

2715.5400 ACQUISITIONS UNDER CERTAIN STOCK BONUS, OPTION, OR SIMILAR PLANS.

Subpart 1. **Exempt acquisitions.** Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant, or right) pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings, or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan, or a stock option pursuant to an employee stock purchase plan, by a director or officer of an insurer issuing such stock or stock option shall be exempt from the operation of clause (2) of the act if the plan meets the conditions of subparts 2 to 4.

Subp. 2. **Approval of plan.** The plan must be approved, directly or indirectly:

A. by the affirmative votes of the holders of a majority of the securities of such insurer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state of Minnesota; or

B. by the written consent of the holders of a majority of the securities of such insurer entitled to vote; provided, however, that if such vote or written consent was not solicited substantially in accordance with the proxy rules, if any, prescribed by the commissioner in effect at the time of such vote or written consent, the insurer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan that would be required by any such rules so prescribed and in effect at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of the date the act first applies to such insurer, or the acquisition of an equity security for which exemption is claimed.

Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Two copies of such written information shall be filed with, or mailed for filing to, the commissioner not later than the date on which it is first sent or given to security holders of the insurer. For the purposes of this subpart, the term "insurer" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the insurer in connection with the succession.

Subp. 3. **Selection of officers.** If the selection of any director or officer of the insurer to whom stock may be allocated, or to whom qualified, restricted, or employee stock purchase plan stock options may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock that may be allocated to any such director or officer or that may be covered by qualified, restricted, or employee stock purchase plan stock options

granted to any such director or officer, is subject to the discretion of any person, then such discretion shall be exercised only as follows:

A. with respect to the participation of directors:

(1) by the board of directors of the insurer, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(2) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(3) otherwise in accordance with the plan, if the plan specifies the number of maximum number of shares of stock that directors may acquire or that may be subject to qualified, restricted, or employee stock purchase plan stock options granted to directors and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options may be acquired and exercised; or sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors;

B. with respect to the participation of officers who are not directors:

(1) by the board of directors of the insurer or a committee of three or more directors; or

(2) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons. For the purpose of this subpart, a director or committee member shall be deemed to be a disinterested person only if such person is not at the time such discretion is exercised eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted, or employee stock purchase plan stock options may be granted pursuant to the plan or any other plan of the insurer or any of its affiliates entitling the participants therein to acquire stock or qualified, restricted, or employee stock purchase plan stock options of the insurer or any of its affiliates;

C. the provisions of this subpart shall not apply with respect to any option granted, or other equity security acquired, prior to the date that clauses (1), (2), and (3) of the act became applicable with respect to any class of equity securities of any insurer.

Subp. 4. **Dollar limits.** As to each participant or as to all participants the plan effectively limits the aggregate dollar amount or the aggregate number of shares of stock that may be allocated, or that may be subject to qualified, restricted, or employee stock purchase plan stock options granted pursuant to the plan, the limitations may be established

on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date; and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares, or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provisions for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

Statutory Authority: *MS s 60A.22*

Published Electronically: *September 14, 2007*