

60D.20 STANDARDS AND MANAGEMENT OF AN INSURER WITHIN A HOLDING COMPANY SYSTEM.

Subdivision 1. **Transactions within a holding company system.** (a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) charges or fees for services performed shall be reasonable;
- (3) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (4) the books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including this accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (5) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or a shorter period the commissioner permits, and the commissioner has not disapproved it within this period:

- (1) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets, or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;
- (2) loans or extensions of credit to any person who is not an affiliate, where the insurer 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 insurer making such loans or extensions of credit provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;
- (3) reinsurance agreements or modifications to those agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;
- (4) all management agreements, service contracts and all cost-sharing arrangements; and
- (5) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this section authorizes or permits any transactions that, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12-month period for the purpose, the commissioner may exercise the authority under section 60D.25.

(d) The commissioner, in reviewing transactions pursuant to paragraph (b), shall consider whether the transactions comply with the standards set forth in paragraph (a), and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

Subd. 2. Dividends and other distributions. (a) Subject to the limitations and requirements of this subdivision, the board of directors of any domestic insurer within an insurance holding company system may authorize and cause the insurer to declare and pay any dividend or distribution to its shareholders as the directors deem prudent from the earned surplus of the insurer. An insurer's earned surplus, also known as unassigned funds, shall be determined in accordance with the accounting procedures and practices governing preparation of its annual statement. Dividends which are paid from sources other than an insurer's earned surplus as of the end of the immediately preceding quarter for which the insurer has filed a quarterly or annual statement as appropriate, or are extraordinary dividends or distributions may be paid only as provided in paragraphs (d), (e), and (f).

(b) The insurer shall notify the commissioner within five business days following declaration of a dividend declared pursuant to paragraph (a) and at least ten days prior to its payment. The commissioner shall promptly consider the notification filed pursuant to this paragraph, taking into consideration the factors described in subdivision 4.

(c) The commissioner shall review at least annually the dividends paid by an insurer pursuant to paragraph (a) for the purpose of determining if the dividends are reasonable based upon (1) the adequacy of the level of surplus as regards policyholders remaining after the dividend payments, and (2) the quality of the insurer's earnings and extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(d) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until: (1) 30 days after the commissioner has received notice of the declaration of it and has not within the period disapproved the payment; or (2) the commissioner has approved the payment within the 30-day period.

(e) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (1) ten percent of the insurer's surplus as regards policyholders on December 31 of the preceding year; or (2) the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month

period ending on December 31 of the preceding year, but does not include pro rata distributions of any class of the insurer's own securities.

(f) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until: (1) the commissioner has approved the payment of such a dividend or distribution; or (2) the commissioner has not disapproved the payment within the 30-day period referred to above.

(g) For purposes of state law, dividends paid to an insurer's parent company from an insurer, which is a member of an insurance holding company system, are not considered income to the parent company.

Subd. 3. Management of domestic insurers subject to registration. (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing in this chapter precludes a domestic insurer from having or sharing a common management use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subdivision 1, paragraph (a), clause (1).

(c) Not less than one-third of the directors of a publicly traded domestic insurer, and not less than one-third of the members of each committee of the board of directors of any publicly traded domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board.

(d) The board of directors of a publicly traded domestic insurer shall establish an audit committee having a majority of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee shall have responsibility for selecting independent certified public accountants and reviewing the scope and results of the independent audit and any internal audit.

(e) Paragraphs (c) and (d) do not apply to a domestic insurer if the person controlling the insurer is an insurer, or a general business corporation the principal business of which is insurance, having a board of directors and committees of the board that meet the requirements of paragraphs (c) and (d).

Subd. 4. Adequacy of surplus. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves;
- (10) the quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants; and
- (11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

History: 1991 c 325 art 14 s 7; 1992 c 464 art 1 s 8; 1993 c 299 s 9,10; 1994 c 425 s 8; 1999 c 177 s 28; 2002 c 330 s 3