

CHAPTER 60D

INSURANCE HOLDING COMPANY SYSTEMS

60D.20 Standards and management of an insurer within a holding company system.

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

[For text of subd 1, see M.S.1992]

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, minus 25 percent of earned surplus attributable to unrealized capital gains. Dividends which are paid from sources other than an insurer's earned surplus 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 as of the 31st day of December next preceding; 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 the 31st day of December next preceding, 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.

[For text of subd 3, see M.S.1992]

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: 1993 c 299 s 9,10