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Ms. Norma Garcia
General Counsel & Chief Clerk
Texas Department of Insurance
Mail Code 113-2A
PO Box 149104
333 Guadalupe St.
Austin, Texas 78701

via email: norma.garcia@tdi.texas.gov

Re: Proposed Rules; Ch. 19, Licensing and Regulation of Insurance Professionals; 28 TAC Ch. 19, Subch. I, §§19.804, 19.803 and 19.819; Subch. K, §§19.1003, 19.1004, 19.1013, 19.1016, and 19.1019; and Subch. N, 19.1310

Dear Ms. Garcia:

These comments are submitted on behalf of our client, the Texas Association of Life and Health Insurers (TALHI), insurance trade association representing the interests of over 150 life and health insurers who do business in Texas.

While TALHI generally supports the proposed changes to the above referenced provisions, changes in proposed new Section 19.804 titled as Application for Entity License, are not consistent with the statute and could adversely impact insurers that may own stock in a licensed corporate agency. Some members of TALHI may own stock in a corporation licensed to do business as an insurance agent.

Section 19.804 is a new section setting forth procedures for obtaining an entity license. This could include any type of corporate entity formed under the Texas Business Organizations Code or various types of partnerships. Prior to 2001, every officer, director, shareholder, or partner in a business entity, with certain exceptions for grandfathered managing general agencies, had to be individually licensed.¹ This ownership requirement prohibited entities, such as an insurance company or holding company, from owning any stock in a corporation that was licensed as an insurance agency in Texas.

¹ See, TEX. INS. CODE art. 21.07§2(f). This requirement also did not apply to certain grandfathered managing general agents under TEX. INS. CODE art. 21.07-3..

In 2001, Texas agent license laws were substantially changed by the Texas Legislature in order to comply with the agent license uniformity requirements in the new federal Gramm-Leach-Bliley Act (GLB). Legislation was needed to allow the Texas Department of Insurance to properly implement the requirements of GLB in Texas.²

One of the key features of this new law was an amendment that allows a corporation or partnership to be licensed if at least *one* “officer” of a corporation or one partner in a partnership was individually licensed. This changed allowed entities, such as an insurance company or other entity, to own all of the stock of a corporate agency. As a result of this change, some members of TALHI may own stock in corporate entities that may be licensed as general life health agencies. In these situations, an individual that is elected as an officer may not own any stock in such a corporate entity and would have no right or ability to control such a corporation.

The changes enacted in 2001 as described above were codified in TEX. INS. CODE Article 21.07 §2(i). In 2003, this provisions was recodified without change in the current provisions in TEX. INS. CODE §4001.106.

New rules as proposed in §19.804(b)(1) would effectively change this important statutory provision by requiring that the licensed individual officer or active partner “have and exercise the right or ability to control the entity as the term control is defined in Insurance Code §4001.003(2).” The requirement that the licensed individual officer have control has never been part of the Texas statutory framework and would be a significant change not contemplated by the statutory framework. It would also effectively eliminate the ability of an insurance company or other entity to own 100% of the stock of a corporate agency.

TALHI respectfully contends this proposed change is inconsistent with the statutes and should be amended to delete the control element.

The statutory framework also does not require the designation of a “responsible person” as contemplated by the proposed rule change. It is understood that the TDI may need to have a responsible person designated in order to respond to requests and other information from the department. However, this responsibility should not require control as that term is defined in Section 4001.003(2). The statutory framework provides the Commissioner is the agent for service of process for a corporation or partnership that is licensed and does not appoint or maintain an agent for service of process.³

TALHI recommends that Section 19.804(b) be amended or revised to comply with the statutory framework for the licensing of a corporation or partnership. If it is necessary to include “responsible person” for dealing with matters with the department, a suggested amendment is attached. This would delete the requirement that the individual licensed officer also be responsible for the administration of insurance operations in the state. This is vague and not

² GLB contained provisions that required uniformity in agent license laws. See, 15 U.S.C. §1011-1015. As enacted in 1999, GLB authorized the formation of the National Association of Registered Agents and Brokers or NARAB I.

³ See, TEX. INS. CODE §4001.008.

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required by statute. Insurance entities that control corporate entities seldom require the individual officer to be responsible for the administration of insurance operations. These are controlled by the shareholder that is authorized to elect directors and officers. If the concept of responsible person is necessary, the phrase responsible for administering all insurance operations should also be deleted.

Please contact either Jennifer Cawley, Executive Director for TALHI or me if you have questions or need additional information.

Sincerely,

/s/ Jay A. Thompson

Jay A. Thompson

Cc: Doug Slape, TDI, Deputy Commissioner, Financial Regulation Division
Jennifer Cawley, TALHI

Suggested Amendment to Proposed Section 19.804(b)

Amend proposed Section 19.804(b) to read as follows:

(b) The licensed individual officer or active partner required for an entity license is responsible for ~~administering the applicant entity's insurance operations in Texas~~, including filings with TDI and responses to inquiries from the department. For purposes of this section, that individual is the responsible agent. The responsible agent must: (1) be a licensed officer or director of the entity ;~~as the term control is defined in Insurance Code §4001.003(2)~~ and (2) has not:

(A) had a license suspended or revoked or been the subject of any other disciplinary action by a financial or insurance regulator of this state, another state, or the United States; or

(B) committed an act for which a license may be denied under Subchapter C, Chapter [4005](#).