

§ 58-19-30. Standards and management of an insurer within an insurance holding company system.

(a) Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to all of 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 such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.
- (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.
- (6) Agreements for cost-sharing services and management services shall include such provisions as required by this Article or rule and regulation issued by the Commissioner.

(b) The following transactions involving a domestic insurer and any person in its holding company system, including amendments or modifications of affiliated agreements that were previously filed pursuant to this section and that are subject to any materiality standards contained in subdivision (1) through (7) of this section [subdivisions (1) through (6) of this subsection], 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 before the transaction, or such shorter period as the Commissioner permits, and the Commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reason for the change and the financial impact on the domestic insurer. Informal notice shall be given to the Commissioner, within 30 days after termination of a previously filed agreement, so that the Commissioner may determine the type of filing required, if any. An insurer required to give notice of a proposed transaction pursuant to this subsection shall furnish the required information on a Form D, as prescribed by the Commissioner:

- (1) Sales, purchases, exchanges, loans or extensions of credit, or investments, provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31.
- (2) Loans or extensions of credit to any person who is not affiliated, 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 the loans or extensions of credit provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31.
- (3) Reinsurance agreements or modifications to the agreements, including the following:

- a. Reinsurance pooling agreements.
 - b. Agreements in which either (i) the reinsurance premium or a change in the insurer's liabilities or (ii) the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the preceding December 31.
 - c. Agreements that 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 the assets will be transferred to one or more affiliates of the insurer.
- (4) All management agreements, service contracts, tax allocation agreements, or cost-sharing arrangements. Management agreements, service contracts, and cost-sharing arrangements shall at a minimum and as applicable:
- a. Identify the person providing services and the nature of such services.
 - b. Set forth the methods to allocate costs.
 - c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the NAIC Accounting Practices and Procedures Manual.
 - d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement.
 - e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance.
 - f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement.
 - g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to the control of the insurer.
 - h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer.
 - i. Include standards for termination of the agreement with and without cause.
 - j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services.
 - k. Specify that, if the insurer is placed in receivership or seized by the Commissioner under Article 30 of this Chapter:
 - 1. All of the rights of the insurer under the agreement extend to the receiver or Commissioner.
 - 2. All books and records will immediately be made available to the receiver or the Commissioner and shall be turned over to the receiver or Commissioner immediately upon the receiver's or the Commissioner's request.
 - l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Article 30 of this Chapter.
 - m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner under Article 30 of this Chapter, and will make them

available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

- (5) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this subdivision unless it exceeds the lesser of one-half percent (0.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the preceding December 31. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this subdivision.
- (6) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same insurance holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for that purpose, the Commissioner may exercise the Commissioner's authority under G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of the investment, the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(c) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the Commissioner has received notice of the declaration thereof and has not within that period disapproved the payment or (ii) the Commissioner has approved the payment within the 30-day period.

For the purposes of this section, an "extraordinary dividend" or "extraordinary 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 (i) ten percent (10%) of the insurer's surplus as regards policyholders as of the preceding December 31, or (ii) 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 the preceding December 31; but does not include pro rata distributions of any class of the insurer's own securities.

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 (i) the Commissioner has approved the payment of the dividend or distribution or (ii) the Commissioner has not disapproved the payment within the 30-day period referred to above.

(d) For the purposes of this Article, 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 factors set forth in subdivisions (1) through (11) of this subsection, among others, shall be considered. In determining the adequacy of an insurer's surplus, no single factor is controlling. The Commissioner will consider the net effect of all of the factors in subdivisions (1) through (11) of this subsection, plus other factors bearing on the financial condition of the insurer. [The factors are:]

- (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 kinds of insurance.
- (3) The number and size of risks insured in each kind of insurance.
- (4) The extent of the geographic 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. In determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company.
- (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 his judgment such investment so warrants.
- (11) The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items.

(e) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders made pursuant to subsection (c) of this section and prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) shall include the following:

- (1) The amount of the proposed dividend or distribution.
- (2) The date established for payment of the dividend or distribution.
- (3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation.
- (4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in subsection (c) of this section.
- (5) A copy of the calculations determining whether the proposed dividend or distribution is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in subsection (c) of this section. The work paper shall include the following information:
 - a. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval

is sought and commencing on the day after the same day of the same month in the last preceding year.

- b. Surplus as regards policyholders as of the preceding December 31.
 - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31.
 - d. If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31.
- (6) A balance sheet and statement of income for the period between the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for approval or the prior notification of a dividend or distribution is submitted. The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds.
 - (7) A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
 - (8) A brief statement as to the intended use or uses of the proposed dividend or distribution by the parent, and if applicable, any upstream parent of the insurer.

A request for approval of an extraordinary dividend or any other extraordinary distribution shall be deemed to be incomplete unless all of the information required by this subsection has been included. (1989, c. 722, s. 1; 1991, c. 681, ss. 35, 36; c. 720, s. 18; 1993, c. 452, s. 33; 2001-223, s. 16.7; 2005-215, s. 14; 2006-105, ss. 3.3, 3.4; 2015-146, ss. 1.5(a), 1.5(b); 2015-281, s. 13.)