, of benefits or losses paid by the cedent MCE, but not yet recovered from the reinsurers, under the terms and provisions of the Member Contracts reinsured under the reinsurance agreement; and

(3) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the cedent MCE.

(ii) When the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and when the reinsurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the reinsurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the reinsurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amount in a separate account in the name of the cedent MCE in a Qualified United States Financial Institution apart from its general assets, in trust for such uses and purposes specified in subparagraph (i) of this paragraph as may remain after withdrawal and for any period after the termination date.

(b) Nothing contained in subsection (10)(a) shall preclude the cedent MCE and reinsurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subsection (10)(a)(B); or

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.
410-141-5070. FINANCIAL SOLVENCY REGULATION: Other Security

A cedent MCE may take credit for unencumbered funds withheld by the cedent MCE in the United States subject to withdrawal solely by the cedent MCE and under its exclusive control.
410-141-5075. FINANCIAL SOLVENCY REGULATION: Restrictions on assumption or transfer of obligations or risks

A domestic MCE shall not enter a transaction in which the domestic MCE assumes or transfers obligations or risks on contracts under an Assumption Reinsurance Agreement or any equivalent agreement, unless the Authority first approves the transaction.
410-141-3-5080. FINANCIAL SOLVENCY REGULATION: Assets, Liabilities, Reserves

(5) In any determination of the financial condition of an MCE, there shall be allowed as assets only such assets as are owned by the MCE and which consist of:

(a) Cash in the possession or control of the MCE, including the true balance of any deposit in a solvent bank or trust company.

(b) Investments held in accordance with these rules, and due or accrued income items in connection therewith to the extent considered by the Authority to be collectible.

(c) Receivables for capitated revenue payments due the MCE, to the extent allowed by the Authority.

(d) Amounts recoverable from reinsurers if credit for reinsurance may be allowed to the MCE pursuant to OAR 410-141-5050 to 5070.

(e) Other assets considered by the Authority to be available for the payment of losses and claims, at values determined by the Authority.

(6) In addition to assets impliedly excluded by this section, the following expressly shall not be allowed as assets in any determination of the financial condition of an MCE:

(a) Advances to officers, employees, agents and other persons on personal security only.

(b) Stock or other equivalent equity interests of such MCE owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock or equivalent equity interest acquired or held through the ownership by such MCE of an interest in another firm, corporation or business unit.

(c) Tangible personal property, except such property as the MCE is otherwise permitted to acquire and retain as an investment under these rules and which is deemed by the Authority to be available for the payment of losses and claims or which is otherwise expressly allowable, in whole or in part, as an asset.

(d) The amount, if any, by which the book value of any investment as carried in the ledger assets of the MCE exceeds the value thereof as determined under these rules.

(7) In any determination of the financial condition of an MCE, liabilities to be charged against its assets shall be calculated in accordance with these rules and shall include:

(a) The amount necessary to pay all of its unpaid losses and claims incurred on or prior to the date of the statement, whether reported or unreported to the MCE, together with the expenses of adjustment or settlement thereof.

(b) A reserve equal to the unearned portion of capitated revenue held by the MCE as of the financial statement date.
(c) Reserves which place a sound value on its liabilities and which are not less than the reserves according to accepted actuarial standards consistently applied and based on actuarial assumptions relevant to contract provisions.

(d) Taxes, expenses and other obligations due or accrued at the date of the statement.

(e) Any additional reserves for asset valuation contingencies or loss contingencies required by these rules or considered to be necessary by the Authority for the protection of the Authority and the Members of the MCE.

(8) An MCE shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of 10 percent of the MCE’s assets, nor shall it invest more than 10 percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to:

(a) Investments in, or loans upon, the security of the general obligations of a sovereign.

(b) Investments by an MCE in all real or personal property used exclusively by such MCE to provide health services.
410-141-5085. FINANCIAL SOLVENCY REGULATION: Disallowance of Certain Reinsurance Transactions

(1) The Authority shall disallow as an asset or as a credit against liabilities any reinsurance found by the Authority after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding MCE’s financial condition as of the date of any financial statement of the MCE. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the MCE’s outstanding risks placed within four months prior to the date of any such financial statement and canceled in fact within eight months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the principal purpose of deception.

(2) The Authority shall disallow as an asset any deposit, funds or other assets of the MCE found by the Authority after a hearing thereon:

(a) Not to be the property of the MCE;

(b) Not freely subject to withdrawal or liquidation by the MCE at any time for the payment or discharge of claims or other obligations arising under its Member Contracts; or

(c) To result from arrangements made principally for the purpose of deception as to the MCE’s financial condition as of the date of any financial statement of the MCE.
410-141-5090. FINANCIAL SOLVENCY REGULATION: Increase of Inadequate Reserves

If the Authority determines that an MCE's reserves, however calculated or estimated, are inadequate, the Authority shall require the MCE to maintain reserves in such additional amount as is needed to make them adequate.
410-141-5095. FINANCIAL SOLVENCY REGULATION: Alternative Accounting for Assets and Liabilities; Annual Statement; Discretion of Authority

Assets may be allowed as deductions from corresponding liabilities, liabilities may be charged as deductions from assets, deductions from assets may be charged as liabilities, and deductions from liabilities may be allowed as assets, in accordance with the form of annual statement prescribed by the Authority, or otherwise in the discretion of the Authority.
410-141-5100. ASSET VALUATION AND PERMITTED INVESTMENTS: Assets Other Than Securities; Calculation of Value; Bonds; Real Property; Mortgages

(1) Each bond or other evidence of debt having a fixed term and rate of interest may be valued as follows, if amply secured and not in default as to principal or interest:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, according to an accepted method of valuation approved by the Authority.

(2) For the purpose of subsection (1) of this section, the purchase price shall not be a higher amount than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such bond or other evidence of debt.

(3) For purposes of subsections (1) and (2) of this section, the Authority may determine the method of calculating values. The method or valuation may not be inconsistent with any applicable method or valuation used by MCEs in general or any such method or valuation then currently formulated or approved by the NAIC or its successor organization.

(4) Real property shall be valued as follows:

(a) Real property acquired pursuant to a mortgage loan or contract of sale shall be valued at an amount not greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the MCE and any amounts thereafter paid by the MCE on assessments levied for improvements in connection with the property.

(b) Other real property held by an MCE shall be valued at an amount not in excess of the cost of the acquired property and the cost of improvements thereafter made by the MCE, less a reasonable allowance for depreciation.

(5) Purchase money mortgages on real property referred to in subsection (4)(a) of this section shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90 percent of the fair value of such real property, whichever is less.

(6) Other assets, other than securities, shall be valued at cost of acquisition less any repaid portion thereof, unless the Authority determines that another value is proper.
410-141-5105. ASSET VALUATION AND PERMITTED INVESTMENTS: Calculation of Value; Market Value; Fixed Value; Net Value

(1) Securities held by an MCE, other than bonds or other evidences of debt to which OAR 410-141-5100, applies, must be valued in the discretion of the Authority at their market value, at their appraised value or at prices determined by the Authority as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value instead of market value, at the discretion of the Authority and in accordance with any method of valuation approved by the Authority.

(3) Stock of a subsidiary corporation of an MCE may not be valued at an amount in excess of the net value thereof as based upon the assets only of the subsidiary that would be eligible under OAR 410-141-5100 to 410-141-5190 for investment of the funds of the MCE directly.

(4) The Authority may determine the method of calculating values as provided in this section, but the method or valuation may not be inconsistent with any applicable method or valuation used by MCEs in general or any such method of valuation then currently formulated or approved by the NAIC or its successor organization.
410-141-5110. ASSET VALUATION AND PERMITTED INVESTMENTS: Books, Records, Accounts and Source Data

An MCE shall keep its books, records, accounts and transaction source data in such manner that the Authority may readily verify its statements of financial condition and ascertain whether the MCE is unimpaired, has given proper treatment to Members and has complied with Applicable Law.
410-141-5115. ASSET VALUATION AND PERMITTED INVESTMENTS: Definition of “Corporation,” “Sovereign,” “Political Subdivision”

As used in OAR 410-141-5125 to 410-141-5225:

(1) “Corporation” means a corporation, joint stock association or business trust organized and existing under the laws of a sovereign.

(2) “Sovereign” means the United States, or a state, or Canada or a province thereof.

(3) “Political subdivision” means an incorporated county, city, town, village, municipality, or subdivision thereof, or a public corporation, district, agency, commission, authority or instrumentality, or subdivision thereof.
410-141-5120. ASSET VALUATION AND PERMITTED INVESTMENTS: “Obligation” Defined

As used in OAR 410-141-5125 to 410-141-5225, “obligation” means a bond, debenture, note, warrant, certificate or other evidence of indebtedness.
410-141-5125. ASSET VALUATION AND PERMITTED INVESTMENTS: “Amply Secured Obligation” Defined

As used in OAR 410-141-5125 to 410-141-5225, “amply secured obligation” means an obligation which is not in default and as to which no default is imminent, and which satisfies the requirements of one or more of the following subsections:

(1) An obligation of a sovereign or political subdivision thereof, if it is issued, assumed or guaranteed by the governmental unit involved and is payable either from:

   (a) Taxes levied or which may be levied by such governmental unit; or

   (b) Adequate special revenues pledged or otherwise appropriated or required by law to be used for the purpose of such payment, provided the law authorizing the issuance of the obligation requires that adequate rates be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating expenses, maintenance charges, and the principal, interest and dividends on the obligation. An obligation payable solely out of special assessments on real property benefited by local improvements shall not be considered amply secured unless the total amount so payable is less than 50 percent of the market value of the real property (including any improvements thereon) and constitutes a lien on such property.

(2) An obligation issued, assumed or guaranteed by a corporation, if the corporation is solvent, has not been in default on any of its obligations during the preceding three years, and if the obligation is secured by the pledge of property the market value of which exceeds the amount of the obligation by 25 percent or more. Obligations which are the subject of OAR 410-141-5150 and OAR 410-141-5160 are not included within the provisions of this subsection.

(3) An obligation otherwise found to be amply secured by the Authority. In making such determinations, the Authority shall give consideration to model laws, model regulations and other statutory accounting guidance pertaining to amply secured obligations issued from time to time by the NAIC, and shall consider the financial condition of the issuing, assuming or guaranteeing corporation as well as the existence or absence of any pledge of property as security.
410-141-5130. ASSET VALUATION AND PERMITTED INVESTMENTS: “Unencumbered” defined

As used in OAR 410-141-5125 to 410-141-5225, “unencumbered” means the nonexistence of any lien, burden or charge having priority over the lien securing the MCE's investment. The following shall not be considered encumbrances on real property or leasehold interests therein:

(1) Reservations of mineral, oil or timber rights, easements, rights of way, sewer rights or rights of walls.

(2) Liens for taxes or assessments not delinquent.

(3) Building restrictions or other restrictive covenants common to the community.

(4) Where the loan is secured by a lien upon real property, a lease under which rents or profits are reserved to the owner, if in any event the security for the loan would be a first lien upon the real property except for such lease.

(5) Where the loan is secured by a lien on a leasehold, a prior lien on the real property, provided the security for the loan is a first lien upon the leasehold and there exists no provision preventing the MCE from continuing the lease in force for the duration of the lease or no condition or rights of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee's obligations under the lease are discharged.
410-141-5135. ASSET VALUATION AND PERMITTED INVESTMENTS: “Improved Real Property” Defined

As used in OAR 410-141-5150 to 410-141-5225, “improved real property” means:

(1) Farmland used for tillage, crop or pasture;

(2) Real estate on which permanent improvements, or improvements under construction or in process of construction, suitable for residence, institutional, commercial or industrial use, are situated; and

(3) Real estate to be developed for the use or uses set forth in subsection (2) of this section on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated.
410-141-5140. ASSET VALUATION AND PERMITTED INVESTMENTS: Compensating Balances; Prohibited Use of Funds

Except as provided in OAR 410-141-5145, funds of an MCE shall not be used as compensating balances for loans to other persons, or otherwise pledged for the benefit of other persons.
410-141-5145. ASSET VALUATION AND PERMITTED INVESTMENTS: Investments Used to Provide Compensating Balances; Necessary Conditions

Investments of an MCE of the kind described in OAR 410-141-5150(2) that are made for the purpose of providing compensating balances for other persons will not be prohibited by OAR 410-141-5140 while the following conditions are met:

(1) The investment is made in the name of and remains the sole property of the MCE;

(2) The investment is not subject to appropriation in any manner by any person, including the person for whom the compensating balance is being provided, the institution in which the deposit is made and other creditors of such persons;

(3) The MCE holds an irrevocable written waiver from the depositary institution, in a form satisfactory to the Authority, waiving all right, title and interest in or to any setoff, banker's or similar lien or other security interest in such investment or any funds represented thereby;

(4) The investment is unrestricted as to right of withdrawal except for such restrictions as may be usual and customary for such investments under OAR 410-141-5150(2) when no compensating balance is involved; and

(5) The MCE receives a reasonable fee, taking into consideration its return on other funds, for providing the compensating balance involved.
410-141-5150. ASSET VALUATION AND PERMITTED INVESTMENTS: Investment of Required Capitalization; Investments Allowed; Conditions

(1) Funds of an MCE at least equal to its required capitalization shall be invested and kept invested as follows:

   (a) In amply secured obligations of the United States, a state or a political subdivision of this state.

   (b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:

      (A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

      (B) The lien does not exceed 66-2/3 percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the installment payments are sufficient to repay the loan within a period of not more than 25 years; or

      (C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Department of Veterans Affairs, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(2) In deposits, certificates of deposit, deposit accounts, savings accounts, or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations to the extent such investments are insured by the Federal Deposit Insurance Corporation.

(3) Investments made pursuant to this section shall be kept free of any lien or pledge. The term “lien or pledge” as used in this section shall not include a deposit of securities with a sovereign, nor assets held in trust for the benefit or protection of all or any class of policyholders of an MCE.
410-141-5155. ASSET VALUATION AND PERMITTED INVESTMENTS: Investment in Obligations of Sovereigns, Political Subdivisions Thereof or Corporations; Federal Agencies and Authorities

Funds of an MCE may be invested in amply secured obligations of a sovereign, political subdivision thereof or corporation. Expressly included, but not by way of limitation, are obligations of the following federal agencies and authorities: Federal Home Loan Banks, Federal Land Banks, Home Owners Loan Corporation, Public Housing Authorities (to the extent that such obligations are secured by a pledge of annual contributions to be paid by the United States or an agency thereof), and Federal Intermediate Credit Banks.
410-141-5160. ASSET VALUATION AND PERMITTED INVESTMENTS:  Investment in Mortgage Loans

(1) Funds of an MCE may be invested in:

(a) Loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in the manner and subject to the same terms and conditions set forth in OAR 410-141-5150, except that the property may be located within the boundaries of any sovereign; for loans described in OAR 410-141-5150 (1)(b)(B), the maximum permitted ratio of the loan to the appraised value shall be 80 rather than 66-2/3 percent, and the maximum term of the loan shall be 30 rather than 25 years.

(b) Loans secured by first liens upon a leasehold of improved, unencumbered real property located within the boundaries of any sovereign if:

(A) The leasehold has a period of not less than 20 years to run from the date of the loan, inclusive of the term which may be provided by an enforceable option of renewal, the loan does not exceed 70 percent of the fair market value of the leasehold together with any improvements located thereon which are subject to the lien, the terms of the loan provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within a period of four-fifths of the term of the leasehold, and the MCE is entitled to be subrogated to all rights of the lessee under the leasehold; or

(B) The investment is insured or guaranteed in the manner provided in OAR 410-141-5150 (1)(b)(C).

(2) A loan upon the security of real property or a leasehold interest therein which is a participation in or a part of a series or issue shall not be made unless the MCE holds a senior participation or similar security interest in the mortgage or deed of trust giving it substantially the rights of a first mortgagee.

(3) Nothing in OAR 410-141-5115 to 410-141-5225 shall prohibit an MCE from renewing or extending a proper loan secured by a first lien upon real property or a leasehold interest therein made pursuant to this section or to OAR 410-141-5150 for the original or a lesser amount even though such amount is a greater percentage of the current fair market value of the real property or leasehold than would otherwise be permitted under such sections.
(1) Except as otherwise provided in OAR 410-141-5150 and OAR 410-141-5160, an MCE may invest in real property only if used for the purposes or acquired in the manner and within the limits as follows:

(a) An MCE may invest in the land and the buildings thereon in which it has its principal office, and in such other real property as required for its convenient accommodation in the transaction of business. Such investments shall not exceed in the aggregate ten percent of the assets of the MCE, except with the consent of the Authority.

(b) An MCE may invest in real property that is acquired in satisfaction of loans, mortgages, liens, judgments or debts previously owing to the MCE in the course of its business.

(c) An MCE may invest in real property acquired in part payment of the consideration on the sale of other real property owned by the MCE if the transaction does not increase the investment of the MCE in real property.

(d) An MCE may invest in real property acquired by gift or devise or through merger, consolidation or bulk reinsurance of another MCE.

(e) An MCE may invest in the vendor’s interest in real property subject to a contract of sale. The amount invested in the vendor’s interest under such a contract shall not exceed, except with the consent of the Authority:

(A) Ninety percent of the market value of the subject real property, when the real property is one, or two-family residential property.

(B) Eighty percent of the market value of the subject real property, when the real property is other than that described in subparagraph (A) of this paragraph.

(f) An MCE may invest in real property or any interest therein that is acquired or held by purchase, lease or otherwise, other than real property used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement or club purposes, if the real property or interest therein is acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. An MCE may hold, improve, develop, maintain, manage, lease, sell and convey real property acquired by it under this paragraph. Real property and interests therein so acquired may be leased or sublet. Except with the consent of the Authority, an MCE shall not have an amount exceeding five percent of its assets at any one time invested in real property and interests therein under this paragraph.

(g) An MCE may invest in additional real property and in equipment incident to real property if necessary or convenient for the purpose of enhancing the sale or other value of real property previously acquired or held by the MCE under paragraph (b), (c), (d) or (f) of this subsection. The real property and equipment shall be included, together with the real property for the enhancement of which it was acquired, for the purpose of applicable investment limits.

(h) An MCE may invest in real property without regard to whether the property is income-producing when acquired if the MCE intends to improve the property for resale or if the MCE intends that the
property will be income-producing. The MCE may also invest in real property that is income-producing and used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement or club purposes. Funds invested under this paragraph shall not exceed the lesser of five percent of the MCE’s assets or 50 percent of the MCE’s capital and surplus, except with the consent of the Authority.

(i) Except with the consent of the Authority, all real property owned by the MCE under this subsection, except as to properties described in paragraphs (a) and (e) of this subsection, shall not at any time exceed 10 percent of the assets of the MCE.

(2) Except as otherwise provided in subsection (3) of this section:

(a) Real property acquired under this section shall be disposed of within five years after it ceases to be income-producing or to be used by the MCE for its business operation, whichever is later.

(b) Real property acquired under subsection (1)(h) of this section that is not income-producing when acquired shall be disposed of within five years after acquisition if the real property is not improved for resale or if the real property is not income-producing during the five years.

(c) When an investment or any combination of investments by an MCE in real property exceeds any applicable limitation under this section other than a limitation of time, the MCE, not later than the fifth year after the limitation is exceeded, shall dispose of sufficient real property that is subject to the limitation to comply with the limitation.

(3) Any real property acquired under this section that otherwise qualifies as an investment under OAR 410-141-5115 to 410-141-5225 may be retained and held if approved as an investment in the manner prescribed by OAR 410-141-5205 and 410-141-5210. The Authority may extend the time limit prescribed in subsection (2) of this section if the interests of the MCE will suffer by a “forced sale” of the property.
410-141-5170. ASSET VALUATION AND PERMITTED INVESTMENTS: Investment in Corporate Stocks; Conditions; Limitations

(1) Funds of an MCE may be invested in stocks (including trust certificates) of solvent corporations organized and carrying on a business under the laws of a sovereign as follows:

(a) Preferred or guaranteed stocks if the corporation is not in default or arrears as to any preferred or guaranteed dividend and has continuously and regularly paid such dividends during the preceding three years or has paid cash dividends for five years on common stock.

(b) Common stocks as provided in paragraph (c) of this subsection if:

(A) The obligations and preferred stock, if any, of such corporation are eligible for investment under these rules; and

(B) The stock is registered on a national securities exchange regulated under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or if of a type not commonly so registered is regularly traded on a broad national or regional basis.

(C) Notwithstanding OAR 410-141-5230(1), not more than 25 percent of admitted assets may be in common stocks that have not paid a cash dividend during each of the five years preceding the date of acquisition.

(2) An MCE shall not invest so as to own or control more than five percent of the voting power outstanding of a corporation, nor shall it invest in the obligations or stocks of a corporation if the MCE and its directors, trustees and officers own or control, or as a result thereof shall own and control, in the aggregate more than 50 percent of the voting power. This subsection does not apply to limit the amount of an MCE’s assets that may be invested in the voting securities of a depository institution or any company that controls the depository institution.
410-141-5175. ASSET VALUATION AND PERMITTED INVESTMENTS: Loans; Security; Limitations

(1) Funds of an MCE may be invested in loans secured by pledges of obligations and stocks eligible for investment under these rules. As of the date the loan is made, it shall not exceed in amount 80 percent of the market value of the collateral pledged. No such loan shall be made for the purpose of providing funds to purchase or carry stocks registered on a national securities exchange.

(2) Funds of an MCE may be invested in loans secured by personal property or fixtures if such loan is:

(a) In connection with a loan on the security of real property or a leasehold as provided in OAR 410-141-5160;

(b) In an amount not exceeding 20 percent of the amount loaned on the real property or leasehold;

(c) For a term of not more than five years;

(d) Secured by a security interest which constitutes a first lien, except for taxes not then delinquent, on tangible, permanent personal property of the borrower kept and used on the premises, other than stocks of goods held for sale or transfer in the ordinary course of business or items which by normal use will be consumed or depleted during the period of the loan; and

(e) In an amount, the ratio of which to the value of the security does not exceed the ratio of the companion loan to the value of the real property or leasehold.
Funds of an MCE may be invested in the following:

(1) Obligations secured by a mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance.

(2) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.

(3) Bank and bankers' acceptances and other bills of exchange of the kind and nature made eligible by law for purchase in the open market by federal reserve banks.

(4) Deposits, certificates of deposits, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations insured with the Federal Deposit Insurance Corporation or qualified to do business under the laws of this state.

(5) Obligations issued by trustees or receivers of a corporation created or existing under the laws of a sovereign which, or the assets of which, are being administered under the direction of a court having jurisdiction if the obligation is adequately secured as to principal and interest.

(6) Transportation equipment used wholly or in part within a sovereign, or adequately secured trust certificates of participation or similar obligations or contracts evidencing an interest in such transportation equipment, where the investor is entitled to receive a determined or determinable portion of rental, purchase or other obligatory payments for use or purchase of the equipment.

(7) Purchase contracts or lease-purchase agreements executed under the Federal Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954.

(8) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act. An MCE acquiring such stock may exercise all rights and powers given to members under such Act, including but not by way of limitation the right to obtain advances or borrow money from such bank and to pledge collateral as security therefor.

(9) Obligations issued, assumed or guaranteed by the Inter-American Development Bank.

(10) Obligations issued, assumed or guaranteed by the Asian Development Bank.

(11) Obligations issued, assumed or guaranteed by the African Development Bank.
410-141-5185. ASSET VALUATION AND PERMITTED INVESTMENTS:  Personal Property; Purchases Or Loans For Protection Of Investment Property; Custom

(1) An MCE may acquire and retain personal property received as a dividend, gift or devise, or pursuant to a lawful plan of merger, consolidation or reorganization or bona fide agreement of bulk reinsurance, or in satisfaction or liquidation of an obligation, or in exchange or part payment for real or personal property previously owned or to protect or enhance such property.

(2) An MCE may make purchases or loan sums necessary to protect, preserve or enhance investment property, real or personal, which it is otherwise authorized to acquire or hold.

(3) The Authority shall allow as assets in any determination of the financial condition of the MCE only such property or investments acquired or retained under this section as are consistent with the customary operations of an MCE.
410-141-5190. ASSET VALUATION AND PERMITTED INVESTMENTS: “Prudent Investor” Standard

(1) Funds of an MCE may be invested in a manner not expressly prohibited under OAR 410-141-5195 and OAR 410-141-5230 provided such investments are made in the exercise of the judgment and care under the circumstances then prevailing which investors of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(2) Funds invested under this section shall not exceed the lesser of seven and one-half percent of the MCE's assets or the excess of the MCE's assets over all liabilities and required capitalization.

(3) If the Authority has reason to believe that loans or investments made pursuant to this section are not adequately secured or are not yielding an income the Authority may direct the MCE to report under oath the amount of such loans or investments, the security therefor and its market value.
410-141-5195. ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Conduct by Directors, Trustees, Officers, Agents or Employees

(1) Except in the case of the issuance or sale of the MCE's securities, as approved by a majority of the disinterested members of the MCE's Board, or failing such majority by the shareholders, a director, trustee, officer, agent or employee, or spouse or relative thereof, shall not receive any fee, commission, compensation or other valuable consideration whatsoever, directly or indirectly, for aiding, promoting or assisting:

(a) The planning, preparing or executing of an activity described in OAR 410-141-5320; or

(b) The planning, preparing or executing of any plan for the issuance, sale or acquisition of shares or other securities of the MCE for any purpose.

(2) Except as provided in subsections (4) and (5) of this section, a director, trustee or officer of an MCE shall not:

(a) Accept any money or thing of value for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the MCE; or

(B) The making of a loan to or from the MCE.

(b) Have a pecuniary interest, whether as principal, agent or beneficiary, in a purchase, sale or loan under paragraph (a) of this subsection.

(3) Except as provided in subsections (4) and (5) of this section, an MCE shall not do any of the following:

(a) Pay any money or thing of value to a director, trustee or officer of the MCE for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the MCE; or

(B) The making of a loan to or from the MCE.

(b) Make a loan to a director, trustee or officer of the MCE.

(c) Make any advances to a director, trustee or officer of the MCE for future services to be performed.

(d) Guarantee any financial obligations of a director, trustee or officer of the MCE.

(4) An MCE may contract, or otherwise enter into a transaction, for the provision of goods or services to the MCE in the normal course of business with a director, trustee or officer, or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, a proprietary interest in excess of five percent, if the interest of the director, trustee or officer is fully disclosed to the MCE’s Board and the MCE’s board thereafter approves and authorizes the contract or transaction by a vote sufficient for the purpose without counting the vote of the interested person.

(5) The prohibitions set forth in this section shall not apply to or affect:
(a) The payment to any director, officer or trustee of reasonable compensation, whether based in whole or in part upon commission or otherwise;

(b) The payment of a fee to any approved person for legal or other specialized or professional services rendered to the MCE and approved by the MCE’s Board;

(c) The making of loans or advances to agents or other employees of an MCE as required or as is expedient in the conduct of its business;

(d) The issuance of a debt obligation by an MCE to a director, officer or trustee of the MCE; and

(e) The advance of expenses to a director, officer or trustee for travel or other related business activities of the MCE.
410-141-5200. ASSET VALUATION AND PERMITTED INVESTMENTS: Investment of Funds in Obligations That Are Not Investment Quality; Percentage of Assets

(1) An MCE may acquire or hold obligations that are not investment grade only as provided in this section.

(2) For purposes of this section, an obligation is not investment grade if the obligation is either of the following:

(a) A “medium grade obligation”, which means an obligation that is rated three by the SVO;

(b) A “lower grade obligation,” which means an obligation that is rated four, five or six by SVO.

(3) An MCE shall not acquire, directly or indirectly, any medium grade or lower grade obligation of any person if, after given effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the MCE would exceed 20% of its allowed assets. For purposes of this section, the aggregate amount of medium grade and lower grade obligations shall be the aggregate value of the obligations as set forth in the most recent financial statement required by, and filed with, the Authority.

(4) In addition to the prohibition in subsection (3) on the aggregate amount of medium grade and lower grade obligations, an MCE shall not acquire or hold:

(a) More than ten percent of its allowed assets in obligations rated four, five or six by the SVO;

(b) More than three percent of its allowed assets in obligations rated five or six by the SVO;

(c) More than one percent of its allowed assets in obligations rated six by the SVO.

(5) Attaining the limit of any one category under subsection (4) does not preclude an MCE from acquiring or holding obligations in other categories, subject to the specific and multi-category limits of this section.

(6) The following prohibitions apply to investments in lower grade obligations and medium grade obligations issued, guaranteed or insured by any one person:

(a) An MCE shall not acquire or hold more than an aggregate of one percent of its allowed assets in medium grade obligations issued, guaranteed or insured by any one person;

(b) An MCE shall not acquire or hold more than one-half of one percent of its allowed assets in lower grade obligations issued, guaranteed or insured by any one person;

(c) In addition to the prohibitions in subsections (a) and (b) of this section, an MCE shall not acquire or hold more than one percent of its allowed assets in any medium or lower grade obligations issued, guaranteed or insured by any one person.

(7) This section does not prohibit an MCE from doing any of the following:
(a) Acquiring any obligation that the MCE committed prior to the effective date of this section to acquire if the MCE would have been permitted to acquire the obligation when the MCE made the commitment;

(b) Acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held.

(8) An MCE may acquire a medium or lower grade obligation of a person in which the MCE already has one or more medium or lower grade obligations if the obligation is acquired in order to protect an investment previously made in the obligations of the person. All such acquired obligations, however, shall not exceed one-half of one percent of the MCE's allowed assets.

(9) The board of directors of a domestic MCE that acquires, hold or invests, directly or indirectly, more than two percent of its allowed assets in medium grade and lower grade obligations shall adopt a written plan for the making of such investments. The plan shall contain guidelines with respect to the quality of the issues invested in as well as diversification standards. The diversification standards shall at least include standards regarding the issuer, industry, duration, liquidity and geographic location.

(10) An MCE shall not acquire any lower grade or medium grade obligation that in whole or in part exceed the applicable limitation established in this section. The requirement under this section does not apply to the acquisition of an obligation to which subsection (7) applies.

(11) If an obligation held by an MCE is of investment grade when acquired but subsequently becomes a medium grade or lower grade obligation, and that event causes the obligations of the MCE to exceed an applicable limit established under this section, the MCE shall not count the excess as an allowed asset. An MCE shall not hold any excess ascribable to deterioration of an obligation as described in this section longer than a continuous period of three years during which the obligation
410-141-5205. ASSET VALUATION AND PERMITTED INVESTMENTS: Approval by Board of Directors; Investments; Deposits

(1) Investments and sales or exchanges thereof shall be approved by the MCE’s Board or a committee thereof charged with the duty of investing the funds of the MCE.

(2) Deposits shall be made in banks or banking institutions approved by the MCE’s Board.
410-141-5210. ASSET VALUATION AND PERMITTED INVESTMENTS: Record of Investments; Contents

As to each investment, an MCE shall make a written record in permanent form, signed by a person authorized by the MCE’s Board or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:

(1) In the case of mortgage loans:
   (a) The name of the borrower;
   (b) The location and legal description of the property;
   (c) A physical description and the appraised value of the security as determined by a competent and qualified appraiser; and
   (d) The amount of the loan, rate of interest and terms of repayment.

(2) In the case of obligations:
   (a) The name of the obligor;
   (b) A description of the security and record of earnings;
   (c) The amount invested and the rate of interest or dividend; and
   (d) The maturity and yield based upon the purchase price.

(3) In the case of corporate stocks:
   (a) The name of the issuing corporation;
   (b) The record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock;
   (c) A summary of the financial statement of the corporation as of the end of the preceding fiscal year;
   (d) The exchange, if any, on which the stock is listed; and
   (e) The amount invested and the number of shares acquired and held.

(4) In the case of real estate, leaseholds or vendors’ interests under contracts of sale therein:
   (a) The location and legal description of the property;
   (b) A physical description and the appraised value of the property and interest therein;
   (c) The purchase price and terms;
   (d) The amount of any lien known to be against the property;
(e) If of a leasehold, the terms of the outstanding lease; and

(f) If a vendor's interest under a contract of sale, the terms and status of payments under the contract.

(5) In the case of all investments:

(a) The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents that are part of the MCE's records; and

(b) The name of any director, trustee or officer of the MCE, having a direct, indirect or contingent interest in the loan, security or property, or who would derive, directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.
410-141-5215. ASSET VALUATION AND PERMITTED INVESTMENTS: Disposal of Investments; Order of Authority; Grounds

After a hearing, the Authority may by written order require the disposal of an investment which the Authority finds to be made or retained in violation of Applicable Law, or of an investment which the Authority, for good cause, determines to be prejudicial to, or to impair the security of, the stockholders or Members of the MCE.

On loans secured by liens upon real property or leasehold interests therein, the buildings and other improvements located on the premises shall be kept insured against loss or damage from fire in an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is the lesser. The fire insurance policy or policies shall be payable to the MCE, or a trustee for its benefit, and continued in force until the loan is repaid or satisfied. Such policy or policies shall be held by the MCE or the trustee, unless the Authority has determined that a different method of protecting the MCEs against loss is satisfactory and has given prior approval of such method to the MCE.
410-141-5225. ASSET VALUATION AND PERMITTED INVESTMENTS: Investments In Property Of Any One Person Or Single Parcel Of Real Estate; Percentage Limitation

An MCE shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of ten percent of the MCE's assets, nor shall it invest more than ten percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to investments in, or loans upon, the security of the general obligations of a sovereign.
410-141-5230. ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Investments

(1) An MCE shall not make investments:

(a) Which at the time of purchase or acquisition are not interest-bearing or dividend or income-paying, or are in default in any respect; or

(b) From which the MCE is not entitled to receive for its exclusive account and benefit the interest, dividends or income.

(2) Subsection (1)(a) of this section shall not apply to property acquired under OAR 410-141-5165, OAR 410-141-5185 or OAR 410-141-5190 if the property is acquired with the intent and expectation that it will be income-producing.

(3) An MCE shall not invest its funds in any investment or security found by the Authority to be designed to evade any prohibition of Applicable Law.
410-141-5235. CAPITALIZATION: Capital and Surplus.

(1) An MCE shall possess and thereafter maintain capital or surplus or any combination thereof equal to no less than $2.5 million.

(2) An MCE applying for its original certificate of authority in this state shall possess, when first so authorized, additional capital or surplus, or any combination thereof, of not less than $500,000.

(3) Notwithstanding an MCE’s compliance with subsections (1) and (2), an MCE shall at all times also comply with the risk based capital standards set forth at OAR 410-141-5260 to 5285.

(4) For the protection of the public, the Authority may require an MCE to possess and maintain capital or surplus, or any combination thereof, in excess of the amounts otherwise required under this section owing to the type, volume and nature of business transacted by the MCE. For the purpose of determining the reasonableness and adequacy of a MCE’s capital and surplus, the Authority may consider the following factors, as among others:

(a) The size of the MCE, as measured by its assets, capital and surplus, reserves, capitated revenue and other appropriate criteria.

(b) The number of Members covered by the MCE.

(c) The extent of the geographical dispersion of the Members covered by the MCE.

(d) The nature and extent of the reinsurance program of the MCE.

(e) The quality, diversification and liquidity of the investment portfolio of the MCE.

(f) The recent past and projected future trend in the size of the investment portfolio of the MCE.

(g) The combined capital and surplus maintained by comparable MCEs.

(h) The adequacy of the reserves of the MCE.

(i) The quality and liquidity of investments in affiliates. The Authority may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of the Authority the investment so warrants.

(j) The quality of the earnings of the MCE and the extent to which the reported earnings include extraordinary items.
410-141-5240. CAPITALIZATION: Impaired Capital and Surplus.

(1) Whenever the Authority determines from any showing or statement made to the Authority or from any examination made by the Authority that the assets of an MCE are less than its liabilities plus required capitalization, the Authority may proceed immediately under the provisions of OAR 410-141-5520 and Section 26 of S.B. 1041 or the Authority may allow the MCE a period of time, not to exceed 90 days, in which to make good the amount of the impairment with cash or authorized investments.

(2) If the amount of any such impairment is not made good within the time prescribed by the Authority under subsection (1) of this section, the Authority shall proceed under the provisions of OAR 410-141-5520 and Section 26 of the S.B. 1041.

(3) An order directing an MCE to cure an impairment shall be confidential for such time as the Authority considers proper but not exceeding the time prescribed by the Authority for making the amount of the impairment good. If the Authority determines that the public interest in disclosure outweighs the public interest in protecting the solvency of the MCE, the Authority may make the order available for public inspection.
410-141-5245. CAPITALIZATION: Dividend and Distribution Restrictions

Unless prior written approval of the Authority is first obtained, an MCE shall not:

(1) Make any distribution of assets by dividend or other distribution to shareholders, equity members, parent companies or any related parties” that would cause the MCE’s capital and surplus to fall below the prescribed minimum under OAR 410-141-5235.

(2) Reduce its total adjusted capital by partial distribution of its assets, by payment in the form of a dividend or otherwise to shareholders, equity members, parent companies or any related parties below an amount equal to 300% of the MCE’s authorized control level risk-based capital, as defined in and calculated pursuant to OAR 410-141-5260.

(3) Declare or pay dividends to shareholders, equity members, parent companies or any related parties other than from earned surplus. For purposes of this subsection, “earned surplus” does not include surplus arising from unrealized capital gains or revaluation of assets.

(4) Declare or pay an extraordinary dividend or distribution to shareholders, equity members, parent companies or any related parties. A dividend or dividend is “extraordinary” for purposes of this subsection if it exceeds an amount equal to the aggregate of the MCE’s net after-tax income for the prior three calendar years, less any dividends or distributions paid during the prior two calendar years and the current year. “Extraordinary dividend or distribution” does not include pro rata distributions of any class of the MCE’s own securities.
410-141-5250. CAPITALIZATION: Restricted Reserve Account

(1) An MCE shall establish a Restricted Reserve Account and maintain sufficient Restricted Reserve Funds in the Restricted Reserve Account to meet the Authority’s Primary Reserve and Secondary Reserve requirements. Restricted Reserve Funds shall be held for the purpose of (i) making payments to providers in the event of the MCE’s insolvency and (ii) assuring the MCE’s performance in the event termination its contract with the Authority is terminated.

(2) An MCE’s Primary Reserve and Secondary Reserve balances shall be determined by calculating the MCE’s average monthly medical expense incurred.

(a) If an MCE has submitted quarterly financial statements for the current quarter and the prior three quarters, the average monthly medical expense incurred shall be derived by adding together the “total hospital and medical” expense (NAIC statement of revenue and expenses) for the prior four quarters and dividing by 12.

(b) A newly formed MCE will use an average of hospital and medical expense projected for the first four quarters of operation.

(c) Each quarter, the average expense liability will be recalculated using historical quarter data available.

(3) The amount an MCE must deposit and maintain in its Restricted Reserve Account shall be calculated as follows:

(a) If an MCE’s average monthly medical expense incurred is less than or equal to $250,000, an amount equal to the average monthly medical expense incurred shall be deposited into, and maintained in, the Restricted Reserve Account. This amount will be referred to as the MCE’s “Primary Reserve” and the MCE shall have no “Secondary Reserve” (hereinafter defined) until such time as the MCE’s average monthly medical expense exceeds $250,000.

(b) If an MCE’s average monthly medical expense is greater than $250,000, an amount equal to fifty percent (50%) of the difference between the average monthly medical expense and the Primary Reserve balance of $250,000 shall be deposited into, and maintained in, the Restricted Reserve Account. This additional amount is referred to as the MCE’s “Secondary Reserve.”

(c) An MCE’s Primary Reserve and, if applicable, its Secondary Reserve shall be recalculated and the balance of the Restricted Reserve Account shall be adjusted accordingly each quarter based upon the MCE’s then current average monthly medical expense.

(4) An MCE shall establish its Restricted Reserve Account with a third party financial institution for the purpose of holding the MCE’s Primary Reserve and Secondary Reserve.

(5) The Authority’s model depository agreement shall be used by the MCE to establish its Restricted Reserve Account. MCEs shall request the model depository agreement form from the Authority. MCEs shall submit the model depository agreement to the Authority at the time of application and the model depository agreement shall remain in effect throughout the period of time that the MCE contract is in effect. The model depository agreement cannot be changed without the Authority’s prior written approval.
(6) The MCE shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the prior written consent of the Authority.

(7) An MCE shall submit a copy of the model depository agreement at the time of application. If an MCE requests and receives written authorization from the Authority to make a change to its existing Restricted Reserve Account, the MCE shall submit a model depository agreement reflecting the changes to the Authority within 15 days of the date of the change.

(8) The following instruments are considered eligible deposits for the purposes of an MCE’s Primary Reserve and Secondary Reserve:

(a) Cash;

(b) Certificates of Deposit; or

(c) Amply secured obligations of the United States, or of a state or a political subdivision thereof as determined by the Authority.

(9) Except as provided in subsection (a), if an MCE has multiple contracts or agreements with the Authority, separate Restricted Reserve Accounts shall be maintained for each contract and agreement.

(a) Separate Restricted Reserve Accounts shall not be required for state-funded services and Oregon Health Plan contracts. However, the MCE shall be obligated to maintain actuarially sound and sufficient aggregate loss reserves for all its contractual liabilities, including both contractual liabilities that are supported by a Restricted Reserve Account and those which are not so supported.

(10) MCEs that enter into Sub-Capitation Arrangements with third-party providers for any portion of the health care services covered by the MCE’s agreement with the Authority may require that the Capitated Subcontractor establish, fund and maintain a Restricted Reserve Account and Restricted Reserve Funds for the Capitated Subcontractor’s portion of the risk assumed. Alternatively, the MCE may elect to establish, fund and maintain a single Restricted Reserve Account for all risk assumed under the agreement with the Authority (including the portion of those risks assumed by the Capitated Subcontractor). In either event, the MCE shall assure that the aggregate of the Restricted Reserve Account(s) and Restricted Reserve Funds comply with the requirements of this section.

(11) All the requirements of this section in respect of an MCE’s Restricted Reserve Account shall respectively apply to a Restricted Reserve Account established, funded and maintained by a Capitated Subcontractor under subsection (10).

(12) If a Restricted Reserve Fund of an MCE is held in a combined account or pool with other entities, the MCE and its subcontractors, as applicable, shall provide a statement from the pool or account manager or custodian confirming that the proceeds of the Restricted Reserve Fund shall be available for payment to the MCE and the Authority, on demand, and that no other payee has the contractual right to withdraw the proceeds of the Restricted Reserve Account under or pursuant to the agreement(s) governing administration of the Restricted Reserve Account.

(13) If an MCE wishes to withdraw proceeds from its Restricted Reserve Account in order to cover services under its Member Contracts, the MCE shall provide advance notice to the Authority of the amount to be withdrawn, the reason for withdrawal, when and how the Restricted Reserve Fund will be
replenished, and measures to avoid the need for future withdrawals from the Restricted Reserve Account. No such withdrawal shall be made without the prior written approval of the Authority.
410-141-5255. CAPITALIZATION: Surplus Notes

(1) With the prior approval of the Authority, an MCE may issue one or more surplus notes in order to secure funding needed to comply with minimum capital and surplus requirements and/or minimum risk based capital requirements under these rules, or otherwise to provide additional funding required for the MCE’s operations.

(2) Approval by the Authority of the issuance and sale of a surplus note by an MCE, including the form and terms of the surplus note and the purchaser of the surplus note, is required and shall be at the sole discretion of the Authority.

(3) The issuance and sale of a surplus note, and the form and terms of the surplus note, shall comply with (i) the standards for the issuance of surplus notes set forth in the Accounting Practices and Procedures Manual published by the NAIC and (ii) the following requirements:

(a) A surplus note shall be sold only in return for cash or marketable securities having readily determinable values and liquidity satisfactory to the Authority.

(b) Commissions, promotion expenses or finders fees may not be paid in connection with a surplus note sale except for commissions, expenses and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking or similar entity.

(c) Payment of principal or interest on a surplus note may not be made without the prior written approval of the Authority. The issuer shall provide the Authority with written notice at least thirty days prior to the intended date of the payment of principal or interest on a surplus note or such shorter period as the Authority may permit.

(d) Payment of principal or interest on a surplus note shall be subordinated to payment of all other liabilities of the issuer.

(e) Payment of interest on a surplus note may be made only from the unassigned funds of the issuer.

(f) Surplus notes shall not be assignable or negotiable without the prior written approval of the Authority.
410-141-5260. CAPITALIZATION: Risk-based Capital Definitions

As used in OAR 410-141-5260 to 410-141-5285:

(1) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions.

(2) "Company Action Level RBC" means, with respect to any MCE, the product of 2.0 (200%) and the MCE’s Authorized Control Level RBC.

(3) “Corrective Order” means an order entered by the Authority under OAR 410-141-5275 to OAR 410-141-5285 specifying corrective actions the Authority determines are required of an MCE in respect of its Total Adjusted Capital and its RBC Level.

(4) "Mandatory Control Level RBC" means the product of .70 (70%) and the MCE’s authorized control level RBC.

(5) "RBC Instructions" means the RBC Report form and including risk-based capital instructions adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time.

(6) "RBC Level" means an MCE’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC.

(7) "RBC Plan" means a comprehensive financial plan containing the elements specified in OAR 410-141-5260 to 410-141-5285. If the Authority rejects the RBC Plan and it is revised by the MCE with or without the Authority’s recommendation, the plan shall be called the "revised RBC Plan."

(8) "RBC Report" means the report required by OAR 410-141-5265.

(9) "Regulatory Action Level RBC" means the product of 1.5 (150%) and the MCE’s Authorized Control Level RBC.

(10) "Total Adjusted Capital" means the sum of:

(a) An MCE’s capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under OAR 410-141-5015; and

(b) Such other items, if any, as the RBC instructions may provide.
410-141-5265. CAPITALIZATION: RBC Reports

(1) On or before April 30 of each year, an MCE shall prepare and submit to the Authority a report of its Total Adjusted Capital and its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as are required by the RBC instructions. In addition, an MCE shall file its RBC Report with the NAIC in accordance with the RBC instructions. The MCE shall report in its annual financial statement its Total Adjusted Capital and its Authorized Control Level RBC as calculated in its RBC Report. An MCE’s RBC Report will be considered confidential and shall not be made available to the public.

(2) An MCE’s Total Adjusted Capital shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following factors into account (and may adjust for the covariance between such factors) determined in each case by applying the factors in the manner set forth in the RBC instructions:

   (a) Asset risk;
   (b) Credit risk;
   (c) Underwriting risk; and
   (d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A substantial excess of Total Adjusted Capital over Company Action Level RBC is desirable. Accordingly, an MCE should seek to maintain Total Adjusted Capital that exceeds the MCE’s Company Action Level RBC. Additional capital is used and useful in the business of a risk-bearing entity and helps to secure an MCE against various risks inherent in, or affecting, the business of an MCE and not accounted for or only partially measured by the risk-based capital requirements contained in OAR 410-141-5260 to 410-141-5285. The Authority recommends that an MCE endeavor to maintain its Total Adjusted Capital at no less than 300% of its Authorized Control Level RBC.

(4) If an MCE files an RBC Report that in the judgment of the Authority is inaccurate, then the Authority shall adjust the RBC Report to correct the inaccuracy and shall notify the MCE of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "adjusted RBC Report."
410-141-5270. CAPITALIZATION: Company Action Level Event

(1) "Company Action Level Event" means any of the following events:

(a) The filing of an RBC Report by an MCE that indicates that the MCE’s Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC. The MCE shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the MCE is the subject of a Company Action Level Event.

(b) Notification by the Authority to the MCE of an adjusted RBC Report that indicates an event in subsection (a), if the MCE does not challenge the adjusted RBC Report.

(c) If an MCE challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the MCE that the Authority has, after a hearing, rejected the MCE’s challenge.

(2) In the event of a Company Action Level Event, the MCE shall prepare and submit to the Authority an RBC Plan that:

(a) Identifies the conditions that caused or contributed to the Company Action Level Event.

(b) Contains proposed corrective actions that the MCE intends to take and that are expected to result in the elimination of the Company Action Level Event.

(c) Provides projections of the MCE’s financial results in the current year and at least two succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels.

(d) Identifies the key assumptions impacting the MCE’s projections and the sensitivity of the projections to those assumptions.

(e) Identifies the quality of, and problems associated with, the MCE’s business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any.

(3) The RBC Plan shall be submitted:

(a) Within 30 days of the Company Action Level Event; or

(b) Within 30 days after notification to the MCE that the Authority has, after a hearing, rejected the MCE’s challenge, if the MCE challenges an adjusted RBC Report which indicated a Company Action Level Event.

(4) Within 60 days after the submission by an MCE of an RBC Plan to the Authority, the Authority shall notify the MCE whether the RBC Plan shall be implemented or is, in the judgment of the Authority, unsatisfactory. If the Authority determines the RBC Plan is unsatisfactory, the notification to the MCE shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the Authority. Upon notification from the Authority, the
MCE shall prepare a revised RBC Plan, which may incorporate by reference any revisions proposed by the Authority, and shall submit the revised RBC Plan to the Authority:

(a) Within 45 days after the notification from the Authority; or

(b) Within 45 days after a notification to the MCE that the Authority has, after a hearing, rejected the MCE’s challenge, if the MCE challenges the notification from the Authority under this section.

(5) In the event of a notification by the Authority to an MCE that the MCE’s RBC Plan or revised RBC Plan is unsatisfactory, the Authority may at the Authority’s discretion, subject to the MCE’s right to a hearing under this section, specify in the notification that the notification constitutes a Regulatory Action Level Event.
410-141-5275. CAPITALIZATION: Regulatory Action Level Event

(1) "Regulatory Action Level Event" means, with respect to an MCE, any of the following events:

   (a) The filing of an RBC Report by the MCE that indicates that the MCE's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC. The MCE shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the MCE is the subject of a Regulatory Action Level Event.

   (b) Notification by the Authority to an MCE of an adjusted RBC Report that indicates the event in subsection (a), if the MCE does not challenge the adjusted RBC Report.

   (c) If the MCE challenges an adjusted RBC Report that indicates the event in subsection (a), the notification by the Authority to the MCE that the Authority has, after a hearing, rejected the MCE's challenge.

   (d) The failure of the MCE to file an RBC Report by the filing date, unless the MCE has provided an explanation for the failure that is satisfactory to the Authority and has cured the failure within ten days after the filing date.

   (e) The failure of the MCE to submit an RBC Plan to the Authority within the time period set forth in this section.

   (f) Notification by the Authority to the MCE that:

      (A) The RBC Plan or revised RBC Plan submitted by the MCE under this section is, in the judgment of the Authority, unsatisfactory; and

      (B) The MCE has not challenged the determination.

   (g) If the MCE challenges a determination by the Authority, the notification by the Authority to the MCE that the Authority has, after a hearing, rejected the challenge;

   (h) Notification by the Authority to the MCE that the MCE has failed to adhere to its RBC Plan or revised RBC Plan, but only if the failure has a substantial adverse effect on the ability of the MCE to eliminate the Company Action Level Event in accordance with its RBC Plan or revised RBC Plan and the Authority has so stated in the notification, if the MCE has not challenged the determination; or

   (i) If the MCE challenges a determination by the Authority, the notification by the Authority to the MCE that the Authority has, after a hearing, rejected the challenge.

(2) In the event of a Regulatory Action Level Event, the Authority may take some or all of the following actions:

   (a) Require the MCE to prepare and submit an RBC Plan or, if applicable, a revised RBC Plan.

   (b) Perform such examination or analysis as the Authority deems necessary of the assets, liabilities and operations of the MCE including a review of its RBC Plan or revised RBC Plan.
(c) Subsequent to the examination or analysis, issue a Corrective Order specifying such corrective actions as the Authority shall determine are required.

(d) Prohibit or limit enrollments until further notice.

(e) Require the MCE to provide monthly financial statements.

(3) In determining corrective actions, the Authority may take into account factors the Authority deems relevant with respect to the MCE based upon the Authority's examination or analysis of the assets, liabilities and operations of the MCE, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC Plan or revised RBC Plan shall be submitted:

(a) Within 30 days after the occurrence of the Regulatory Action Level Event; or

(b) Within 30 days after the notification to the MCE that the Authority has, after a hearing, rejected the MCE's challenge.

(4) The Authority may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Authority to review the MCE's RBC Plan or revised RBC Plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the MCE and formulate a Corrective Order with respect to the MCE. The fees, costs and expenses relating to consultants shall be borne by the affected MCE or such other party as directed by the Authority.
(1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC Report by the MCE that indicates that the MCE's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC. The MCE shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the MCE is the subject of an Authorized Control Level Event.

(b) The notification by the Authority to the MCE of an adjusted RBC Report that indicates the event in subsection (a), if the MCE does not challenge the adjusted RBC Report.

(c) If the MCE challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the MCE that the Authority has, after a hearing, rejected the MCE's challenge.

(d) The failure of the MCE to respond, in a manner satisfactory to the Authority, to a Corrective Order if the MCE has not challenged the Corrective Order.

(e) If the MCE has challenged a Corrective Order and the Authority has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the MCE to respond, in a manner satisfactory to the Authority, to the Corrective Order subsequent to rejection or modification by the Authority.

(2) In the event of an Authorized Control Level Event, the Authority may take any or all of the following actions:

(a) Take such actions as are allowed under OAR 410-141-5275 regarding an MCE with respect to which a Regulatory Action Level Event has occurred.

(b) If the Authority deems it to be in the best interests of the Members and creditors of the MCE and of the public, the Authority may:

(A) Place the MCE under regulatory control and/or apply to have the MCE made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041.

(B) Terminate the MCE’s contract(s) with the Authority and cause the Members covered by the MCE to be transferred to one or more other MCEs.
410-141-5285. CAPITALIZATION: Mandatory Control Level Event

(1) "Mandatory Control Level Event" means any of the following events:

(a) The filing of an RBC Report that indicates that the MCE’s Total Adjusted Capital is less than its Mandatory Control Level RBC. The MCE shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the MCE is the subject of a Mandatory Control Level Event.

(b) Notification by the Authority to the MCE of an adjusted RBC Report that indicates the event in subsection (a), if the MCE does not challenge the adjusted RBC Report.

(c) If the MCE challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the MCE that the Authority has, after a hearing, rejected the MCE’s challenge.

(2) In the event of a Mandatory Control Level Event, the Authority shall take the following actions:

(a) Place the MCE under regulatory control and/or apply to have the MCE made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041.

(b) Terminate the MCE’s contract(s) with the Authority and cause the Members covered by the MCE to be transferred to one or more other MCEs.

(3) Upon the occurrence of any of the following events, an MCE may request a hearing for the purpose of challenging any determination or action by the Authority in connection with any event described in this section. The MCE shall notify the Authority of its request for a hearing not later than the fifth day after notification by the Authority under any of the events described in this section. Upon receipt of the MCE’s request for a hearing, the Authority shall set a date for the hearing. The date shall be not less than 10 or more than 30 days after the date of the MCE’s request. The events to which the opportunity for a hearing under this section relates are as follows:

(a) Notification to an MCE by the Authority of an adjusted RBC Report;

(b) Notification to an MCE by the Authority that:

(A) The MCE’s RBC Plan or revised RBC Plan is unsatisfactory; and

(B) Notification constitutes a Regulatory Action Level Event with respect to the MCE.

(c) Notification to an MCE by the Authority that the MCE has failed to adhere to its RBC Plan or revised RBC Plan and that the failure has a substantial adverse effect on the ability of the MCE to eliminate the Company Action Level Event with respect to the MCE in accordance with its RBC Plan or revised RBC Plan; or

(d) Notification to an MCE by the Authority of a Corrective Order with respect to the MCE.

(4) The Authority may keep confidential an MCE’s RBC Plan or the results or report of any examination or analysis conducted by the Authority in connection with an MCE’s RBC Plan if the Authority
determines that disclosure of such information (i) is not necessary to protect the public interest and (ii) may jeopardize the MCE’s ability to successfully implement the RBC Plan.

410-141-5290. REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Reports Of Material Acquisitions And Dispositions Of Assets and Material Nonrenewals, Cancellations Or Revisions Of Ceded Reinsurance Agreements

(1) Every MCE shall file a report with the Authority disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the subject transaction has been submitted to the Authority for review, approval or information under or pursuant to another provision of Applicable Law.

(2) The report required in subsection (1) is due no later than the 15th day following the end of the calendar month in which any of the reportable transaction occurred.
410-141-5295. REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Materiality and Reporting Standards for Asset Acquisitions and Dispositions

(1) No acquisitions or dispositions of assets need be reported pursuant to OAR 410-141-5290 if the acquisition or disposition is not material. For purposes of OAR 410-141-5290, a material acquisition (or the aggregate of any series of related acquisitions during any 30-day period) or disposition (or the aggregate of any series of related dispositions during any 30-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting MCE's total allowed assets as reported in its most recent statutory statement filed with the Authority.

(2) OAR 410-141-5290 applies to the following asset acquisitions and asset dispositions:

(a) Asset acquisitions include every purchase, lease, exchange, merger, consolidation, succession or other acquisition by or for the reporting MCE.

(b) Asset dispositions include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction or other disposition.

(3) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) Date of the transaction.

(b) Manner of acquisition or disposition.

(c) Description of the assets involved.

(d) Nature and amount of the consideration given or received.

(e) Purpose of, or reason for, the transaction.

(f) Manner by which the amount of consideration was determined.

(g) Gain or loss recognized or realized as a result of the transaction.

(h) Name or names of the person or persons from whom the assets were acquired or to whom they were disposed.
410-141-5300. REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Materiality and Reporting Standards for Changes in Ceded Reinsurance Agreements

(1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to OAR 410-141-5290 if the nonrenewals, cancellations or revisions are not material. A material nonrenewal, cancellation or revision is one that affects:

(a) More than fifty percent of the MCE's total ceded capitated revenue;

(b) More than fifty percent of the MCE's total ceded indemnity and loss adjustment reserves; or

(c) More than fifty percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the MCE's most recent annual statement.

(2) Either of the following events shall constitute a material revision that must be reported:

(a) An authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers.

(b) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(3) No filing shall be required if the MCE's total ceded capitated revenue represents, on an annualized basis, less than ten percent of its total written capitated revenue for direct and assumed business.

(4) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of a ceded reinsurance agreement:

(a) Effective date of the nonrenewal, cancellation or revision;

(b) The description of the transaction with an identification of the initiator thereof;

(c) Purpose of, or reason for, the transaction; and

(d) If applicable, the identity of the replacement reinsurers.
(1) The Authority may require an MCE to produce books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of the MCE or the MCE’s affiliates that the Authority determines are needed for the Authority to investigate or examine the MCE’s financial condition or to investigate, examine or determine the MCE’s compliance with Applicable Law or with the MCE’s contracts and agreements with the Authority.

(2) If an MCE, without good cause, fails to comply with its obligations under subsection (1), the Authority may impose a civil penalty on the MCE pursuant to OAR 410-141-5540 and/or may suspend or revoke the MCE’s agreement with the Authority.
410-141-5310. EXAMINATIONS: Authority Examinations Of MCEs

(1) The Authority may examine every MCE, including an audit of the financial affairs of an MCE, as often as the Authority determines an examination to be necessary or otherwise appropriate under the circumstances. Without limiting the Authority’s right to examine an MCE at such times and with such frequency as the Authority determines to be necessary or otherwise appropriate under the circumstances, an MCE will be examined at least once during the MCE’s contract period. An examination will be conducted for such purposes and such scope as the Authority determines to be necessary or otherwise appropriate under the circumstances, including, without limitation, an investigation and examination of the financial condition of the MCE, its ability to fulfill its obligations and its manner of fulfillment, the nature of its operations and its compliance with these rules and applicable MCE contract requirements.

(2) Examinations will be conducted under and pursuant to the following practices and procedures, subject to such exceptions, modifications and other practices and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances:

(a) The Authority will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The Authority may contract and coordinate all or portions of the examination with DCBS. Any reference to the Authority in this section shall include DCBS when DCBS is working under an interagency agreement with the Authority to conduct the examination. DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with this section.

(b) The examiner(s) shall conduct the examination in accordance with the guidelines, practices, principles and procedures set forth in the Examiners Handbook published by the NAIC. The Authority may instruct or allow the examiner(s) to follow or employ such other guidelines, practices, principles and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances.

(c) The Authority may retain appraisers, independent actuaries, independent certified public accountants and other professionals and specialists as needed. The cost of retaining such professionals and specialists shall be paid currently, as incurred (including prepayment of retainer amounts), by the MCE that is the subject of the examination.

(d) The Authority, including its appointed examiners, may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.

(3) Every person being examined or investigated shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control, including, in the case of an examination, the property, assets, business and affairs of the person.

(4) Upon written request of the Authority or its examiners, the MCE, its affiliates and each officer, director, employee, contractor, agent or representative of the MCE and/or the MCE’s affiliates promptly shall produce to the Authority or its examiners, or otherwise shall promptly provide the Authority or its examiners with convenient, complete and free access to, all books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of such persons that relate in any way to the subject matter of the examination. The MCE shall use its best efforts to
cause the MCE’s affiliates and each officer, director, employee, contractor, agent or representative of the MCE and/or the MCE’s affiliates to comply with a request made by the Authority or its examiners under this subsection 4.

(5) The procedure for completion of an examination shall be as follows:

(a) Not later than sixty days following completion the examination, the examiner(s) shall submit to the Authority a draft Report of Examination. The draft report shall include fact-findings and conclusions and also may include proposed recommendations for curative actions to be undertaken by the MCE based on the draft report’s fact-findings and conclusions.

(b) The Authority will provide the MCE with a copy of the draft report and allow the MCE a reasonable opportunity to review and comment on the draft report. A copy of the draft report shall be delivered to the MCE by certified mail, addressed to the MCE’s home office or to such other point of contact as the MCE may designate in writing to the Authority for this purpose. The Authority will consider the MCE’s comments on the draft report and may request additional information or meet with the MCE for the purpose of resolving questions or obtaining additional information. The Authority may consult with or cause the examiner(s) to consider any submissions made by the MCE in response to the draft report and any additional information provided to the Authority by the MCE.

(c) Before the Authority accepts and files the draft report as a final examination report available for publication or makes any matters relating thereto public, the MCE may request a hearing on the draft report and any of its fact-findings, conclusions and recommendations. The MCE must request a hearing by letter, delivered by certified mail to the Authority no later than thirty days following the date on which the draft report was delivered to the MCE (“Hearing Request Period”).

(d) The Authority will appoint an Authority staff member or other representative to conduct the hearing contemplated by Section 5(c) (“Hearing Officer”). The Hearing Officer shall consider the evidence and comments presented by the MCE at the hearing, together with any other evidence or comments offered by the examiner(s). Following the hearing, the Hearing Officer will report to the Authority whether any changes should be made to the draft report. The Authority will consider the Hearing Officer’s report and will determine whether the draft report should be adopted without change, should be modified or whether comments offered by the MCE should be included as a supplement to the draft report. The Authority shall not be bound by the Hearing Officer’s report and may accept or decline to adopt any changes recommended by the Hearing Officer in the Authority’s sole discretion. The Authority shall adopt the draft report, and make it available for public inspection as a final examination report on the first to occur of (i) expiration of the Hearing Request Period if no request for hearing is received from the MCE, and (ii) if a hearing is requested by the MCE, completion of the hearing and the Hearing Officer’s report, followed by the Authority’s adoption of the draft report, with or without modifications, as a final examination report.

(6) The Authority shall make a final examination report available for public inspection. If the Authority, in its sole discretion, considers that doing so is in the public interest, the Authority may publish notice of a final examination report, its availability for public inspection and/or a summary of, or excerpts from, the final examination report by such means (including print, broadcast and web-based media) as the Authority determines to be appropriate under the circumstances.

(7) OAR 410-141-3390 applies generally to examinations and the examination process under this section. In accordance with OAR 410-141-3390, the Authority may designate as confidential and exempt
from public inspection any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to the examiner(s) or the Authority during the course of an examination (collectively, “Examination Materials”). If the Authority, in the Authority's sole discretion, determines that disclosure is necessary to protect the public interest, the Authority may make available any such Examination Materials to any other person in the course of the examination or to the public generally.

(8) Nothing in this section shall be construed or operate to limit the Authority's right or obligation to disclose a draft report or final examination report, or any Examination Materials to any other federal or state regulatory authority where required by law, where permitted by the MCE's agreement with the Authority, or where otherwise determined by the Authority to be in the public interest.

(9) No cause of action may arise and no liability may be imposed against the Authority or DCBS, an authorized representative of the Authority or DCBS or any examiner appointed by the Authority or DCBS for any statements made or conduct performed in good faith pursuant to an examination or investigation. No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or documents to the examiner(s) or the Authority or any authorized representative of the Authority in connection with an examination, or for providing testimony in the course of an examination, unless the person doing so acted in bad faith, with fraudulent intent or intent to deceive.

(10) Subsection (9) supplements, and does not abrogate or modify in any way, any common law or statutory privilege or immunity otherwise enjoyed by any person to which that subsection applies.

(11) Facts determined and conclusions made by the Authority pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action.

(12) In addition to other powers of the Authority under these rules relating to the examination and investigation of MCEs, the Authority may order, at any time and from time to time, an MCE to produce such books, records, accounts, papers, documents and computer and other recordings in the possession of the MCE or its affiliates as are necessary to ascertain the financial condition of the MCE or to determine compliance with these rules. If the MCE fails to comply with such an order, the Authority may examine the affiliates to obtain such information, in addition to imposing sanctions or other remedies under these the Authority rules or the MCE contract.

(13) At any time during the course of, or following, an examination, the Authority may take any other actions and exercise any other powers, remedies or authority available to the Authority or otherwise contemplated by these rules.
The purpose of OAR 410-141-5315 to OAR 410-141-5510 is that of regulating the control or ownership of an MCE or of an MCE holding company system. A further purpose of OAR 410-141-5315 to OAR 410-141-5510 is that of promoting the public interest and the interests of MCE Members and shareholders by facilitating, consistent with those interests, better use of management skills and services, diversification through acquisitions, free access to capital markets, sound tax planning and open competition.
410-141-5320 MCE HOLDING COMPANY REGULATION: Activities Prohibited Unless Certain Provisions Satisfied

(1) Unless a person first satisfies the provisions of OAR 410-141-5325 to OAR 410-141-5350, the person may not engage in any of the following activities:

(a) A person other than the person that issues voting securities of a domestic MCE may not acquire or attempt to acquire control of the domestic MCE. For purposes of this paragraph, a person acquires or attempts to acquire control of a domestic MCE if, as a result of engaging in and completing any of the following actions, in the open market or otherwise, the person would directly or indirectly control the domestic MCE, or would control the domestic MCE by exercising a right to acquire or by conversion:

(A) Making a tender offer for or a request or invitation for tenders of any voting security of the domestic MCE;

(B) Entering into any agreement to exchange securities for any voting security of the domestic MCE; or

(C) Acquiring or seeking to acquire any voting security of the domestic MCE.

(b) A person may not enter into an agreement to merge with or otherwise acquire control of a domestic MCE.

(c) A person may not engage or attempt to engage in any of the following activities:

(A) Acquiring, directly or indirectly, ownership of all or a significant portion of the assets of a domestic MCE. For purposes of this subparagraph, such an acquisition includes an offer, a request or invitation for offers, an acquisition or series of acquisitions in the open market, an exchange offer or agreement, an agreement that provides an option to purchase, or a purchase of or offer to purchase securities that are convertible into voting securities.

(B) Bulk reinsurance by one MCE of all or a significant portion of the Members, or a major class of the Members, who are covered by another MCE or related or affiliated group of MCEs. The provisions of this subparagraph do not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the Authority.

(C) Any other arrangement that brings together under common ownership, control or responsibility all or a significant portion of the assets, liabilities or Member Contracts in force of two or more persons, at least one of which is a domestic MCE.

(D) The provisions of subsection (1) of this section do not apply to any offer, request, invitation, agreement or acquisition the Authority by order as:

(i) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control or ownership of a domestic MCE; or

(ii) Otherwise not comprehended within the purposes of subsection (1) of this section.

(2) Subject to the requirements of OAR 410-141-5320 to OAR 410-141-5360, a domestic stock MCE that is a corporation for profit may merge or consolidate with a stock MCE that is a corporation for profit.
(3) A person that seeks in any manner to give up a controlling interest in a domestic MCE shall file a confidential notice of the person’s proposed divestiture with the Authority and send a copy of the notice to the domestic MCE at least 30 days before the person ceases to own or hold a controlling interest in the domestic MCE. The notice is confidential until the transaction that transfers control of the domestic MCE concludes, unless the Authority determines, in the Authority’s sole discretion, that keeping the notice confidential will interfere with the enforcement of this subsection.

(a) The Authority shall determine in which instances an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction.

(b) This subsection does not apply if a person files a statement under OAR 410-141-5340.

(4) If an acquisition is otherwise subject to this section, the acquiring party shall file a notice with the Authority in accordance with OAR 410-141-5350. An acquiring party that does not file the notice may be subject to the penalty specified in OAR 410-141-5355 and 5360.
(1) An acquiring party shall:

(a) File a statement of acquisition that has the information specified in this section with the Authority of the Authority for approval. If more than one acquiring party must file a statement under this paragraph, any or all acquiring parties that are acting in concert may file a joint statement.

(b) Deliver or mail to the domestic MCE to which the activity described in OAR 410-141-5320 applies, concurrently with filing the statement under paragraph (a) of this subsection, a statement that has the information specified in this section. A statement mailed under this paragraph must be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement must be the statement mailed or delivered under this paragraph.

(2) The statement an acquiring party files with the Authority under this section must be made under oath or affirmation and must have the following information:

(a) The name and address of the domestic MCE that is subject to the acquisition and of each acquiring party that must file the statement, additional biographical and business information about each acquiring party that must file the statement, and business plans and information regarding persons who will serve as or perform functions of directors or officers, as required by the Authority.

(b) The source, nature and amount of the consideration used or to be used in effecting the activity, a description of any transaction in which funds were or are to be obtained for the activity and the identity of persons that provide the consideration. If a source of consideration is a loan made in the lender’s ordinary course of business, the identity of the lender must remain confidential if the acquiring party filing the statement requests confidentiality.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the acquiring party’s preceding five fiscal years, or for as long as the acquiring party and any predecessors of the acquiring party have existed, if the acquiring party and the acquiring party’s predecessors have existed for a shorter period of time, and similar unaudited information as of a date not earlier than 90 days before the statement was filed.

(d) Any plan or proposals that each acquiring party that must file a statement has to liquidate the MCE, to sell the MCE’s assets or to merge or consolidate the MCE with any person or to make any other material change in the MCE’s business, corporate structure or management.

(e) The number of shares of any security of a type described in OAR 410-141-5320 that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement or acquisition of any security of a type described in OAR 410-141-5320 and a statement as to the method by which the acquiring party determined the fairness of the proposal.

(f) The amount of each class of any security of a type described in OAR 410-141-5320 that each acquiring party owns beneficially or concerning which each acquiring party has a right to acquire beneficial ownership.

(g) A full description of any contracts, agreements or understandings with respect to any security of a type described in OAR 410-141-5320 in which any acquiring party is involved, including but not limited...
to contracts, agreements or understandings that govern a transfer of any of the securities or that relate to joint ventures, loan or option arrangements, puts or calls, loan guarantees, guarantees against loss or guarantees of profits, division of losses or profits, or giving or withholding proxies. The description must identify the persons with which each acquiring party has entered into the contract, agreement or understanding.

(h) The names of persons who have purchased any securities of a type described in OAR 410-141-5320 during the 12 months before the date on which the acquiring party files the statement under this section, together with the dates of purchase and the amount and type of consideration the persons paid or agreed to pay.

(i) A description of any recommendations to purchase any securities of a type described in OAR 410-141-5320 that an acquiring party made during the 12 months before the date on which the acquiring party files the statement under this section, or of any recommendations that another person made as a result of interviewing an acquiring party or at an acquiring party’s suggestion.

(j) Copies of all tender offers, requests, exchange offers, invitations to tender or agreements to acquire securities of a type described in OAR 410-141-5320, along with any additional material used to solicit the tender offers, requests, exchange offers, invitations to tender or agreements, if any additional material was distributed.

(k) The term of any contract, agreement or understanding for soliciting securities of a type described in OAR 410-141-5320 for tender that is made with or proposed to be made with a broker-dealer, together with the fees, commissions or other compensation the broker-dealer will receive in connection with the solicitation.

(l) Any additional information the Authority may require.

(3) All requests or invitations for tenders or advertisements that make a tender offer or request or invite tenders of securities for control of a domestic MCE made by or on behalf of any acquiring party required to file the statement under this section must have the information specified in subsection (2) of this section. Copies of the materials must be filed with the Authority at least 10 days before the time the materials are first published or sent or given to security holders. Any additional materials that solicit or request the tenders after the initial solicitation or request must have the information specified in subsection (2) of this section. Copies of the additional materials must be filed with the Authority at least 10 days prior to the time the materials are first published or sent or given to security holders.

(4) If any acquiring party required to file the statement under this section is a partnership, limited partnership, syndicate or other group, the Authority may require that the information specified in subsection (2) of this section be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person that controls the partner or member. If any partner, member or person is a corporation or if the acquiring party is a corporation, the Authority may require that the information described in subsection (2) of this section be given with respect to the corporation and each officer and Authority of the corporation and each person that is directly or indirectly the beneficial owner of more than 10 percent of the outstanding securities of the corporation.

(5) If any material change occurs in the facts set forth in the statement filed under this section, the party that filed the statement shall file with the Authority and send to the MCE, within two business
days after the party learns of the change, an amendment that sets forth the change together with copies of all documents and other material relevant to the change.

(6) If an offer, request, invitation, agreement or acquisition described in OAR 410-141-5320 is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C.A. §77a et seq., or in circumstances that require disclosing similar information under the Securities Exchange Act of 1934, 15 U.S.C.A. § 78a et seq., or under a state law that requires a similar registration or disclosure, the party or parties may use the registration statement or disclosure to provide the information the party or parties must provide in the statement required under subsection (1) of this section.

(7) Any acquiring party may file with the completed statement or within 10 days after the date on which the acquiring party filed the statement a written request for a hearing on the acquisition. The MCE that is subject to the acquisition may file with the Authority a written request for a hearing on the acquisition within 10 days after the acquiring party filed the completed statement.
410-141-5330. MCE HOLDING COMPANY REGULATION: Hearing, Request, Notice

(1) If a person has duly filed a written request for a hearing or if, within 10 days after an acquiring party has filed a completed statement under OAR 410-141-5325, the Authority finds that holding a hearing is necessary or advisable, the Authority shall cause a hearing to be held.

(2) The hearing must be held at a time and place the Authority designates within 30 days after the written request for a hearing was filed or within 30 days after the date of the Authority’s order for a hearing to be held. In addition to any other notice required under this section, at least 20 days before the hearing the Authority shall notify the person that filed the written request and the acquiring party of the hearing. At least seven days before the hearing, one or more of the MCE the acquiring party shall give notice as the Authority requires to parties the Authority designates. The acquiring party shall bear the expense of providing the notice and, as security for the payment of the expense, shall file with the Authority a bond or other deposit in a form and amount acceptable to the Authority.

(3) The hearing must be conducted in accordance with the provisions for a contested case proceeding under ORS chapter 183.
410-141-5335. MCE HOLDING COMPANY REGULATION: Determination Concerning Proposed Activity By Authority, Time For Decision, Grounds For Refusal

(1) The Authority shall make a determination concerning the proposed activity described in OAR 410-141-5320 within a period that begins 60 days before the effective date of the activity. The Authority may refuse, after a public hearing, to approve a proposed activity if:

(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

(b) The activity is inequitable or unfair to the Members or shareholders of any MCE involved in, or to any other person affected by, the proposed activity. However, in connection with an acquisition of the MCE’s voting securities from the MCE’s shareholders, the Authority shall evaluate whether the proposed acquisition is fair to the shareholders of the MCE to be acquired only with respect to any shareholders that are unaffiliated with the acquiring party or parties and that would remain after the acquisition is completed.

(c) The activity would substantially reduce the security of and service to be rendered to Members of any domestic MCE involved in the proposed activity or would otherwise prejudice the interests of such Members.

(d) The activity provides for a foreign or alien MCE to be an acquiring party, and the Authority further finds that the MCE cannot satisfy the requirements of this state for transacting the MCE business that would be affected by the activity.

(e) The activity or the completion of the activity would substantially diminish competition in this state or tend to create a monopoly. In determining whether the activity would substantially diminish competition in this state or tend to create a monopoly, the Authority:

(A) Shall require the information described in OAR 410-141-5350 and apply the standards set forth in OAR 410-141-5355.

(B) May not disapprove the activity if the Authority finds that the activity would yield substantial economies of scale or increase the availability of MCE coverage as provided in OAR 410-141-5355(10).

(C) May condition the Authority’s approval of the activity on a party’s removing the basis for the Authority’s disapproval within a specific period of time.

(f) After the change of control or ownership, the domestic MCE to which the activity described in OAR 410-141-5320 applies would not be able to satisfy the requirements for receiving a certificate of authority to transact the line or lines of business for which the domestic MCE is currently authorized.

(g) The financial condition of any acquiring party might jeopardize the financial stability of the MCE.

(h) The plans or proposals that the acquiring party has to liquidate the MCE, sell the MCE’s assets or consolidate or merge the MCE with any person, or to make any other material change in the MCE’s business or corporate structure or management, are unfair and unreasonable to the MCE’s Members and not in the public interest.
(i) The competence, experience and integrity of the persons that would control the operation of the MCE are such that permitting the activity or permitting completion of the activity would not be in the interest of the MCE’s Members and the public.

(j) The activity or completing the activity is likely to be hazardous or prejudicial to the insurance-buying public.

(k) The activity is subject to other material and reasonable objections.

(2) If the Authority disapproves the proposed activity, the Authority shall promptly notify, in writing, the MCE and each acquiring party involved in the proposed activity, specifying the bases, factors and reasons for the disapproval and giving the MCE and each acquiring party that filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the Authority’s objections.

(3) If the Authority determines that a party that acquires control of a domestic MCE must maintain or restore the domestic MCE’s capital to a level required under the laws and rules of this state, the Authority shall make and communicate the determination to the acquiring party not later than 60 days after the acquiring party files the statement required under OAR 410-141-5325.

(4) The acquiring party or parties that filed a statement of acquisition under OAR 410-141-5325 shall file any amendment to the statement that responds to the Authority’s objection and, if a hearing was held on the proposed activity, shall resubmit the amendment at a hearing held under this section unless the Authority finds that a hearing is not necessary to protect the Members, shareholders or any other person the proposed activity affects.

(5) The Authority may retain at the acquiring party’s expense any actuaries, accountants and other experts not otherwise a part of the Authority’s staff as the Authority may reasonably need to assist the Authority in reviewing the proposed activity.

(6) The Authority may establish the effective date of an activity to which OAR 410-141-5320 applies in the order that approves the activity.

(7) Within 60 days after receiving a notice of approval or disapproval, any MCE or other party to a proposed activity, including the MCE subject to the acquisition, may appeal the Authority’s final order as provided in ORS chapter 183. For purposes of the judicial review, the specifications the Authority must set forth in the Authority’s written notice are the findings of fact and conclusions of law of the Authority.
410-141-5340. MCE HOLDING COMPANY REGULATION: Acquisition Statement

Not later than the 30th day after consummation of an activity described in OAR 410-141-5320, the acquiring party shall submit to the Authority a statement that the activity has been consummated. The statement must be made under the oath of the presiding officer of the board of directors of the acquiring party.
OAR 410-141-5345. MCE HOLDING COMPANY REGULATION: Acquisition Of MCE; Application Of Provisions

(1) As used in subsection (3)(d) of this section, “market” means the line of business that an MCE authorized to operate in this state reports in the annual financial statement that the MCE files under OAR 410-141-5015.

(2) Except as provided in subsection (3) of this section, OAR 410-141-5350, OAR 410-141-5355 and OAR 410-141-5360 apply to an acquisition in which a change of control occurs in an MCE that is authorized to transact insurance in this state.

(3) OAR 410-141-5350, OAR 410-141-5355 and OAR 410-141-5360 do not apply to:

(a) A person’s purchase of an MCE’s securities solely for investment purposes, provided that the person does not use the person’s ownership of the securities to cause or attempt to cause an action, or to vote to take an action, that would cause a substantial decrease in competition in an insurance market in this state. If a presumption arises that a person controls the MCE by reason of the person’s purchase of securities, the person’s purchase of the securities is not solely for investment purposes unless the Authority accepts a disclaimer of control from the person or the Authority affirmatively finds that the person does not control the MCE.

(b) A person’s acquisition of another person, if both the person that is acquiring the other person and the person that is subject to the acquisition are not engaged primarily in transacting MCE business, either directly or through an affiliate. An exemption under this subsection from the application of OAR 410-141-5350, OAR 410-141-5355 and OAR 410-141-5360 is effective only if the person that is acquiring the other person notifies the Authority in accordance with OAR 410-141-5350 not less than 30 days before the date on which the acquisition would be completed. The requirement to notify the Authority does not apply if an exclusion set forth in paragraph (a), (c) or (d) of this subsection applies to the acquisition.

(c) An acquisition in which a person acquires another person with which the person is already affiliated.

(d) An acquisition that, immediately after completion, would meet any of these conditions:

(A) The combined market share held by an MCE that is acquiring another MCE and the MCE that is subject to the acquisition does not exceed five percent of the total market share;

(B) The market share does not increase for either an MCE that is acquiring another MCE or the MCE that is subject to the acquisition; or

(C) The combined market share held by an MCE that is acquiring another MCE and the MCE that is subject to the acquisition does not:

(i) Exceed 12 percent of the total market share; or

(ii) Increase by more than two percent of the total market share.

(D) An acquisition of an MCE for which the Authority finds that:
(i) The MCE is in failing condition;

(ii) No feasible alternative exists for improving the MCE’s condition; and

(iii) The public benefit that would arise from improving the MCE’s condition by means of the acquisition outweigh the detriment that may result from diminishing competition among MCE.
410-141-5350. MCE HOLDING COMPANY REGULATION: Notice Of Proposed Acquisition

(1) A person that proposes to acquire another person, or the person that would be subject to the acquisition, must notify the Authority and wait for the period of time specified in subsection (3) of this section before completing the acquisition. The Authority shall treat a notice and information that a person submits in accordance with this section as confidential and as exempt from disclosure under ORS 192.311 to 192.478.

(2) A person that completes an acquisition without notifying the Authority as provided in this subsection may be subject to an order from the Authority under OAR 410-141-5360.

(3) The Authority by shall provide the form and content of the notice that a person must submit under subsection (1) of this section. The Authority may require any information the Authority deems necessary to determine whether the acquisition may substantially diminish competition in the MCE business in this state or may tend to create a monopoly. The additional information may include an opinion from an economist that assesses what competitive impact the acquisition may have in this state. A person that submits an economist’s opinion under this subsection shall also submit a summary of the economist’s education and experience that reflect the economist’s ability to render an informed opinion.

(4) A person may not proceed with an acquisition until 30 days after the Authority receives the notice under subsection (1) of this section, unless the Authority permits the acquisition to proceed earlier.

(5) During the period of time described in subsection (4), the Authority may require the person to submit additional information related to the acquisition. If the Authority requires additional information, the person may not proceed with the acquisition until 30 days after the Authority receives the additional information, unless the Authority permits the acquisition to proceed earlier.
As used in this section:

(a) “Highly concentrated market” means a market in which the share that the four largest MCEs hold is 75 percent or more of the market.

(b) “MCE” means a company that conducts the business of an MCE in this state or a group of companies under common management, ownership or control that does so.

(c) “Market” means the relevant product or geographical market the Authority determines under subsection (8) of this section.

(2) The Authority may issue an order under OAR 410-141-5360 if an MCE fails to submit adequate information in accordance with OAR 410-141-5350 or if prima facie or substantial evidence of the type described in subsection (4)(a) or (b) of this section exists to support the Authority’s determination that an acquisition may:

(a) Substantially diminish competition in a line of insurance in this state; or

(b) Tend to create a monopoly.

(3) Prima facie evidence exists to support the Authority’s determination that an acquisition may substantially diminish competition in this state or may tend to create a monopoly if the acquisition:

(a) Is subject to OAR 410-141-5345;

(b) Involves two or more MCEs that compete in the same market;

(c) Will take place in a market that has a significant trend toward increased concentration, as provided in subsection (5) of this section; and

(d) Involves at least one MCE within a group of up to eight of the largest MCEs in a market that has a significant trend toward increased concentration, as provided in subsection (5) of this section, and another MCE that is either within the same group or has a market share of two percent or more.

(4) Substantial evidence exists to support the Authority’s determination that an acquisition may substantially diminish competition in this state or may tend to create a monopoly if:

(a) In a highly concentrated market the MCEs involved in the acquisition hold the following shares:

<table>
<thead>
<tr>
<th>MCE A</th>
<th>MCE B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Four percent</td>
<td>Four percent or more</td>
</tr>
<tr>
<td>Ten percent</td>
<td>Two percent or more</td>
</tr>
<tr>
<td>Fifteen percent</td>
<td>One percent or more</td>
</tr>
</tbody>
</table>
(b) In a market that is not highly concentrated, the MCEs involved in the acquisition hold the following shares:

<table>
<thead>
<tr>
<th>MCE A</th>
<th>MCE B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Five percent</td>
<td>Five percent or more</td>
</tr>
<tr>
<td>Ten percent</td>
<td>Four percent or more</td>
</tr>
<tr>
<td>Fifteen percent</td>
<td>Three percent or more</td>
</tr>
<tr>
<td>Nineteen percent</td>
<td>One percent or more</td>
</tr>
</tbody>
</table>

(5) Evidence of a significant trend toward increased concentration in the market exists if the aggregate market share of any grouping of as many as eight of the largest MCEs in the market has increased by seven percent or more over a period of time that begins at least five years and not more than 10 years before the date of the notice described in OAR 410-141-5350 and that ends on the date of the notice described in OAR 410-141-5350.

(6) Notwithstanding the requirement in subsection (2) of this section to find prima facie or substantial evidence before issuing an order under OAR 410-141-5355, the Authority may issue the order if the Authority determines, on the basis of other substantial evidence, that the acquisition may substantially diminish competition in this state or may tend to create a monopoly. In making a determination under this subsection, the Authority may consider:

(a) The market shares of the MCEs involved in the acquisition;
(b) Volatility in the relative market shares among the largest MCEs in the market;
(c) The number of competitors in the market;
(d) The concentration of the market and any trend toward increased concentration; and
(e) The ease with which an MCE may enter or exit the market.

(7) The Authority has the burden of showing prima facie evidence for the Authority’s determination that an acquisition may substantially diminish competition in this state or may tend to create a monopoly. A person may rebut the Authority’s showing or determination under subsection (2), (3) or (6) of this section by providing substantial evidence to the contrary.

(8) In determining the scope and extent of the market for the purpose of determining whether an acquisition may substantially diminish competition in this state or may tend to create a monopoly, the Authority at a minimum shall consider definitions and guidelines that the NAIC promulgates and information that the parties to the acquisition submit. Unless the Authority determines otherwise:

(a) The product market is the line of business in this state that an MCE reports in the annual financial statement the MCE files under OAR 410-141-5015; and
(b) The geographical market is this state.

(9) In the tables shown in subsection (4) of this section:

(a) Percentages that do not appear in the tables may be interpolated using the percentages that appear in the tables.

(b) Prima facie evidence exists for the Authority to determine that an acquisition may substantially diminish competition in this state or may tend to create a monopoly if more than two MCEs are involved in the acquisition and the total market share among the MCEs exceeds the aggregated market share of “MCE A” and “MCE B” in any row shown in the tables.

(c) “MCE A” is the MCE with the largest share of the market.

(10) The Authority may not issue an order under OAR 410-141-5360 if:

(a) The acquisition will yield substantial economies of scale or substantial economies in resource use that cannot feasibly be achieved in any other way and the economies would provide a public benefit that outweighs the public benefit of maintaining competition in the market; or

(b) The acquisition would substantially increase the availability of MCE capacity and the public benefit from increased MCE capacity availability outweighs the public benefit of maintaining competition in the market.
410-141-5360. MCE HOLDING COMPANY REGULATION: Issuance Of Order By Authority; Grounds; Penalties For Violation Of Order

(1) The Authority may issue an order with the effect described in paragraph (2) of this subsection if the Authority determines that an acquisition may substantially diminish competition in this state or may tend to create a monopoly or if the Authority determines that a party to an acquisition has violated a provision of OAR 410-141-5350. The Authority shall issue the order together with findings of fact and conclusions of law that support the order.

(2) An order issued under paragraph (1) of this subsection may:

(a) Require an MCE to cease and desist from transacting business in this state; or

(b) Deny an application from an MCE for a certificate of authority to transact business in this state.

(3) The Authority may not issue an order under subsection (1) of this section unless the Authority:

(a) Provides a hearing to the person that will be subject to the order;

(b) Notifies the person of the impending order and the hearing within 30 days after the date on which the person submitted the notice described in OAR 410-141-5350 and not less than 15 days before the date of the hearing; and

(c) Completes the hearing and issues the order not later than 60 days after the date on which the person submitted the notice described in OAR 410-141-5350.

(4) An order issued under subsection (1) of this section does not apply if an acquisition that is the subject of the order does not proceed.

(5) A person that violates an order issued under subsection (1) of this section may be subject to:

(a) A civil penalty under OAR 410-141-5335; or

(b) A suspension or revocation of the person’s certificate of authority.
(1) Every authorized MCE that is a member of an MCE holding company system shall register with the Authority as provided in this section. A foreign MCE need not register if the foreign MCE is subject to registration requirements and standards adopted by statute or rule in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section, OAR 410-141-5370 and OAR 410-141-5375.

(b) OAR 410-141-5415(1).

(c) OAR 410-141-5435 or a provision that requires each registered MCE to keep current the information required to be disclosed in its registration statement by reporting all material changes or additions not later than 15 days after the end of the month in which it learns of each such change or addition.

(2) An MCE that is subject to registration under this section shall register not later than 15 days after the date the MCE becomes subject to registration, and annually thereafter on or before April 30 for the previous calendar year, unless the Authority for good cause shown extends the time for registration, and then within such extended time. The Authority may require any authorized MCE that is a member of a holding company system and is not subject to registration under this section to furnish a copy of the registration statement, the summary required in OAR 410-141-5435 or other information filed by the MCE with the insurance regulatory authority of its domiciliary jurisdiction.
410-141-5370. MCE HOLDING COMPANY REGULATION: Form And Contents Of Registration Statement

(1) Every MCE that is subject to the registration requirements of OAR 410-141-5365 shall file a registration statement on a form prescribed by the Authority. The Authority shall consider and may prescribe as the registration statement form for this section the form that the NAIC prescribes.

(2) The registration statement must list, describe, summarize or include, as appropriate:

(a) The capital structure, general financial condition, ownership and management of the MCE and any person that controls the MCE.

(b) The identity and relationship of every member of the MCE holding company system.

(c) The following agreements in force and transactions currently outstanding or that have occurred during the last calendar year between the MCE and the MCE’s affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the MCE or of the MCE by the MCE’s affiliates;

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the MCE’s assets to liability;

(E) All management agreements, service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements.

(I) Any pledge of the MCE’s stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the MCE holding company system.

(d) Financial statements of or within an MCE holding company system, including financial statements of affiliates, if the Authority requests the financial statements.

(A) Financial statements that are subject to this paragraph include, but are not limited to, annual audited financial statements that the MCE or the MCE holding company system files with the United States Securities and Exchange Commission under Securities Act of 1933, 15 U.S.C.A. § 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C.A. § 78a et seq.

(B) An MCE that must file financial statements under this paragraph may satisfy the requirement by providing the Authority with the parent corporation financial statements that have been filed most recently with the United States Securities and Exchange Commission.
(e) Other matters concerning transactions between registered MCEs and any affiliates as may be included from time to time in any registration forms prescribed by the Authority.

(f) Affidavits that state that:

(A) The MCE's Board is responsible for and oversees corporate governance and internal controls; and

(B) The MCE’s officers or senior management have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures.

(C) Any other information the Authority requires.

(g) Each registration statement filed under this section must have a summary that outlines all items in the current registration statement that have changed from the prior registration statement.
410-141-5375. MCE HOLDING COMPANY REGULATION: Information Not Required To Be Disclosed

(1) Information that is not material for the purposes of registration under OAR 410-141-5365 to OAR 410-141-5505 need not be disclosed on the registration statement filed pursuant to OAR 410-141-5365.

(2) Unless the Authority by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of an MCE’s admitted assets as of the December 31 next preceding the date of the registration statement or amendment shall not be deemed material for purposes of registration under OAR 410-141-5365 to OAR 410-141-5505.
410-141-5380. MCE HOLDING COMPANY REGULATION: Persons Required To Provide Information To MCEs

Any person within an MCE holding company system subject to registration shall provide complete and accurate information to an MCE when such information is necessary to enable the MCE to comply with the registration requirements of OAR 410-141-5365 to OAR 410-141-5505.
410-141-5385. MCE HOLDING COMPANY REGULATION: Termination Of Registration By Authority

The Authority shall terminate the registration of any MCE which demonstrates that it no longer is a member of an MCE holding company system.
410-141-5390. MCE HOLDING COMPANY REGULATION: Consolidated Registration Statement

The Authority of may require or allow two or more affiliated MCEs subject to registration to file a consolidated registration statement.
410-141-5395. MCE HOLDING COMPANY REGULATION: Registration On Behalf Of Affiliated MCE

The Authority may allow an authorized MCE that is part of an MCE holding company system to register on behalf of an affiliated MCE that is required to register under OAR 410-141-5365 and to file all information and material required to be filed under the registration requirements of OAR 410-141-5365 to OAR 410-141-5505.
410-141-5400. MCE HOLDING COMPANY REGULATION: Exemption From Registration Requirements

The registration requirements of OAR 410-141-5365 to OAR 410-141-5505 do not apply to any MCE, information or transaction the Authority exempts by rule or order.
410-141-5405. MCE HOLDING COMPANY REGULATION: Presumption Of Control Of Another Person; Rebuttal

The Authority shall presume that a person controls another person if the person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of the other person. A person may rebut this presumption with a showing in the manner provided under OAR 410-141-5410 that control does not exist in fact. The Authority may determine, after giving persons that have an interest in the Authority’s determination notice and opportunity to be heard and after making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption that control exists in fact.
410-141-5410. MCE HOLDING COMPANY REGULATION: Disclaimer Of Affiliation

(1) Any person, MCE or member of an MCE holding company system may file with the Authority a disclaimer of affiliation with any authorized MCE. The disclaimer must fully disclose all material relationships and bases for affiliation between the person, MCE or member and the MCE to which the disclaimer of affiliation applies, as well as the basis for disclaiming the affiliation.

(2) After the person, MCE or member files a disclaimer, the person, MCE or member and the MCE to which the disclaimer applies are relieved of any duty to register or report under OAR 410-141-5365 to OAR 410-141-5505 that may arise out of the MCE’s relationship with the person, MCE or member of the MCE holding company system that filed the disclaimer unless the Authority disallows the disclaimer.

(3) A disclaimer that the person, MCE or member of the MCE holding company system files under this section is effective unless within 30 days after the Authority receives the disclaimer the Authority notifies the person, the MCE or the member of the MCE holding company system that Authority has disallowed the disclaimer.

(4) The Authority shall grant a hearing if the person, MCE or member of a MCE holding company system that filed the disclaimer requests a hearing.
410-141-5415. MCE HOLDING COMPANY REGULATION: Transactions Within Holding Company; Standards

(1) A transaction within an MCE holding company system to which an MCE subject to registration is a party is subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payment received must be allocated to the MCE in conformity with customary insurance accounting practices that are consistently applied.

(d) The books, accounts and records of each party to the transaction must be maintained so as to disclose clearly and accurately the nature and details of the transaction, including accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The combined capital and surplus of the MCE following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the MCE’s outstanding liabilities and adequate to the MCE’s financial needs.

(2) The Authority may prescribe from time to time required provisions that must be included in agreements with affiliates for cost-sharing services and management.

(3) A domestic MCE and any person in the domestic MCE’s MCE holding company system may enter into a transaction described in subsection (4), including an amendment to or modification of an affiliate agreement that is subject to standards set forth in this section, only if:

(a) The domestic MCE has notified the Authority of the domestic MCE’s intention to enter into the transaction in writing and not later than the 30th day before the transaction, or within a shorter period the Authority allows; and

(b) The Authority does not disapprove the transaction within the period.

(4) Subsection (3) applies to the following transactions:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, if the transactions equal or exceed the lesser of three percent of the MCE’s allowed assets or 25 percent of the MCE’s combined capital and surplus, each as of the 31st day of December immediately preceding.

(b) Loans or extensions of credit to any person that is not an affiliate, if the MCE makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the MCE that is making the loans or extending the credit. This subparagraph applies to transactions that equal or exceed the lesser of three percent of the MCE’s allowed assets or 25 percent of the MCE’s combined capital and surplus, each as of the 31st day of December immediately preceding.
(c) Reinsurance agreements or modifications to reinsurance agreements, reinsurance pooling agreements and agreements in which the reinsurance premium or a change in the MCE’s liabilities, the projected reinsurance premium or a projected change in the MCE’s liabilities in any of the next three years equals or exceeds five percent of the MCE’s combined capital and surplus, as of the 31st day of December immediately preceding, including agreements that may require as consideration the transfer of assets from an MCE to a nonaffiliate if an agreement or understanding exists between the MCE and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the MCE.

(d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements.

(e) A guarantee that a domestic MCE makes if the guarantee is not quantifiable as to amount. If the guarantee is quantifiable as to amount, the domestic MCE is not required to notify the Authority under this section unless the guarantee exceeds the lesser of one-half of one percent of the MCE’s admitted assets or 10 percent of surplus with respect to Members as of the 31st day of December immediately preceding.

(f) Direct or indirect acquisitions or investments in a person that controls the MCE or in an affiliate of the MCE, the amount of which, together with the MCE’s existing acquisitions or investments in the person or affiliate, exceeds two and one-half percent of the MCE’s surplus to Members.

(g) Any other material transactions specified by the Authority from time to time as transactions that may adversely affect the interests of the MCE’s Members.

(5) A notice for a transaction under subsection (3) that is an amendment to or modification of an affiliate agreement that was previously filed must include a statement of reasons for the change and an estimate of the financial impact the change would have on the domestic MCE.

(6) An MCE shall notify the Authority informally within 30 days after a previously filed agreement has terminated, and the Authority, after receiving the notice, shall determine the type of filing the MCE must submit, if any.

(7) A domestic MCE may not enter into one or more transactions during any 12-month period that are part of a plan or series of like transactions with persons that are within the MCE holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(8) In reviewing a transaction in accordance with subsection (3) of this section, the Authority shall consider whether the transaction complies with the standards set forth in subsection (1) of this section and whether the transaction may adversely affect the interests of Members.

(9) A domestic MCE shall notify the Authority not later than the 30th day after any investment the domestic MCE makes in any one corporation or other legal entity if the total investment the MCE holding company system makes in the corporation or other legal entity exceeds 10 percent of the corporation’s voting securities or other equivalent ownership interests.

(10) This section does not authorize or permit any transaction that, in the case of an MCE that is not a member of the same MCE holding company system, would be otherwise contrary to law.
(1) A person’s control of a domestic MCE that is subject to registration does not relieve the officers and directors of the MCE of any obligation or liability to which the officers and directors would otherwise be subject by law. The domestic MCE must be managed so as to assure the MCE’s separate operating identity.

(2) This section does not preclude a domestic MCE from having or sharing a common management, or from using personnel, property or services jointly or cooperatively, with another person under an arrangement that meets the standards set forth in OAR 410-141-5415.

(3) At least one-third of a domestic MCE’s directors and at least one-third of the members of each committee of the MCE’s Board must be persons who are not:

(a) Officers or employees of the MCE or of any entity that controls, is controlled by or is under common control with the MCE; or

(b) Beneficial owners of a controlling interest in the voting securities of the MCE or of an entity that controls, is controlled by or is under common control with the MCE.

(4) A quorum for transacting business at a meeting of the MCE’s Board or any committee of the MCE’s Board must include at least one person with the qualifications described in paragraph (a) of this subsection.

(5) A domestic MCE’s Board shall establish at least one committee of which the entire membership consists of persons who have the qualifications described in subsection (3) of this section. The MCE Board shall give the committee established under this subsection responsibility for:

(a) Recommending independent certified public accountants for the board to select;

(b) Reviewing the MCE’s financial condition and the scope and results of any independent or internal audit;

(c) Nominating candidates for election to the MCE Board;

(d) Recommending principal officers for selection and the compensation for the principal officers; and

(e) Evaluating the principal officers’ performance.

(6) Subsections (3), (4) and (5) of this section do not apply to a domestic MCE if the person that controls the domestic MCE has a board of directors, and committees of the person’s board of directors, that meet the requirements set forth in subsections (3), (4) and (5) of this section.

(7) The Authority may waive the requirements set forth in subsections (3), (4) and (5) of this section if an MCE applies for a waiver and:

(a) The MCE has less than $1 million in annual direct written and assumed capitated revenue; or
(b) Unique circumstances justify the Authority’s waiver.

(c) In determining whether to grant the waiver, the Authority may consider what type of business entity the MCE is, the volume of business the MCE transacts, whether the MCE has qualified board members, the MCE’s ownership or organizational structure and any other factor the Authority deems relevant.
410-141-5425. MCE HOLDING COMPANY REGULATION: Additional Definitions

Unless the context otherwise requires, as used in OAR 410-141-5340 to OAR 410-141-5510:

(1) “Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(2) “Form A” means the form prescribed by OAR 410-141-5475.

(3) “Form B” means the form prescribed by OAR 410-141-5430.

(4) “Form C” means the form prescribed by OAR 410-141-5435.

(5) “Form D” means the form prescribed by OAR 410-141-5500.

(6) “Form E” means the form prescribed by OAR 410-141-5490.

(7) “Ultimate controlling person” means the person who is not controlled by any other person.
410-141-5430. MCE HOLDING COMPANY REGULATION: Registration Of MCEs -- Statement Filing

An MCE required to file an annual registration statement pursuant to OAR 410-141-5365 shall:

(1) Furnish the required information on Form B. Form B is set forth on the website of the Authority at https://www.oregon.gov/oha/FOD/Pages/CCO-Financial.aspx.

(2) Include a statement that the MCE’s Board oversees corporate governance and internal controls.
410-141-5435. MCE HOLDING COMPANY REGULATION: Summary Of Registration -- Statement Filing

An MCE required to file an annual registration statement pursuant to OAR 410-141-5435 is also required to furnish information required on Form C. Form C is set forth on the website of the Authority at https://www.oregon.gov/oha/FOD/Pages/CCO-Financial.aspx.
410-141-5440. MCE HOLDING COMPANY REGULATION: Alternative And Consolidated Registrations

(1) An authorized MCE may file a registration statement, Form B, on behalf of an affiliated MCE or MCEs that are required to register under OAR 410-141-5365. A registration statement may include information not required by OAR 410-141-5370 regarding any MCE in the MCE holding company system even if the MCE is not an authorized MCE. In lieu of filing a registration statement on Form B, the authorized MCE may file a copy of the registration statement or similar report that it is required to file in its state of domicile, if:

(a) The statement or report contains information substantially similar to that required to be furnished on Form B; and

(b) The filing MCE is the principal MCE in the MCE holding company system.

(2) The question of whether the filing MCE is the principal MCE in the MCE holding company system is a question of fact, and an MCE filing a registration statement or report in lieu of Form B on behalf of an affiliated MCE shall set forth a brief statement of facts that will substantiate the filing MCE’s claim that it, in fact, is the principal MCE in the MCE holding company system.

(3) With the prior approval of the Authority, an unauthorized MCE may follow any of the procedures that could be followed by an authorized MCE under subsection (1).
(1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (referred to as the “subject” in this section) shall contain:

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

(b) 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 that 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;

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

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

(2) A request for termination of registration shall be considered granted unless the Authority, within thirty days after the Authority receives the request, notifies the registrant otherwise.
(1) Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by OAR 410-141-5365 to OAR 410-141-5510, including but not limited to the registration provisions thereof. The forms are not intended to be blank forms that 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 if the answers to the items are prepared so as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, an appropriate statement to that effect shall be made.

(2) One complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Authority by personal delivery or mail. At least one of the copies shall be manually signed and certified in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) Statements must be prepared on paper 8-1/2” x 11” or 8-1/2” x 13” in size and 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.
410-141-5455. MCE HOLDING COMPANY REGULATION: Forms; Incorporation By Reference, Summaries, And Omissions.

(1) Information required by any item of Form A, B, D, E or 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, statement filed with a governmental authority or any other document may be incorporated by reference in answer or partial answer to any item of Form A, B, D, E or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be attached as exhibits if the documents are extensive. Documents currently on file with the Authority that were filed within three years need not be filed 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 in which the incorporation would render the statement incomplete, unclear, or confusing.

(2) If an item requires a summary or outline of the provisions of any document, only a brief statement of the pertinent provisions of the document shall be made. The summary or outline may in addition incorporate by reference particular parts of any exhibit or document currently on file with the Authority that was filed within three years and may be qualified in its entirety by such reference. If two 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 such documents need be filed, but it shall have attached a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents of which a copy is filed.
410-141-5460. MCE HOLDING COMPANY REGULATION: Forms; Information Unknown Or Unavailable And Extension Of Time To Furnish

(1) Required information need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted. However, the person filing shall:

   (a) Give such information on the subject as the person possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

   (b) Include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(2) If it is impractical to furnish any required information, document, or report at the time it is required to be filed, an application may be filed with the Authority:

   (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.

(3) An application submitted under subsection (2) shall be considered granted unless the Authority, within 30 days after receipt thereof, enters an order denying the application.
In addition to the information expressly required to be included in Forms A, B, C, D, E and F there shall be included further material information, if any, as may be necessary to make the information contained in the form not misleading. The person filing may also file exhibits in addition to those expressly required by the statement. Such exhibits shall be marked to indicate clearly the subject matters to which they refer.
A change to Form A, B, C, D, E and F shall include on the top of the cover page the phrase: “Change No. _____ to” and shall indicate the date of the change and not the date of the original filing.
410-141-5475. MCE HOLDING COMPANY REGULATION: Acquisition Of Control -- Statement Filing

A person required to file a statement pursuant to OAR 410-141-5320 and 5325 shall furnish the required information on Form A which is described in OAR 410-141-5325. The person also shall furnish the required information on Form E, which is described in OAR 410-141-5490. Form E is set forth on the website of the Authority at https://www.oregon.gov/oha/FOD/Pages/CCO-Financial.aspx.
410-141-5480. MCE HOLDING COMPANY REGULATION: Amendments to Form A

An applicant who has filed a statement pursuant to OAR 410-141-5320 and 5325 shall promptly advise the Authority of any changes in the information so furnished on Form A arising subsequent to the date upon which the information was furnished but prior to disposition of the application by the Authority.
410-141-5485. MCE HOLDING COMPANY REGULATION: Acquisition Of Certain Persons Considered To Be MCEs

(1) If the person being acquired is considered to be a domestic MCE solely because of the definition of “domestic MCE” in OAR 410-141-5000, the name of the domestic MCE on the cover page shall be indicated as follows: “ABC Company, a subsidiary of XYZ Holding Company.”

(2) When a person who is considered to be a “domestic MCE” solely because of the definition of “domestic MCE” in OAR 410-141-5000, is being acquired, references to “the MCE” contained in Form A shall refer to both the domestic subsidiary MCE and the person being acquired.
410-141-5490. MCE HOLDING COMPANY REGULATION: Pre-Acquisition Notification

(1) If a domestic MCE, including any person controlling a domestic MCE, is proposing a merger or acquisition under OAR 410-141-5325, the person must file a pre-acquisition notification form, Form E, as required under OAR 410-141-5340. Form E is set forth on the website of the Authority at https://www.oregon.gov/oha/FOD/Pages/CCO-Financial.aspx.

(2) If a non-domiciliary MCE licensed to do business in this state is proposing a merger or acquisition pursuant to OAR 410-141-5325, that person shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form need not be filed if the acquisition is beyond the scope of OAR 410-141-5355 and 5360.

(3) In addition to the information required by Form E, the Authority may require an opinion from an economist as to the competitive impact of the proposed acquisition.
The statement to be filed with the Authority pursuant to OAR 410-141-5325 shall include the following information, to be set forth in Form A:

(1) If any acquiring party required to file a statement is an individual, the principal occupation of the person and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(2) If any acquiring party required to file a statement is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the acquiring party and any predecessors of the acquiring party have been in existence, an informative description of the business intended to be done by the acquiring party and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subsection (1).

(3) The number of shares of any security that each acquiring party required to file a statement proposes to acquire in connection with the acquisition, the terms of any proposed offer or agreement relating to the acquisition and a statement as to the method by which the fairness of the proposal was determined.

(4) The amount of each class of any security of the type to be acquired in connection with the acquisition that is beneficially owned or concerning which there is a right to acquire beneficial ownership by any acquiring party.

(5) A full description of any contracts, arrangements or understandings with respect to any security of the type to be acquired in connection with the acquisition in which any acquiring party required to file a statement is involved, including, without limitation, those involving transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered.

(6) A description of the purchase of any security of the type to be acquired in connection with the acquisition during the 12 calendar months preceding the filing of the statement, by any acquiring party required to file a statement, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid for the security.

(7) A description of any recommendation to purchase any security of the type to be acquired in connection with the acquisition made by any acquiring party required to file a statement, or by anyone based upon interviews or at the suggestion of any acquiring party required to file a statement, during the 12 calendar months preceding the filing of the statement.

(8) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the type to be acquired in connection with the acquisition and, if distributed, copies of additional soliciting material relating thereto.
(9) A description of the terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation for tender of securities of the type to be acquired in connection with the acquisition, including the amount of any fees, commissions or other compensation to be paid to any broker-dealer in connection with the agreement, contract or understanding.
410-141-5500. MCE HOLDING COMPANY REGULATION: Transactions Subject To Prior Notice -- Notice Filing

An MCE required to give notice of a proposed transaction pursuant to OAR 410-141-5415 (3) shall furnish the required information on Form D. Form D is set forth on the website of the Authority at https://www.oregon.gov/oha/FOD/Pages/CCO-Financial.aspx.
(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper must include the following information:

(A) The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the MCE’s own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(B) Total capital and surplus as of the 31st day of December immediately preceding;

(C) Net income for the 12-month period ending the 31st day of December immediately preceding and the two preceding 12-months periods; and

(D) Dividends paid to stockholders excluding distributions of the MCE’s own securities in the preceding two calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Authority and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the MCE’s capital and surplus and the reasonableness of combined capital and surplus in relation to the MCE’s outstanding liabilities and the adequacy of surplus relative to the MCE’s financial needs.

(2) Each registered MCE shall report to the Authority all dividends and other distributions to shareholders within five business days following the declaration thereof, including the same information required by section (1)(d)(A) to (D) of this section.
410-141-5510. MCE HOLDING COMPANY REGULATION: Adequacy of Surplus

The factors set forth in OAR 410-141-5235 for the purpose of determining the reasonableness and adequacy of the MCE’s capital and surplus are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an MCE’s capital and surplus, no single factor is necessarily controlling. Instead, the Authority shall consider the net effect of all of such factors and also other factors bearing on the financial condition of the MCE. In comparing the capital and surplus maintained by other MCEs, the Authority shall consider the extent to which each of such factors varies from MCE to MCE. In determining the quality and liquidity of investments in subsidiaries, the Authority shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.
MCE INSOLVENCY AND DISSOLUTION: Access To Funds And Transition Of Members And Records

(1) MCEs shall provide the Authority access to Restricted Reserve Funds if insolvency occurs.

(2) MCEs shall have written policies and procedures to ensure that if insolvency occurs, Members and related clinical records are transitioned to other MCEs or providers with minimal disruption.
410-141-5520. MCE INSOLVENCY AND DISSOLUTION: Hazardous Operations

(1) Without limitation or exclusion of any other authority, actions or remedies that are available to the Authority under these rules or under Applicable Law, if the Authority determines that the continued operation of an MCE is hazardous to its Members or to the public in general, the Authority may order the MCE to take one or more of the following actions:

(a) Reduce the total amount of present and potential liability for Member services by reinsurance.

(b) Reduce, suspend or limit the volume of business being accepted or renewed.

(c) Reduce general insurance and commission expenses by methods specified by the Authority.

(d) Increase the capital and surplus of the MCE.

(e) Suspend or limit the declaration and payment of dividends by the MCE to its stockholders or members.

(f) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Authority determines such action to be necessary.

(2) The Authority may issue an order under subsection (1) with or without a hearing. An MCE subject to an order issued without a hearing may file a written request for a hearing to review the order. A request for hearing shall not stay the effect of the order. The hearing shall be held within thirty days following the filing of the request. The Authority shall render its decision within thirty days following completion of the hearing and the closing of the hearing record.

(3) Without limiting the facts, conditions, circumstances or factors that the Authority may identify, evaluate or rely upon in determining whether the continued operation of an MCE could be hazardous to the MCE’s Members, its creditors or the general public, and without limiting the Authority’s discretion to make such determinations, the Authority may consider the following:

(a) Adverse findings reported in financial condition examination reports, audit reports, and actuarial opinions, reports or summaries.

(b) Whether the MCE has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the MCE, when considered in light of the assets held by the MCE with respect to such reserves and related actuarial items including but not limited the investment earnings on such assets, and the considerations anticipated to be received and retained under such contracts.

(c) The ability of an MCE’s reinsurers to perform and whether the MCE's reinsurance program provides sufficient protection for the MCE’s capital and surplus after taking into account the MCE's cash flow and the classes of business written as well as the financial condition of the MCE’s reinsurers.

(d) Whether the MCE's operating loss in the last 12-month period or any shorter period of time is greater than 50 percent of the MCE's remaining capital and surplus in excess of the minimum required.
(e) Whether the MCE’s operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the MCE’s remaining surplus in excess of the minimum required.

(f) Whether any of the MCE’s reinsurers or any of the MCE’s other counterparty obligors, or any entity within the MCE’s holding company system is insolvent, threatened with insolvency or delinquent in payment or performance of its monetary or other obligations to the MCE, which could materially and adversely affect the solvency of the MCE.

(g) Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that may materially and adversely affect the solvency of the MCE.

(h) Whether any "controlling person" of an MCE is delinquent in remitting amounts due the MCE.

(i) The age and collectability of receivables.

(j) Whether the management of an MCE, including officers, directors or any other person who directly or indirectly controls the operation of the MCE, fails to possess and demonstrate the competence, fitness and reputation determined by the Authority to be necessary to serve the MCE in such position.

(k) Whether management of an MCE has failed to respond to inquiries relating to the condition of the MCE or has furnished false and misleading information concerning an inquiry.

(l) Whether the MCE has failed to meet financial responsibility, accountability or filing requirements.

(m) Whether management of an MCE has filed a false or misleading sworn financial statement or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the MCE.

(n) Whether the MCE has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

(o) Whether the MCE has experienced or is projected to experience in the foreseeable future cash flow or liquidity issues that could materially and adversely affect the MCE’s solvency and/or prospects for continued operation.

(p) Whether management has established reserves that do not comply with minimum standards established by the MCE contract or regulations, accounting standards, sound actuarial principles and standards of practice.

(q) Whether management of the MCE has caused the MCE to maintain materially insufficient statutory loss reserves or loss adjustment expense reserves.

(r) In respect of transactions between or among the MCE and affiliates within the MCE’s holding company system, whether (i) the MCE has accurately and timely reported those transactions, and/or filed for and obtained required regulatory approvals of those transactions; (ii) those transactions are fair and reasonable to the MCE, and otherwise consistent with terms that would be available to the MCE in an unaffiliated arms-length transaction; (iii) any of those transactions were for the principal benefit of an affiliate of the MCE or otherwise were not in the best interests of the MCE and its
Members; and (iv) did those transactions otherwise comply with the procedural and substantive
standards that apply under Applicable Law.

(s) Any other fact, condition or circumstance found by the Authority to be hazardous to the MCE’s
Members, creditors or the general public.

(4) For the purposes of making a determination of the financial condition of an MCE under these rules
or the MCE contract, the Authority may do one or more of the following:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is
insolvent, impaired or otherwise subject to a delinquency proceeding.

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with
parents, subsidiaries or affiliates.

(c) Refuse to recognize the stated value of accounts receivable and/or amounts due from affiliates if
the ability to collect receivables is speculative in view of the age of the account or the financial
condition of the debtor or affiliated organization.

(d) Increase the MCE’s liability in an amount equal to any contingent liability, pledge, or guarantee not
otherwise included if there is a substantial risk that the MCE will be called upon to meet the obligation
undertaken within the next twelve-month period.

(5) In circumstances where the Authority determines, in its discretion, that the financial condition,
operating history or future prospects of an MCE warrant such actions, the Authority may require that
the MCE:

(a) Promptly provide written responses to an inquiry of the Authority for a current valuation of assets
or liabilities of the MCE.

(b) In addition to the required annual and quarterly financial statements, file interim financial
statements as of a particular date or with such greater frequency as the Authority may specify.

(c) Promptly produce its personnel and/or records, and/or the records and personnel of its affiliates,
for examination by the Authority.

(d) Correct corporate governance practice deficiencies, and adopt and utilize governance practices
acceptable to the Authority.

(e) Provide a business plan to the Authority demonstrating corrective action the MCE will take to
improve its financial condition or such other conditions or deficiencies as may be identified by the
Authority.
410-141-5525. MCE INSOLVENCY AND DISSOLUTION: Recovery From Parent Corporation Or Holding Company In The Event Of Liquidation Or Rehabilitation Of Domestic MCE

(1) If an order for liquidation or rehabilitation of a domestic MCE has been entered, the receiver appointed under the order may recover, on behalf of the MCE, from any parent corporation or holding company or person or affiliate who otherwise controlled the MCE, the amount of distributions, other than distributions of shares of the same class of stock, paid by the MCE on the MCE's capital stock, or any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the MCE or the MCE's subsidiary to a director, officer or employee, when such a distribution or payment is made at any time during the 12 calendar months preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3) and (4) of this section.

(2) A distribution to which subsection (1) of this section applies is not recoverable if the parent or affiliate shows that the distribution was lawful and reasonable when paid and that the MCE did not know and could not reasonably have known that the distribution might adversely affect the ability of the MCE to fulfill the MCE's contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the MCE or affiliate at the time a distribution to which subsection (1) of this section applies was paid is liable in an amount that is not more than the amount of distributions or payments received by the person under subsection (1) of this section. Any person who otherwise controlled the MCE at the time such distributions were declared is liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If two or more persons are liable with respect to the same distributions, the persons are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent MCE to pay the contractual obligations of the impaired or insolvent MCE.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from the person pursuant to subsection (3) of this section, the person's parent corporation or holding company or other person who otherwise controlled the person liable under subsection (3) of this section when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled the person liable under subsection (3) of this section.

(6) If an MCE is placed into rehabilitation or liquidation and the MCE engages in transactions within its holding company system that are subject to OAR 410-141-5415, the Authority retains jurisdiction over the MCE, any interested affiliates of the MCE and the transaction for purposes of regulation and enforcement under ORA 410-141-5415.
410-141-5530. MCE INSOLVENCY AND DISSOLUTION: Voluntary Dissolution; Approval Of Plan

(1) No MCE may be dissolved voluntarily until the Authority has approved a plan for liquidation of the MCE's assets and obligations.

(2) The plan of dissolution must provide for the reinsurance and assumption of all in-force Member Contracts to which the MCE is a party.

(3) The Authority shall require that the plan of dissolution provide adequate reserves in trust or otherwise for the satisfaction of all remaining obligations of the MCE.
410-141-5535. Civil Penalties

(1) A person that violates any provision of Sections 5000 through 5535 or any final order of the Authority entered under any of Sections 5000 through 5535, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the Authority that shall not exceed $10,000 for each offense.

(2) In addition to the civil penalty specified in subsection (1), (3) and (4) of this section, a person that violates any provision of OAR 410-141-5000 to 410-141-5535 or any final order of the Authority entered under any of OAR 410-141-5000 to 410-141-5535, may be required by the Authority to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the Authority that shall not exceed the amount by which the person profited by or through or as a result of such violation, as determined by the Authority.

(3) In addition to the penalties specified in subsection (1), (2) and (4) of this section, a director or officer of an MCE or any affiliate within an MCE’s holding company system who engages in a transaction or makes an investment that has not been properly reported under, or that otherwise does not comply with, OAR 410-141-5320 to OAR 410-141-5510, who knowingly participates in or assents to the transaction or investment, or who permits another officer or an agent of the holding company system to engage in the transaction or make the investment, shall pay, in the director or officer's individual capacity, a civil penalty in an amount determined by the Authority that shall not exceed $10,000.

(4) In addition to the penalties specified in subsections (1), (2) and (3) of this section, an MCE or other person that fails to make a required filing or demonstrate a good faith effort to comply with a filing requirement under OAR 410-141-5340 to OAR 410-141-5360 shall pay a civil penalty in an amount determined by the Authority that does not exceed $50,000.

(5) Civil penalties under this section shall be imposed and enforced in accordance with ORS 183.745.

(6) A civil penalty imposed under this section may be recovered either as provided in subsection (5) of this section or in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.

(7) The provisions of this section are in addition to and not in lieu of, any other enforcement provisions specified in Division OAR 410 of Chapter 141 or in the MCE’s contract with the Authority.