

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 1. Solicitation of Proxies, Consents, and Authorizations of Domestic Stock Insurers
Subpart 1. General Provisions

23 CAR § 1-101. Application of rule.

(a)(1) This rule is applicable to each domestic stock insurer which has any class of equity security held of record by one hundred (100) or more persons.

(2) However, this rule shall not apply to any insurer if ninety-five percent (95%) or more of its equity securities are owned or controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than five hundred (500) persons.

(b) A domestic stock insurer required to file with the Securities and Exchange Commission forms of proxies, consents, and authorizations complying with the requirements of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, and the applicable regulations promulgated thereunder, shall be exempt from the provisions of this rule with respect to any class of securities subject to Securities and Exchange Commission jurisdiction.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-102. Definitions.

(a) The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.

(b)(1) The terms "solicit" and "solicitation" for purposes of this rule shall include:

(A) Any request for a proxy, whether or not accompanied by or included in a form of proxy;

(B) Any request to execute or not to execute, or to revoke, a proxy; or
(C) The furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

(2) The terms "solicit" and "solicitation" shall not include:

(A) Any solicitation by a person in respect of stock of which he or she is the beneficial owner;

(B) Action by a broker or other person in respect to stock carried in his or her name or in the name of his or her nominee in:

(i) Forwarding to the beneficial owner of such stock soliciting material received from the company;

(ii) Impartially instructing such beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy; or

(iii) Impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; or

(C) The furnishing of a form of proxy to a stockholder upon the unsolicited request of such stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-103. Proxies, consents, and authorizations.

No domestic stock insurer, or any director, officer, or employee of such insurer subject to 23 CAR § 1-101, or any other person, shall solicit or permit the use of his or her name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect of any class of equity security of such insurer held of record by one hundred (100) or more persons in contravention of this rule and Schedules A and B hereto annexed and hereby made a part of this rule.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-104. Disclosure of equivalent information.

(a) Unless proxies, consents, or authorizations in respect of any class of equity security of a domestic insurer subject to 23 CAR § 1-101 are solicited by or on behalf of the management of such insurer from the holders of record of such security prior to any annual or other meeting of such security holders, such insurer shall, in accordance with this rule and such further rules as the Insurance Commissioner may adopt, file with the commissioner and transmit to all security holders of record information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

(b)(1) Such insurer shall transmit a written information statement containing the information specified in 23 CAR § 1-105(d) to every security holder:

(A) Who is entitled to vote in regard to any matter to be acted upon at the meeting; and

(B) From whom a proxy is not solicited on behalf of the management of the insurer.

(2) However, in the case of a class of securities in unregistered or bearer form, such statement need be transmitted only to those security holders whose names and addresses are known to the insurer.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-105. Information to be furnished to stockholders.

(a) No solicitation subject to this rule shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule A.

(b)(1) If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to subsection (a) of this section shall be

accompanied or preceded by an annual report, in preliminary or final form, to such stockholders containing such financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders".

(2) Subject to the foregoing requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

(c) Two (2) copies of each report sent to the stockholders pursuant to this section shall be mailed to the Insurance Commissioner, not later than the date on which such report is first sent or given to stockholders or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to 23 CAR § 1-107(a), whichever date is later.

(d)(1) If no solicitation is being made by management of the insurer with respect to any annual or other meeting, such insurer shall mail to every security holder of record at least twenty (20) days prior to the meeting date an information statement as required by 23 CAR § 1-104 containing the information called for by all of the items of Schedule A, other than Items 1, 3, and 4 thereof, which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

(2) If such information statement relates to an annual meeting at which directors are to be elected, it shall be accompanied by an annual report to such security holders in the form provided in subsection (b) of this section.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-106. Requirements as to proxy.

(a) The form of proxy shall:

(1) Indicate in boldface type whether or not the proxy is solicited on behalf of the management;

(2) Provide a specifically designated blank space for dating the proxy; and

(3)(A) Identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or stockholders.

(B) No reference need be made to proposals as to which discretionary authority is conferred pursuant to subsection (c) of this section.

(b)(1)(A) Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to therein, other than elections to office.

(B) A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each such case.

(2)(A) A form of proxy which provides both for elections to office and for action on other specified matters shall be prepared so as to clearly provide, by a box or otherwise, means by which the security holder may withhold authority to vote for elections to office.

(B) Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for elections to office shall be deemed to grant such authority, provided the form of proxy so states in boldface type.

(c) A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided:

(1) The persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting; and

(2) That a specific statement to that effect is made in the proxy statement or in the form of proxy.

(d) No proxy shall confer authority to vote:

(1) For the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or

(2) At any annual meeting other than the next annual meeting, or any adjournment thereof, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that:

(1) The proxy will be voted; and

(2) Where the person solicited specifies by means of ballot provided pursuant to subsection (b) of this section a choice with respect to any matter to be acted upon, the vote will be in accordance with the specifications so made.

(f)(1) The information included in the proxy statement or information statement shall be clearly presented, and the statements made shall be divided into groups according to subject matter, with appropriate headings.

(2) All printed proxy statements or information statements shall be clearly and legibly presented.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-107. Material required to be filed.

(a) Ten (10) preliminary copies of the proxy statement and form of proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently therewith shall be filed with the Insurance Commissioner at least ten (10) days prior to the date definitive copies of such material are first sent or given to stockholders, or such shorter period to that date as the commissioner may authorize upon a showing of good cause therefor.

(b) Two (2) preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two (2) days, exclusive of Saturdays, Sundays, or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to such date as the commissioner may authorize upon a showing of good cause therefor.

(c) Two (2) definitive copies of the proxy statement, form of proxy, and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date such material is first sent or given to the stockholders.

(d) Where any proxy statement, form of proxy, or other material filed pursuant to these rules is amended or revised, two (2) of the copies shall be marked to clearly show such changes.

(e) Copies of replies to inquiries from stockholders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(f)(1) Notwithstanding the provisions of subsections (a) and (b) of this section and 23 CAR § 1-205, copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication.

(2) Definitive copies, however, shall be filed with or mailed for filing to the commissioner as required by subsection (c) of this section not later than the date such material is used or published.

(3) The provisions of subsections (a) and (b) of this section and 23 CAR § 1-205 shall apply, however, to any reprints or reproductions of all or any part of such material.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-108. False or misleading statements.

(a) No proxy statement, form of proxy, notice of meeting, information statement, or other communication, written or oral, subject to this rule shall contain any statement which at the time and in the light of the circumstances under which it is made:

- (1) Is false or misleading with respect to any material fact; or
- (2) Omits to state any material fact necessary in order to:
 - (A) Make the statements therein not false or misleading; or

(B) Correct any statement in any earlier communication with respect to the same meeting or subject matter which has become false or misleading.

(b) No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made:

(1) Is false or misleading with respect to any material fact; or

(2) Omits to state any material fact necessary in order to:

(A) Make the statements therein not false or misleading; or

(B) Correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-109. Prohibition of certain solicitations.

No person making a solicitation which is subject to this rule shall solicit any:

(1) Undated or postdated proxy; or

(2) Proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

Authority. Arkansas Code § 23-61-108.

Subpart 2. Special Provisions Applicable to Election Contests

23 CAR § 1-201. Applicability.

This subpart shall apply to any solicitation subject to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-202. Participant or participant in a solicitation.

For purposes of this subpart:

(1) The terms "participant" and "participant in a solicitation" include:

(A) The insurer;

(B) Any director of the insurer and any nominee for whose election as a director proxies are solicited; or

(C) Any other person acting alone or with one (1) or more other persons, committees, or groups in organizing, directing, or financing the solicitation; and

(2) The terms "participant" and "participant in a solicitation" do not include:

(A) A bank, broker, or dealer who, in the ordinary course of business:

(i) Lends money or executes orders for the purchase or sale of stock;

and

(ii) Is not otherwise a participant;

(B) Any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(C) Any person:

(i) Employed in the capacity of:

(a) Attorney;

(b) Accountant; or

(c) Advertising, public relations, or financial adviser; and

(ii) Whose activities are limited to the performance of his or her duties in the course of such employment;

(D) Any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant; or

(E) Any officer or director of or any person regularly employed by any other participant, if such officer, director, or employee is not otherwise a participant.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-203. Filing of information required by Schedule B.

(a)(1) No solicitation subject to this subpart shall be made by any person other than the management of an insurer unless at least five (5) business days prior thereto, or such shorter period as the Insurance Commissioner may authorize upon a showing of good cause therefor, there has been filed with the commissioner by or on behalf of each participant in such solicitation, a:

(A) Statement in duplicate containing the information specified by Schedule B; and

(B) Copy of any material proposed to be distributed to stockholders in furtherance of such solicitation.

(2) Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.

(b) Within five (5) business days after a solicitation subject to this subpart is made by the management of an insurer, or such longer period as the commissioner may authorize upon a showing of good cause therefor, there shall be filed with the commissioner by or on behalf of each participant in such solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Schedule B.

(c) If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to solicitation subject to this subpart in opposition thereto, a statement in duplicate containing the information specified in Schedule B shall be filed with the commissioner, by or on behalf of each participant in such prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto.

(d) If, subsequent to the filing of the statements required by subsections (a), (b), and (c) of this section, additional persons become participants in a solicitation subject

to this rule, there shall be filed with the commissioner, by or on behalf of each such person, a statement in duplicate containing the information specified by Schedule B within three (3) business days after such person becomes a participant or such longer period as the commissioner may authorize upon a showing of good cause therefor.

(e) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the commissioner.

(f) Each statement and amendment thereto filed pursuant to this section shall be part of the public files of the commissioner.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-204. Solicitations prior to furnishing required written proxy statement.

Notwithstanding the provisions of 23 CAR § 1-105(a), a solicitation subject to this subpart may be made prior to furnishing stockholders a written proxy statement containing the information specified in Schedule A with respect to such solicitation, provided that:

(1) The statements required by 23 CAR § 1-203 are filed by or on behalf of each participant in such solicitation;

(2)(A) No form of proxy is furnished to stockholders prior to the time the written proxy statement required by 23 CAR § 1-105(a) is furnished to such persons.

(B) However, this subsection shall not apply where a proxy statement then meeting the requirements of Schedule A has been furnished to stockholders;

(3) At least the information specified in 23 CAR §§ 1-203(b) and 1-203(c) of the statements required to be filed by each participant, or an appropriate summary thereof, are included in each communication sent or given to stockholders in connection with the solicitation; and

(4) A written proxy statement containing the information specified in Schedule A with respect to a solicitation is sent or given to stockholders at the earliest practicable date.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-205. Solicitations prior to furnishing required written proxy statement — Filing requirements.

Two (2) copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by 23 CAR § 1-105(a) shall be filed with the Insurance Commissioner in preliminary form at least five (5) business days prior to the date definitive copies of such material are first sent or given to such persons, or shorter period as the commissioner may authorize upon a showing of good cause therefor.

Authority. Arkansas Code § 23-61-108.

23 CAR § 1-206. Application of this subpart to report.

(a) Notwithstanding the provisions of 23 CAR § 1-105(b) and 1-105(c), two (2) copies of any portion of the report referred to in 23 CAR § 1-105(b) which comments upon or refers to any solicitation subject to this subpart, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the Insurance Commissioner as proxy material subject to this rule.

(b) Such portion of the report shall be filed with the commissioner in preliminary form at least five (5) business days prior to the date copies of the report are first sent or given to stockholders.

Authority. Arkansas Code § 23-61-108.

Appendix A. Information Required in Proxy Statement

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/118/23CARpt.1ScheduleA.pdf>

Appendix B. Information to be Included in Statements Filed by or on Behalf of a Participant (other than the Insurer) in a Proxy Solicitation in an Election Contest

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/119/23CARpt.1ScheduleB.pdf>