

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.4731 Plan of operation; changes; filing of audited financial statements; inquiries by commissioner; filing of statement of operations; reports; preservation of books, records, documents, accounts, and vouchers; authority of securities commissioner.

Sec. 4731. (1) An SPFC may make the following material changes to its plan of operation pursuant to section 4705(6)(b), whether or not through an SPFC protected cell:

(a) If included in the initial plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of part or all of the securities issued pursuant to initial insurance securitization transactions, shall not be considered a material change.

(b) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this chapter shall not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with 2 or more nationally recognized rating agencies.

(2) No later than 5 months after the fiscal year end of the SPFC, the SPFC shall file with the commissioner audited financial statements of the SPFC and the trust accounts prepared by an independent public accountant. The independent public accountant shall be an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in good standing in all states in which the independent public accountant is licensed to practice.

(3) The commissioner may address inquiries to any captive insurer concerning the insurer's activities or conditions or any matter connected with the insurer's transactions. An insurer so addressed shall reply in writing to each inquiry from the commissioner within 30 days of receipt of the inquiry.

(4) Each SPFC shall file by March 1 of each year a statement of operations. An SPFC with a counterparty that is authorized as an insurance company shall report using statutory accounting principles and shall value its assets and liabilities pursuant to this act and in a manner consistent with the counterparty. An SPFC with a counterparty that uses GAAP may report using either GAAP or, with the approval of the commissioner, statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of operations shall include a statement of income and a balance sheet and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract and additional descriptions and accounting of the reserves required or maintained by the SPFC. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31 of the previous year. The statements shall be prepared on forms required by the commissioner. In addition, the commissioner may require the filing of performance assessments of the SPFC contract.

(5) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 or that is reinsuring risk of a counterparty that is authorized as an insurer under this act shall file annual reports pursuant to sections 438 and 438a and chapter 10. An SPFC shall maintain its records in this state, or in 1 or more locations outside the state with the approval of the commissioner, and shall make its records available for examination by the commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this chapter.

(6) The commissioner may require interim reporting on any or all of the SPFC's business, including any matter, condition, or requirement regulated by this chapter. The commissioner shall prescribe the format and content of the interim report.

(7) Each SPFC that fails to file a report required by this section, or fails to reply within 30 days to an inquiry of the commissioner, is subject to a civil penalty of not less than \$1,000.00 or more than \$5,000.00 per occurrence, and an additional \$50.00 for every day that the SPFC fails to file a report or reply to the inquiry. In addition, each SPFC that fails to file a report, or fails to make a satisfactory reply to an inquiry of the commissioner concerning the SPFC's affairs, is subject to proceedings under section 4735(2).

(8) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this state for the purpose of examination. The original records, however, may be kept and maintained outside this state if, according to a plan adopted by the management of the SPFC and approved by the commissioner, it maintains suitable records. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(9) Nothing contained in this section with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the securities commissioner pursuant to 1935 PA 13, MCL 451.1 to 451.4.

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