

11 NCAC 11B .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall submit a completed Form D referenced in 11 NCAC 11B .0216, which can be found at www.ncdoi.com.

(b) An insurer required to give prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) or an insurer that requests, under G.S. 58-19-30(c), approval of extraordinary dividends or any other extraordinary distribution to shareholders 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 G.S. 58-19-30(c);
- (5) A copy of the calculations determining that 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 G.S. 58-19-30(c). The work paper shall include the following information:
 - (A) The amounts, dates and form of payment of all dividends or distributions (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 (total capital and surplus) 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; and
 - (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; and
- (8) A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.

(c) A prior notification of an ordinary dividend or any other ordinary distribution required under G.S. 58-19-25(d) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(d) A request for approval of an extraordinary dividend or any other extraordinary distribution required under G.S. 58-19-30(c) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(e) For the purposes of the Commissioner's review of all proposed dividend payments or other distributions to shareholders, the factors set forth in G.S. 58-19-30(d) shall be considered.

*History Note: Authority G.S. 58-2-40; 58-19-25; 58-19-30;
Eff. April 1, 1993;
Temporary Amendment Eff. December 31, 2006;
Eff. August 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*