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SENATE BILL 14-152

BY SENATOR(S) Jahn;  
also REPRESENTATIVE(S) Melton, Kagan, Kraft-Tharp, Schafer.

CONCERNING THE STANDARDIZATION OF FINANCIAL TRANSACTION  
REQUIREMENTS APPLICABLE TO INSURERS.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 10-3-243, **amend** (1) (b) (II) (A), (1) (d), (2) (a), and (2) (e); and **add** (3) as follows:

**10-3-243. Derivative transactions - definitions - restrictions - rules.** (1) For the purposes of this section, unless the context otherwise requires:

(b) (II) (A) "Derivative instrument" includes options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, ~~and~~ futures, AND ANY OTHER AGREEMENTS, OPTIONS, OR INVESTMENTS THAT ARE SUBSTANTIALLY SIMILAR AND ANY AGREEMENTS, OPTIONS, AND INSTRUMENTS PERMITTED UNDER RULES ADOPTED BY THE COMMISSIONER.

(d) ~~"Income-generation transaction"~~ "INCOME GENERATION" means

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

a derivative transaction INVOLVING THE WRITING OF COVERED CALL OPTIONS, COVERED PUT OPTIONS, COVERED CAPS, OR COVERED FLOORS that is intended to generate income or enhance return.

(2) A domestic insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section by:

(a) Using derivative instruments to engage in hedging transactions IF, AS A RESULT OF AND AFTER GIVING EFFECT TO THE TRANSACTIONS:

(I) THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS, FLOORS, AND WARRANTS NOT ATTACHED TO ANOTHER FINANCIAL INSTRUMENT PURCHASED AND USED IN HEDGING TRANSACTIONS DOES NOT EXCEED SEVEN AND ONE-HALF PERCENT OF ITS ADMITTED ASSETS;

(II) THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS, AND FLOORS WRITTEN IN HEDGING TRANSACTIONS DOES NOT EXCEED THREE PERCENT OF ITS ADMITTED ASSETS; AND

(III) THE AGGREGATE POTENTIAL EXPOSURE OF COLLARS, SWAPS, FORWARDS, AND FUTURES USED IN HEDGING TRANSACTIONS DOES NOT EXCEED SIX AND ONE-HALF PERCENT OF ITS ADMITTED ASSETS.

(e) Any investments in derivative investments shall be made in accordance with a written derivative use plan approved by the company's board of directors. The derivative use plan ~~shall~~ MUST be available for review by the commissioner upon request. AN INSURER MUST BE ABLE TO DEMONSTRATE TO THE COMMISSIONER THE INTENDED HEDGING CHARACTERISTICS AND ONGOING EFFECTIVENESS OF THE DERIVATIVE TRANSACTIONS THROUGH CASH FLOW TESTING OR OTHER APPROPRIATE ANALYSIS.

(3) THE COMMISSION MAY PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS SECTION.

**SECTION 2.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 8 of article 3 of title 10 as follows:

## PART 8

## INSURANCE HOLDING COMPANY SYSTEMS

**10-3-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) AN "AFFILIATE" OF, OR PERSON "AFFILIATED" WITH, A SPECIFIC PERSON IS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, THE PERSON SPECIFIED.

(2) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE, THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE, AS APPROPRIATE.

(3) "CONTROL", INCLUDING THE TERMS "CONTROLLING", "CONTROLLED BY", AND "UNDER COMMON CONTROL WITH", MEANS THE POSSESSION, DIRECT OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT OTHER THAN A COMMERCIAL CONTRACT FOR GOODS OR NONMANAGEMENT SERVICES, OR OTHERWISE, UNLESS THE POWER IS THE RESULT OF AN OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD BY THE PERSON. CONTROL IS PRESUMED TO EXIST IF ANY PERSON, DIRECTLY OR INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO VOTE, OR HOLDS PROXIES REPRESENTING, TEN PERCENT OR MORE OF THE VOTING SECURITIES OF ANY OTHER PERSON. A PERSON MAY REBUT THIS PRESUMPTION BY A SHOWING MADE IN THE MANNER PROVIDED BY SECTION 10-3-804 (9) THAT CONTROL DOES NOT EXIST IN FACT. THE COMMISSIONER MAY DETERMINE, AFTER FURNISHING ALL PERSONS IN INTEREST NOTICE AND OPPORTUNITY TO BE HEARD AND MAKING SPECIFIC FINDINGS OF FACT TO SUPPORT THE DETERMINATION, THAT CONTROL EXISTS IN FACT, NOTWITHSTANDING THE ABSENCE OF A PRESUMPTION TO THAT EFFECT.

(4) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR SERIES OF EVENTS INVOLVING ONE OR MORE AFFILIATES OF AN INSURER THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR LIQUIDITY OF THE INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS A WHOLE, INCLUDING ANYTHING THAT WOULD CAUSE THE INSURER'S RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH

IN RULES PROMULGATED BY THE COMMISSIONER OR WOULD CAUSE THE INSURER TO BE IN HAZARDOUS FINANCIAL CONDITION AS SET FORTH IN RULES PROMULGATED BY THE COMMISSIONER.

(5) "INSURANCE HOLDING COMPANY SYSTEM" MEANS TWO OR MORE AFFILIATED PERSONS, ONE OR MORE OF WHICH IS AN INSURER.

(6) "INSURER" HAS THE MEANING SET FORTH IN SECTION 10-3-502 (12); EXCEPT THAT "INSURER" INCLUDES FRATERNAL BENEFIT SOCIETIES AND HEALTH MAINTENANCE ORGANIZATIONS AND DOES NOT INCLUDE AGENCIES, AUTHORITIES, OR INSTRUMENTALITIES OF THE UNITED STATES, ITS POSSESSIONS AND TERRITORIES, THE COMMONWEALTH OF PUERTO RICO, THE DISTRICT OF COLUMBIA, OR A STATE OR POLITICAL SUBDIVISION OF A STATE.

(7) "NAIC" OR "NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS" MEANS THE ORGANIZATION OF INSURANCE REGULATORS FROM THE FIFTY STATES, THE DISTRICT OF COLUMBIA, AND THE FOUR UNITED STATES TERRITORIES.

(8) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, TRUST, UNINCORPORATED ORGANIZATION, ANY SIMILAR ENTITY, OR ANY COMBINATION OF THE FOREGOING ACTING IN CONCERT BUT DOES NOT INCLUDE A JOINT VENTURE PARTNERSHIP EXCLUSIVELY ENGAGED IN OWNING, MANAGING, LEASING, OR DEVELOPING REAL OR TANGIBLE PERSONAL PROPERTY.

(9) "SECURITY HOLDER" OF A SPECIFIED PERSON MEANS ONE WHO OWNS ANY SECURITY OF THE PERSON, INCLUDING COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND ANY OTHER SECURITY CONVERTIBLE INTO OR EVIDENCING THE RIGHT TO ACQUIRE ANY OF THE FOREGOING.

(10) "SUBSIDIARY" OF A SPECIFIED PERSON MEANS AN AFFILIATE CONTROLLED BY THE PERSON, EITHER DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES.

(11) "VOTING SECURITY" MEANS A SECURITY CONVERTIBLE INTO OR EVIDENCING A RIGHT TO ACQUIRE A VOTING SECURITY.

(12) "WHOLLY-OWNED SUBSIDIARY" MEANS A SUBSIDIARY OWNED BY AN INSURER THAT OWNS SHARES OF THE ISSUED AND OUTSTANDING VOTING STOCK OF THE SUBSIDIARY HAVING AT LEAST NINETY-FIVE PERCENT OF THE TOTAL VOTING POWER OF THE STOCK FOR THE ELECTION OF DIRECTORS.

**10-3-802. Subsidiaries of insurers.** (1) A DOMESTIC INSURER, EITHER BY ITSELF OR IN COOPERATION WITH ONE OR MORE PERSONS, MAY ORGANIZE OR ACQUIRE ONE OR MORE SUBSIDIARIES ENGAGED IN THE FOLLOWING KINDS OF BUSINESS:

(a) ANY KIND OF INSURANCE BUSINESS AUTHORIZED BY THE JURISDICTION IN WHICH IT IS INCORPORATED;

(b) ACTING AS AN INSURANCE BROKER OR INSURANCE AGENT FOR ITS PARENT OR FOR ANY OF ITS PARENT'S INSURER SUBSIDIARIES;

(c) INVESTING, REINVESTING, OR TRADING IN SECURITIES FOR ITS OWN ACCOUNT OR THAT OF ITS PARENT, A SUBSIDIARY OF ITS PARENT, OR AN AFFILIATE OR SUBSIDIARY;

(d) MANAGEMENT OF AN INVESTMENT COMPANY SUBJECT TO OR REGISTERED PURSUANT TO THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-1 ET SEQ., AS AMENDED, INCLUDING RELATED SALES AND SERVICES;

(e) ACTING AS A BROKER-DEALER SUBJECT TO OR REGISTERED PURSUANT TO THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78a ET SEQ., AS AMENDED;

(f) RENDERING INVESTMENT ADVICE TO GOVERNMENTS, GOVERNMENT AGENCIES, CORPORATIONS, OR OTHER ORGANIZATIONS OR GROUPS;

(g) RENDERING OTHER SERVICES RELATED TO THE OPERATIONS OF AN INSURANCE BUSINESS, SUCH AS ACTUARIAL, LOSS PREVENTION, SAFETY ENGINEERING, DATA PROCESSING, ACCOUNTING, CLAIMS, APPRAISAL, AND COLLECTION SERVICES;

(h) OWNERSHIP AND MANAGEMENT OF ASSETS THAT THE PARENT

CORPORATION COULD ITSELF OWN OR MANAGE;

(i) ACTING AS ADMINISTRATIVE AGENT FOR A GOVERNMENTAL INSTRUMENTALITY THAT IS PERFORMING AN INSURANCE FUNCTION;

(j) FINANCING OF INSURANCE PREMIUMS, AGENTS, AND OTHER FORMS OF CONSUMER FINANCING;

(k) ANY OTHER BUSINESS ACTIVITY DETERMINED BY THE COMMISSIONER TO BE REASONABLY ANCILLARY TO AN INSURANCE BUSINESS;

(l) OWNING A CORPORATION OR CORPORATIONS ENGAGED OR ORGANIZED TO ENGAGE EXCLUSIVELY IN ONE OR MORE OF THE BUSINESSES SPECIFIED IN THIS SECTION; AND

(m) ANY OTHER KIND OF BUSINESS THAT, IN THE OPINION OF THE COMMISSIONER, WOULD BE IN THE BEST INTEREST OF THE INSURER AND WOULD NOT BE DETRIMENTAL TO THE POLICYHOLDERS OR THE PUBLIC.

(2) IN ADDITION TO INVESTMENTS IN COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES PERMITTED UNDER OTHER PROVISIONS OF THIS TITLE, A DOMESTIC INSURER MAY ALSO:

(a) INVEST, IN COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES OF ONE OR MORE SUBSIDIARIES, AMOUNTS THAT DO NOT EXCEED THE LESSER OF TEN PERCENT OF THE INSURER'S ASSETS OR FIFTY PERCENT OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IF, AFTER SUCH INVESTMENTS, THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS, WILL BE REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO MEET ITS FINANCIAL NEEDS. IN CALCULATING THE AMOUNT OF THE INVESTMENTS, THE COMMISSIONER SHALL EXCLUDE INVESTMENTS IN DOMESTIC OR FOREIGN INSURANCE SUBSIDIARIES AND SHALL INCLUDE:

(I) TOTAL NET MONEYS OR OTHER CONSIDERATION EXPENDED AND OBLIGATIONS ASSUMED IN THE ACQUISITION OR FORMATION OF A SUBSIDIARY, INCLUDING ALL ORGANIZATIONAL EXPENSES AND CONTRIBUTIONS TO CAPITAL AND SURPLUS OF THE SUBSIDIARY WHETHER OR NOT REPRESENTED BY THE PURCHASE OF CAPITAL STOCK OR ISSUANCE OF

OTHER SECURITIES;

(II) ALL AMOUNTS EXPENDED IN ACQUIRING ADDITIONAL COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES; AND

(III) ALL CONTRIBUTIONS TO THE CAPITAL OR SURPLUS OF A SUBSIDIARY AFTER ITS ACQUISITION OR FORMATION;

(b) INVEST ANY AMOUNT IN COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES OF ONE OR MORE SUBSIDIARIES ENGAGED OR ORGANIZED TO ENGAGE EXCLUSIVELY IN THE OWNERSHIP AND MANAGEMENT OF ASSETS AUTHORIZED AS INVESTMENTS FOR THE INSURER IF EACH SUBSIDIARY AGREES TO LIMIT ITS INVESTMENTS IN ANY ASSET SO THAT THE INVESTMENTS WILL NOT CAUSE THE AMOUNT OF THE TOTAL INVESTMENT OF THE INSURER TO EXCEED ANY OF THE INVESTMENT LIMITATIONS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2) OR IN SECTIONS 10-3-213 TO 10-3-242 APPLICABLE TO THE INSURER. FOR THE PURPOSE OF THIS PARAGRAPH (b), "THE TOTAL INVESTMENT OF THE INSURER" INCLUDES:

(I) ANY DIRECT INVESTMENT BY THE INSURER IN AN ASSET; AND

(II) THE INSURER'S PROPORTIONATE SHARE OF ANY INVESTMENT IN AN ASSET BY A SUBSIDIARY OF THE INSURER, WHICH SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF THE SUBSIDIARY'S INVESTMENT BY THE PERCENTAGE OF THE OWNERSHIP OF THE SUBSIDIARY; AND

(c) WITH THE APPROVAL OF THE COMMISSIONER, INVEST ANY GREATER AMOUNT IN COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, OR OTHER SECURITIES OF ONE OR MORE SUBSIDIARIES IF, AFTER THE INVESTMENT, THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS WILL BE REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO ITS FINANCIAL NEEDS.

(3) INVESTMENTS IN COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, OR OTHER SECURITIES OF SUBSIDIARIES MADE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION ARE ADMITTED ASSETS OF A DOMESTIC INSURER, AND SUCH INVESTMENTS ARE NOT SUBJECT TO ANY OF THE OTHERWISE-APPLICABLE RESTRICTIONS OR LIMITATIONS APPLICABLE

TO THE INVESTMENTS OF INSURERS.

(4) ANY PROVISION OF THIS TITLE TO THE CONTRARY NOTWITHSTANDING, ANY INVESTMENT BY A DOMESTIC INSURER IN THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, OR OTHER SECURITIES OF ONE OR MORE INSURANCE COMPANIES THAT ARE WHOLLY-OWNED SUBSIDIARIES OF THE DOMESTIC INSURER ARE ADMITTED ASSETS OF THE DOMESTIC INSURER, SUBJECT TO THE FOLLOWING PROVISIONS:

(a) IF THE AUTHORIZED LINES OF BUSINESS OF THE INVESTING COMPANY AND ANY SUCH WHOLLY-OWNED SUBSIDIARY CORPORATION TOGETHER DO NOT CONSTITUTE THE LINES OF BUSINESS OF A MULTIPLE-LINE COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES OF THE SUBSIDIARY CORPORATION ARE NOT AT ANY TIME AN ADMITTED ASSET OF THE INVESTING COMPANY UNLESS AT SUCH TIME THE TWO COMPANIES HAVE, WITHOUT TAKING THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES INTO ACCOUNT AS AN ASSET OF THE INVESTING COMPANY, A COMBINED CAPITAL OR GUARANTY FUND AND A COMBINED SURPLUS THAT ARE AT LEAST EQUAL, RESPECTIVELY, TO THE SUM OF THE MINIMUM CAPITAL OR MINIMUM GUARANTY FUND REQUIRED BY LAW FOR THE AUTHORIZED LINE OF BUSINESS OF EACH OF THE TWO COMPANIES AND THE SUM OF THE MINIMUM SURPLUS REQUIRED BY LAW FOR THE AUTHORIZED LINE OF BUSINESS OF EACH OF THE TWO COMPANIES; EXCEPT THAT THIS PARAGRAPH (a) DOES NOT APPLY TO AN INVESTING COMPANY THAT IS A FRATERNAL BENEFIT SOCIETY.

(b) IF THE AUTHORIZED LINES OF BUSINESS OF THE INVESTING COMPANY AND ANY SUCH WHOLLY-OWNED SUBSIDIARY CORPORATION TOGETHER CONSTITUTE THE LINES OF BUSINESS OF A MULTIPLE-LINE COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES OF THE WHOLLY-OWNED SUBSIDIARY CORPORATION ARE NOT AT ANY TIME AN ADMITTED ASSET OF THE INVESTING COMPANY UNLESS AT SUCH TIME THE TWO COMPANIES HAVE, WITHOUT TAKING THE STOCK INTO ACCOUNT AS AN ASSET OF THE INVESTING COMPANY, A COMBINED CAPITAL OR GUARANTY FUND AND A COMBINED SURPLUS THAT ARE AT LEAST EQUAL, RESPECTIVELY, TO THE MINIMUM CAPITAL OR GUARANTY FUND AND THE MINIMUM SURPLUS REQUIRED BY LAW FOR THE MULTIPLE-LINE COMPANY.



(c) IF THE AUTHORIZED LINES OF BUSINESS OF ANY TWO INSURANCE COMPANIES THAT ARE MEMBERS OF A CHAIN OF CORPORATIONS DIRECTLY OR INDIRECTLY OWNED BY A COMMON PARENT CORPORATION TOGETHER CONSTITUTE THE LINES OF BUSINESS OF A MULTIPLE-LINE COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES OF EITHER OF THE TWO INSURANCE COMPANIES ARE AT ANY TIME AN ADMITTED ASSET OF ANY INSURANCE COMPANY, INCLUDING THE COMMON PARENT CORPORATION, THAT IS A MEMBER OF SUCH CHAIN OF CORPORATIONS, UNLESS AT SUCH TIME THE TWO INSURANCE COMPANIES HAVE A COMBINED CAPITAL OR GUARANTY FUND AND A COMBINED SURPLUS THAT ARE AT LEAST EQUAL, RESPECTIVELY, TO THE MINIMUM CAPITAL OR GUARANTY FUND AND THE MINIMUM SURPLUS REQUIRED BY LAW FOR SUCH A MULTIPLE-LINE COMPANY.

(5) WHETHER ANY INVESTMENT MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION MEETS THE APPLICABLE REQUIREMENTS OF THAT SUBSECTION IS TO BE DETERMINED BEFORE THE INVESTMENT IS MADE, BY CALCULATING THE APPLICABLE INVESTMENT LIMITATIONS AS THOUGH THE INVESTMENT HAD ALREADY BEEN MADE, TAKING INTO ACCOUNT THE THEN-OUTSTANDING PRINCIPAL BALANCE ON ALL PREVIOUS INVESTMENTS IN DEBT OBLIGATIONS, AND THE VALUE OF ALL PREVIOUS INVESTMENTS IN EQUITY SECURITIES AS OF THE DAY THEY WERE MADE, NET OF ANY RETURN OF CAPITAL INVESTED, NOT INCLUDING DIVIDENDS.

(6) IF AN INSURER CEASES TO CONTROL A SUBSIDIARY, IT SHALL DISPOSE OF ANY INVESTMENT MADE IN THE SUBSIDIARY PURSUANT TO THIS SECTION WITHIN THREE YEARS AFTER THE TIME OF THE CESSATION OF CONTROL OR WITHIN SUCH FURTHER TIME AS THE COMMISSIONER MAY PRESCRIBE, UNLESS AT ANY TIME AFTER THE INVESTMENT HAS BEEN MADE, THE INVESTMENT MEETS THE REQUIREMENTS FOR INVESTMENT UNDER ANY OTHER SECTION OF THIS TITLE AND THE INSURER HAS SO NOTIFIED THE COMMISSIONER.

(7) NOTHING IN THIS PART 8 PROHIBITS A DOMESTIC INSURER THAT, WITH THE PRIOR APPROVAL OF THE COMMISSIONER, ORGANIZED OR ACQUIRED A SUBSIDIARY FROM CONTINUING TO HOLD THE INSURER'S INVESTMENTS IN THE SUBSIDIARY OR FROM MAKING FURTHER INVESTMENTS IN THE SUBSIDIARY CONSISTENT WITH SUBSECTION (2) OF THIS SECTION, IF THE SUBSIDIARY ENGAGES ONLY IN THE KIND OF BUSINESS THAT WAS REPRESENTED TO THE COMMISSIONER AS A BASIS FOR SUCH APPROVAL.

**10-3-803. Acquisition of control of or merger with domestic insurer - definitions.** (1) (a) NO PERSON OTHER THAN THE ISSUER SHALL MAKE A TENDER OFFER FOR OR A REQUEST OR INVITATION FOR TENDERS OF, OR ENTER INTO ANY AGREEMENT TO EXCHANGE SECURITIES FOR, SEEK TO ACQUIRE, OR ACQUIRE, IN THE OPEN MARKET OR OTHERWISE, ANY VOTING SECURITY OF A DOMESTIC INSURER IF, AFTER THE CONSUMMATION OF THE EXCHANGE OR ACQUISITION, THE PERSON WOULD, DIRECTLY, INDIRECTLY, BY CONVERSION, OR BY EXERCISE OF ANY RIGHT TO ACQUIRE, BE IN CONTROL OF THE INSURER, AND NO PERSON SHALL ENTER INTO AN AGREEMENT TO MERGE WITH OR OTHERWISE TO ACQUIRE CONTROL OF A DOMESTIC INSURER OR ANY PERSON CONTROLLING A DOMESTIC INSURER UNLESS, AT THE TIME THE OFFER, REQUEST, OR INVITATION IS MADE OR THE AGREEMENT IS ENTERED INTO, OR BEFORE THE ACQUISITION OF THE SECURITIES IF NO OFFER OR AGREEMENT IS INVOLVED, THE PERSON HAS FILED WITH THE COMMISSIONER AND HAS SENT TO THE INSURER A STATEMENT CONTAINING THE INFORMATION REQUIRED BY THIS SECTION AND THE COMMISSIONER HAS APPROVED THE OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION IN THE MANNER PRESCRIBED IN THIS PART 8.

(b) IN ADDITION, IF THE PERSON ACTING PURSUANT TO THIS SUBSECTION (1) IS:

(I) AN INDIVIDUAL, THE PERSON SHALL SUBMIT A SET OF FINGERPRINTS TO THE COMMISSIONER PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(II) A CORPORATION, EACH EXECUTIVE OFFICER AND DIRECTOR OF THE CORPORATION SHALL SUBMIT A SET OF FINGERPRINTS TO THE COMMISSIONER PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(c) FOR PURPOSES OF THIS SECTION:

(I) "DOMESTIC INSURER" INCLUDES ANY PERSON CONTROLLING A DOMESTIC INSURER UNLESS THE PERSON, AS DETERMINED BY THE COMMISSIONER, IS EITHER DIRECTLY OR THROUGH ITS AFFILIATES PRIMARILY ENGAGED IN BUSINESS OTHER THAN THE BUSINESS OF INSURANCE.

(II) "PERSON" DOES NOT INCLUDE ANY SECURITIES BROKER HOLDING, IN THE USUAL AND CUSTOMARY BROKER'S FUNCTION, LESS THAN

TWENTY PERCENT OF THE VOTING SECURITIES OF AN INSURANCE COMPANY OR OF ANY PERSON THAT CONTROLS AN INSURANCE COMPANY.

(d) A CONTROLLING PERSON OF A DOMESTIC INSURER SEEKING TO DIVEST ITS CONTROLLING INTEREST IN THE DOMESTIC INSURER, IN ANY MANNER, SHALL FILE WITH THE COMMISSIONER, WITH A COPY TO THE INSURER, CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST THIRTY DAYS BEFORE THE CESSATION OF CONTROL. THE COMMISSIONER SHALL DETERMINE THOSE INSTANCES IN WHICH THE PARTY SEEKING TO DIVEST OR TO ACQUIRE A CONTROLLING INTEREST IN AN INSURER WILL BE REQUIRED TO FILE FOR AND OBTAIN APPROVAL OF THE TRANSACTION. THE INFORMATION MUST REMAIN CONFIDENTIAL UNTIL THE CONCLUSION OF THE TRANSACTION UNLESS THE COMMISSIONER, IN HIS OR HER DISCRETION, DETERMINES THAT CONFIDENTIAL TREATMENT WILL INTERFERE WITH ENFORCEMENT OF THIS SECTION. IF THE STATEMENT REFERRED TO IN PARAGRAPH (a) OF THIS SUBSECTION (1) HAS BEEN FILED, THIS PARAGRAPH (d) DOES NOT APPLY.

(e) WITH RESPECT TO A TRANSACTION SUBJECT TO THIS SECTION, THE ACQUIRING PERSON SHALL ALSO FILE A PREACQUISITION NOTIFICATION WITH THE COMMISSIONER, WHICH MUST CONTAIN THE INFORMATION SET FORTH IN SECTION 10-3-803.5 (3) (a). A FAILURE TO FILE THE NOTIFICATION SUBJECTS THE PERSON TO PENALTIES SPECIFIED IN SECTION 10-3-803.5 (5) (c).

(2) THE STATEMENT FILED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL BE MADE UNDER OATH OR AFFIRMATION AND MUST CONTAIN THE FOLLOWING:

(a) (I) THE NAME AND ADDRESS OF EACH PERSON BY WHOM OR ON WHOSE BEHALF THE MERGER OR OTHER ACQUISITION OF CONTROL REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS TO BE EFFECTED, REFERRED TO IN THIS SECTION AS THE ACQUIRING PARTY;

(II) IF THE PERSON IS AN INDIVIDUAL, HIS OR HER PRINCIPAL OCCUPATION, ALL OFFICES AND POSITIONS HELD DURING THE PAST FIVE YEARS, AND ANY CONVICTION OF CRIMES OTHER THAN MINOR TRAFFIC VIOLATIONS DURING THE PAST TEN YEARS;

(III) IF THE PERSON IS NOT AN INDIVIDUAL, A REPORT OF THE

NATURE OF ITS BUSINESS OPERATIONS DURING THE PAST FIVE YEARS OR FOR THE LESSER PERIOD AS THE PERSON AND ANY PREDECESSORS HAS BEEN IN EXISTENCE; AN INFORMATIVE DESCRIPTION OF THE BUSINESS INTENDED TO BE DONE BY THE PERSON AND THE PERSON'S SUBSIDIARIES; AND A LIST OF ALL INDIVIDUALS WHO ARE OR WHO HAVE BEEN SELECTED TO BECOME DIRECTORS OR EXECUTIVE OFFICERS OF THE PERSON OR WHO PERFORM OR WILL PERFORM FUNCTIONS APPROPRIATE TO SUCH POSITIONS. THE LIST MUST INCLUDE FOR EACH INDIVIDUAL THE INFORMATION REQUIRED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(b) THE SOURCE, NATURE, AND AMOUNT OF THE CONSIDERATION USED OR TO BE USED IN EFFECTING THE MERGER OR OTHER ACQUISITION OF CONTROL, A DESCRIPTION OF ANY TRANSACTION WHERE FUNDS WERE OR ARE TO BE OBTAINED FOR ANY SUCH PURPOSE, INCLUDING ANY PLEDGE OF THE INSURER'S STOCK OR THE STOCK OF ANY OF ITS SUBSIDIARIES OR CONTROLLING AFFILIATES, AND THE IDENTITY OF PERSONS FURNISHING CONSIDERATION; EXCEPT THAT, WHERE A SOURCE OF CONSIDERATION IS A LOAN MADE IN THE LENDER'S ORDINARY COURSE OF BUSINESS, THE IDENTITY OF THE LENDER MUST REMAIN CONFIDENTIAL IF THE PERSON FILING SUCH STATEMENT SO REQUESTS;

(c) FULLY AUDITED FINANCIAL INFORMATION AS TO THE EARNINGS AND FINANCIAL CONDITION OF EACH ACQUIRING PARTY FOR THE PRECEDING FIVE FISCAL YEARS OF EACH ACQUIRING PARTY, OR FOR THE LESSER PERIOD AS THE ACQUIRING PARTY AND ANY PREDECESSORS HAVE BEEN IN EXISTENCE, AND SIMILAR UNAUDITED INFORMATION AS OF A DATE NOT EARLIER THAN NINETY DAYS BEFORE THE FILING OF THE STATEMENT;

(d) ANY PLANS OR PROPOSALS THAT EACH ACQUIRING PARTY MAY HAVE TO LIQUIDATE THE INSURER, TO SELL ITS ASSETS OR MERGE OR CONSOLIDATE IT WITH ANY PERSON, OR TO MAKE ANY OTHER MATERIAL CHANGE IN ITS BUSINESS OR CORPORATE STRUCTURE OR MANAGEMENT;

(e) THE NUMBER OF SHARES OF ANY SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT EACH ACQUIRING PARTY PROPOSES TO ACQUIRE; THE TERMS OF THE OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION REFERRED TO IN SUBSECTION (1) OF THIS SECTION; AND A STATEMENT AS TO THE METHOD BY WHICH THE FAIRNESS OF THE PROPOSAL WAS ARRIVED AT;

(f) THE AMOUNT OF EACH CLASS OF ANY SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT IS BENEFICIALLY OWNED OR CONCERNING WHICH THERE IS A RIGHT TO ACQUIRE BENEFICIAL OWNERSHIP BY EACH ACQUIRING PARTY;

(g) A FULL DESCRIPTION OF ANY CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO ANY SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION IN WHICH ANY ACQUIRING PARTY IS INVOLVED, INCLUDING THE TRANSFER OF ANY OF THE SECURITIES, JOINT VENTURES, LOAN OR OPTION ARRANGEMENTS, PUTS OR CALLS, GUARANTEES OF LOANS, GUARANTEES AGAINST LOSS OR GUARANTEES OF PROFITS, DIVISION OF LOSSES OR PROFITS, OR THE GIVING OR WITHHOLDING OF PROXIES. THE DESCRIPTION MUST IDENTIFY THE PERSONS WITH WHOM THE CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS HAVE BEEN ENTERED INTO.

(h) A DESCRIPTION OF THE PURCHASE OF ANY SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION DURING THE TWELVE CALENDAR MONTHS PRECEDING THE FILING OF THE STATEMENT BY ANY ACQUIRING PARTY, INCLUDING THE DATES OF PURCHASE, NAMES OF THE PURCHASERS, AND CONSIDERATION PAID OR AGREED TO BE PAID;

(i) A DESCRIPTION OF ANY RECOMMENDATIONS TO PURCHASE ANY SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION MADE DURING THE TWELVE CALENDAR MONTHS PRECEDING THE FILING OF THE STATEMENT BY ANY ACQUIRING PARTY, OR BY ANYONE BASED UPON INTERVIEWS OR AT THE SUGGESTION OF THE ACQUIRING PARTY;

(j) COPIES OF ALL TENDER OFFERS FOR, REQUESTS, OR INVITATIONS FOR TENDERS OF, EXCHANGE OFFERS FOR, AND AGREEMENTS TO ACQUIRE OR EXCHANGE ANY SECURITIES REFERRED TO IN SUBSECTION (1) OF THIS SECTION, AND, IF DISTRIBUTED, OF ADDITIONAL SOLICITING MATERIAL RELATING TO THEM;

(k) THE TERM OF ANY AGREEMENT, CONTRACT, OR UNDERSTANDING MADE WITH OR PROPOSED TO BE MADE WITH ANY BROKER-DEALER AS TO SOLICITATION OF SECURITIES REFERRED TO IN SUBSECTION (1) OF THIS SECTION FOR TENDER, AND THE AMOUNT OF ANY FEES, COMMISSIONS, OR OTHER COMPENSATION TO BE PAID TO BROKER-DEALERS WITH REGARD TO THE SOLICITATION;

(l) AN AGREEMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT THE PERSON WILL PROVIDE THE ANNUAL REPORT, SPECIFIED IN SECTION 10-3-804 (12), FOR SO LONG AS CONTROL EXISTS;

(m) AN ACKNOWLEDGMENT BY THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT THE PERSON AND ALL SUBSIDIARIES WITHIN ITS CONTROL IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE INFORMATION TO THE COMMISSIONER UPON REQUEST AS NECESSARY TO EVALUATE ENTERPRISE RISK TO THE INSURER; AND

(n) SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER MAY BY RULE PRESCRIBE AS NECESSARY OR APPROPRIATE FOR THE PROTECTION OF POLICYHOLDERS OF THE INSURER OR IN THE PUBLIC INTEREST.

(3) EACH PERSON DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL SUBMIT A SET OF FINGERPRINTS TO THE COMMISSIONER AT THE TIME OF FILING THE STATEMENT DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION. THE COMMISSIONER SHALL FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. THE EMPLOYER BEARS ONLY THE ACTUAL COSTS OF THE RECORD CHECK.

(4) IF THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS A PARTNERSHIP, LIMITED PARTNERSHIP, SYNDICATE, OR OTHER GROUP, THE COMMISSIONER MAY REQUIRE THE PERSON TO GIVE THE INFORMATION CALLED FOR BY PARAGRAPHS (a) TO (n) OF SUBSECTION (2) OF THIS SECTION WITH RESPECT TO EACH PARTNER OF THE PARTNERSHIP OR LIMITED PARTNERSHIP, EACH MEMBER OF THE SYNDICATE OR GROUP, AND EACH PERSON WHO CONTROLS THE PARTNER OR MEMBER. IF ANY PARTNER, MEMBER, OR PERSON IS A CORPORATION OR THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS A CORPORATION, THE COMMISSIONER MAY REQUIRE THE CORPORATION TO GIVE THE INFORMATION CALLED FOR BY PARAGRAPHS (a) TO (n) OF SUBSECTION (2) OF THIS SECTION WITH RESPECT TO THE CORPORATION, EACH OFFICER AND DIRECTOR OF THE

CORPORATION, AND EACH PERSON WHO IS DIRECTLY OR INDIRECTLY THE BENEFICIAL OWNER OF MORE THAN TEN PERCENT OF THE OUTSTANDING VOTING SECURITIES OF THE CORPORATION. IF ANY MATERIAL CHANGE OCCURS IN THE FACTS SET FORTH IN THE STATEMENT FILED WITH THE COMMISSIONER AND SENT TO THE INSURER PURSUANT TO THIS SECTION, AN AMENDMENT SETTING FORTH THE CHANGE, TOGETHER WITH COPIES OF ALL DOCUMENTS AND OTHER MATERIAL RELEVANT TO THE CHANGE, SHALL BE FILED WITH THE COMMISSIONER AND SENT TO THE INSURER WITHIN TWO BUSINESS DAYS AFTER THE PERSON LEARNS OF THE CHANGE.

(5) IF ANY OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS PROPOSED TO BE MADE BY MEANS OF A REGISTRATION STATEMENT UNDER THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77a ET SEQ., AS AMENDED, OR IN CIRCUMSTANCES REQUIRING THE DISCLOSURE OF SIMILAR INFORMATION UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78a ET SEQ., AS AMENDED, OR UNDER A STATE LAW REQUIRING SIMILAR REGISTRATION OR DISCLOSURE, THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION MAY UTILIZE SUCH DOCUMENTS IN FURNISHING THE INFORMATION CALLED FOR BY THAT STATEMENT.

(6) (a) THE COMMISSIONER SHALL CONDUCT AN INDEPENDENT INVESTIGATION TO DETERMINE THE IMPACT OF A PROPOSED MERGER ON COMPETITION:

(I) WHEN THE PROPOSED MERGER INVOLVES A TRANSACTION THAT THE COMMISSIONER DETERMINES, UNDER SECTION 10-3-803.5 (4) (b), WOULD PRESENT PRIMA FACIE EVIDENCE OF A VIOLATION OF THE COMPETITIVE STANDARD; AND

(II) IF THE MERGER OR ACQUISITION INVOLVES A DOMESTIC ENTITY AUTHORIZED UNDER ARTICLE 16 OF THIS TITLE OR REFERENCED IN SECTION 6-18-302 (1) (b) (IV), C.R.S., OR A DOMESTIC INSURER AUTHORIZED UNDER SECTION 10-3-102 THAT WRITES MORE THAN FIFTY PERCENT OF ITS BUSINESS AS HEALTH INSURANCE COVERAGE.

(b) THE INVESTIGATION MUST INCLUDE AN ANALYSIS OF THE PROBABLE EFFECTS OF THE MERGER ON CONSUMERS AND ON SUPPLIERS OF SERVICES. THE COMMISSIONER SHALL NOT RELY SOLELY ON

REPRESENTATIONS OF INSURERS TO DETERMINE WHETHER THE MERGER WILL PRODUCE ECONOMIES OF SCALE OR ECONOMIES IN RESOURCE UTILIZATION THAT CANNOT BE ACHIEVED FEASIBLY IN ANY OTHER WAY. THE INVESTIGATION MUST ALSO INCLUDE REVIEWING THE MARKET CONDUCT EXAMINATION AND FINANCIAL EXAMINATION REPORTS FOR THIS STATE OR ANY OTHER STATE, CONSUMER COMPLAINT INFORMATION FROM RECORDS MAINTAINED BY THE DIVISION OR ANY OTHER STATE REGULATORY AGENCY, AND ANY INFORMATION FROM ANY STATE OR FEDERAL AGENCY RELATED TO THE APPLICANT. THE INVESTIGATION MUST COMMENCE NO LATER THAN FIFTEEN DAYS AFTER THE APPLICANT FILES THE NOTIFICATION REFERRED TO IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

(c) THE COMMISSIONER SHALL MAKE PUBLIC THE REPORT OF THE INDEPENDENT INVESTIGATION CONDUCTED PURSUANT TO THIS SUBSECTION (6) NO LATER THAN FIVE BUSINESS DAYS AFTER THE SUBMISSION OF THE REPORT TO THE COMMISSIONER, SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(d) THE COMMISSIONER SHALL ISSUE AN EXECUTIVE SUMMARY, SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., OF THE COMPETITIVE IMPACT ANALYSIS FILED BY THE APPLICANT TO THE TRANSACTION NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE ANALYSIS IS FILED WITH THE DIVISION. THE APPLICANT SHALL FILE THE COMPETITIVE IMPACT ANALYSIS AT THE SAME TIME THE APPLICANT FILES THE NOTIFICATION REFERRED TO IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION WITH THE DIVISION.

(e) THE COMMISSIONER SHALL MAKE ALL DATA AND REPORTS PERTAINING TO THE PROPOSED MERGER AND COLLECTED OR USED BY THE COMMISSIONER IN HIS OR HER INVESTIGATION AND ANALYSIS AVAILABLE TO THE PUBLIC; EXCEPT THAT, IN THE COMMISSIONER'S DISCRETION, THE COMMISSIONER MAY REDACT SPECIFIC ITEMS OF PROPRIETARY INFORMATION. IF THE INSURER CLAIMS THAT INFORMATION PROVIDED IS PROPRIETARY, THE INSURER HAS THE BURDEN OF PROOF ON THAT ISSUE.

(f) THE COMMISSIONER SHALL COMPLETE THE INDEPENDENT INVESTIGATION PURSUANT TO THIS SUBSECTION (6) NO LATER THAN THE DAY ON WHICH THE APPLICATION IS DEEMED COMPLETE BY THE DIVISION. THE COMMISSIONER SHALL COORDINATE THE COMPLETION OF THE INDEPENDENT INVESTIGATION WITH THE EXPERTS RETAINED PURSUANT TO



PARAGRAPH (g) OF SUBSECTION (8) OF THIS SECTION. THE APPLICANT SHALL BEAR ANY EXPENSES ASSOCIATED WITH THE INDEPENDENT INVESTIGATION PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(7) THE COMMISSIONER SHALL APPROVE ANY MERGER OR OTHER ACQUISITION OF CONTROL REFERRED TO IN SUBSECTION (1) OF THIS SECTION UNLESS, AFTER AN INDEPENDENT INVESTIGATION PURSUANT TO SUBSECTION (6) OF THIS SECTION, AND A PUBLIC HEARING ON THE ACQUISITION, THE COMMISSIONER FINDS THAT:

(a) AFTER THE CHANGE OF CONTROL, THE DOMESTIC INSURER REFERRED TO IN SUBSECTION (1) OF THIS SECTION WOULD NOT BE ABLE TO SATISFY THE REQUIREMENTS FOR THE ISSUANCE OF A LICENSE TO WRITE THE LINE OR LINES OF INSURANCE FOR WHICH IT IS PRESENTLY LICENSED;

(b) THE EFFECT OF THE MERGER OR OTHER ACQUISITION OF CONTROL WOULD BE SUBSTANTIALLY TO LESSEN COMPETITION IN INSURANCE IN THIS STATE OR TEND TO CREATE A MONOPOLY. IN APPLYING THE COMPETITIVE STANDARD IN THIS PARAGRAPH (b):

(I) THE INFORMATIONAL REQUIREMENTS OF SECTION 10-3-803.5 (3) (a) AND THE STANDARDS OF SECTION 10-3-803.5 (4) (b) APPLY;

(II) THE COMMISSIONER SHALL NOT DISAPPROVE THE MERGER OR OTHER ACQUISITION IF THE COMMISSIONER FINDS THAT ANY OF THE SITUATIONS MEETING THE CRITERIA PROVIDED BY SECTION 10-3-803.5 (4) (c) EXIST; AND

(III) THE COMMISSIONER MAY CONDITION THE APPROVAL OF THE MERGER OR OTHER ACQUISITION ON THE REMOVAL OF THE BASIS OF DISAPPROVAL WITHIN A SPECIFIED PERIOD OF TIME.

(c) THE FINANCIAL CONDITION OF ANY ACQUIRING PARTY IS SUCH AS MIGHT JEOPARDIZE THE FINANCIAL STABILITY OF THE INSURER OR PREJUDICE THE INTEREST OF ITS POLICYHOLDERS;

(d) THE PLANS OR PROPOSALS THAT THE ACQUIRING PARTY HAS TO LIQUIDATE THE INSURER, SELL ITS ASSETS OR CONSOLIDATE OR MERGE IT WITH ANY PERSON, OR MAKE ANY OTHER MATERIAL CHANGE IN ITS BUSINESS OR CORPORATE STRUCTURE OR MANAGEMENT ARE UNFAIR AND

UNREASONABLE TO POLICYHOLDERS OF THE INSURER AND NOT IN THE PUBLIC INTEREST;

(e) THE COMPETENCE, EXPERIENCE, AND INTEGRITY OF THOSE PERSONS WHO WOULD CONTROL THE OPERATION OF THE INSURER ARE SUCH THAT IT WOULD NOT BE IN THE INTEREST OF POLICYHOLDERS OF THE INSURER AND OF THE PUBLIC TO PERMIT THE MERGER OR OTHER ACQUISITION OF CONTROL; OR

(f) THE ACQUISITION IS LIKELY TO BE HAZARDOUS OR PREJUDICIAL TO THE INSURANCE-BUYING PUBLIC.

(8) (a) THE COMMISSIONER SHALL PROVIDE PUBLIC NOTICE OF THE FILING OF AN APPLICATION FOR A MERGER OR ACQUISITION NO LATER THAN FIVE BUSINESS DAYS AFTER THE RECEIPT OF THE INITIAL APPLICATION. THE COMMISSIONER SHALL ALSO PROVIDE A GENERAL STATEMENT TO THE PUBLIC OF THE PROCESS AND PROCEDURES CONCERNING A MERGER OR ACQUISITION OF A DOMESTIC INSURER. THE STATEMENT MUST BE A CLEAR AND CONCISE STATEMENT OF HOW THE PUBLIC MAY PARTICIPATE IN THE REVIEW OF A MERGER OR ACQUISITION TRANSACTION, INCLUDING A PUBLIC HEARING OR PROVIDING WRITTEN COMMENTS TO THE COMMISSIONER.

(b) NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE INITIAL APPLICATION FOR A MERGER PURSUANT TO THIS SECTION, THE COMMISSIONER AND THE APPLICANT SHALL ESTABLISH THE ELEMENTS OF A PUBLIC NOTICE OF THE TRANSACTION. THE COMMISSIONER SHALL PUBLISH THE NOTICE NO LATER THAN SEVEN DAYS AFTER THE DIVISION DEEMS THE APPLICATION TO BE COMPLETE.

(c) THE COMMISSIONER SHALL HOLD THE PUBLIC HEARING REFERRED TO IN SUBSECTION (7) OF THIS SECTION WITHIN THIRTY DAYS AFTER THE STATEMENT REQUIRED BY SUBSECTION (1) OF THIS SECTION IS FILED, AND THE COMMISSIONER SHALL GIVE AT LEAST TWENTY DAYS' NOTICE OF THE HEARING TO THE PERSON FILING THE STATEMENT. THE COMMISSIONER SHALL GIVE NOT LESS THAN SEVEN DAYS' NOTICE OF THE PUBLIC HEARING PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (8) TO THE INSURER AND TO THE PUBLIC. THE INSURER SHALL GIVE THE NOTICE TO ITS SECURITY HOLDERS. THE COMMISSIONER SHALL MAKE A DETERMINATION WITHIN THIRTY DAYS AFTER THE CONCLUSION OF THE HEARING. AT THE HEARING, THE PERSON FILING THE STATEMENT, THE INSURER, ANY PERSON TO WHOM

NOTICE OF HEARING WAS SENT, AND ANY OTHER PERSON WHOSE INTERESTS MAY BE AFFECTED HAVE THE RIGHT TO PRESENT EVIDENCE, EXAMINE AND CROSS-EXAMINE WITNESSES, AND OFFER ORAL AND WRITTEN ARGUMENTS AND, IN CONNECTION THEREWITH, ARE ENTITLED TO CONDUCT DISCOVERY PROCEEDINGS IN THE SAME MANNER AS IS PRESENTLY ALLOWED IN THE DISTRICT COURTS OF THIS STATE. ALL DISCOVERY PROCEEDINGS MUST BE CONCLUDED NO LATER THAN THREE DAYS BEFORE THE COMMENCEMENT OF THE PUBLIC HEARING.

(d) THE DEADLINE FOR SUBMISSION OF WRITTEN PUBLIC COMMENT TO RESPOND TO TESTIMONY FROM THE APPLICANT IS TEN BUSINESS DAYS AFTER THE HEARING. THE COMMISSIONER SHALL REVIEW ALL RESPONSES AND PROVIDE A REPORT SUMMARIZING ALL PUBLIC TESTIMONY.

(e) IF THE PROPOSED ACQUISITION OF CONTROL WILL REQUIRE THE APPROVAL OF A STATE OTHER THAN COLORADO IN ADDITION TO THE APPROVAL OF THE COMMISSIONER, THE PUBLIC HEARING REFERRED TO IN SUBSECTION (7) OF THIS SECTION MAY BE HELD ON A CONSOLIDATED BASIS UPON REQUEST OF THE PERSON FILING THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION. THE PERSON SHALL FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION WITH THE NAIC WITHIN FIVE DAYS AFTER MAKING THE REQUEST FOR A PUBLIC HEARING. A COMMISSIONER MAY OPT OUT OF A CONSOLIDATED HEARING AND SHALL PROVIDE NOTICE TO THE APPLICANT OF THE OPT-OUT WITHIN TEN DAYS AFTER THE RECEIPT OF THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION. A HEARING CONDUCTED ON A CONSOLIDATED BASIS MUST BE PUBLIC AND SHALL BE HELD WITHIN THE UNITED STATES BEFORE THE COMMISSIONERS OF THE STATES IN WHICH THE INSURERS ARE DOMICILED. THE COMMISSIONERS SHALL HEAR AND RECEIVE EVIDENCE. A COMMISSIONER MAY ATTEND THE HEARING IN PERSON OR BY TELECOMMUNICATION.

(f) IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC INSURER, THE COMMISSIONER SHALL MAKE ANY DETERMINATION THAT THE PERSON ACQUIRING CONTROL OF THE INSURER IS REQUIRED TO MAINTAIN OR RESTORE THE CAPITAL OF THE INSURER TO THE LEVEL REQUIRED BY THE LAWS AND RULES OF THIS STATE NOT LATER THAN SIXTY DAYS AFTER THE DATE OF NOTIFICATION OF THE CHANGE IN CONTROL SUBMITTED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

(g) THE COMMISSIONER MAY RETAIN, AT THE ACQUIRING PERSON'S EXPENSE, ANY ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE COMMISSIONER'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE COMMISSIONER IN REVIEWING THE PROPOSED ACQUISITION OF CONTROL.

(9) THE INSURER SHALL MAIL A SYNOPSIS OF THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION, AND ALL NOTICES OF PUBLIC HEARINGS HELD PURSUANT TO SUBSECTION (7) OF THIS SECTION, TO ITS SHAREHOLDERS WITHIN FIVE BUSINESS DAYS AFTER THE INSURER HAS RECEIVED SUCH STATEMENTS, AMENDMENTS, OTHER MATERIAL, OR NOTICES FILED PURSUANT TO THIS SECTION. THE PERSON MAKING THE FILING SHALL BEAR THE EXPENSES OF THE MAILING. AS SECURITY FOR THE PAYMENT OF SUCH EXPENSES, THE PERSON SHALL FILE WITH THE COMMISSIONER AN ACCEPTABLE BOND OR OTHER DEPOSIT IN AN AMOUNT TO BE DETERMINED BY THE COMMISSIONER.

(10) THIS SECTION DOES NOT APPLY TO:

(a) AN EXCHANGE OF STOCK OF A DOMESTIC INSURER ACTUALLY ACCOMPLISHED IN ACCORDANCE WITH SECTIONS 10-3-604 TO 10-3-606, OR ANY PRELIMINARY AGREEMENT BETWEEN A DOMESTIC INSURER AND ANY OTHER CORPORATION ENTERED INTO IN CONTEMPLATION OF THE ADOPTION OF A PLAN OF EXCHANGE UNDER PART 6 OF THIS ARTICLE; OR

(b) AN OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION THAT THE COMMISSIONER, BY ORDER, EXEMPTS FROM THIS SECTION AS NOT HAVING BEEN MADE OR ENTERED INTO FOR THE PURPOSE AND NOT HAVING THE EFFECT OF CHANGING OR INFLUENCING THE CONTROL OF A DOMESTIC INSURER, OR AS OTHERWISE NOT COMPREHENDED WITHIN THE PURPOSES OF THIS SECTION.

(11) THE FOLLOWING ARE VIOLATIONS OF THIS SECTION:

(a) THE FAILURE TO FILE ANY STATEMENT, AMENDMENT, OR OTHER MATERIAL REQUIRED TO BE FILED PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION; OR

(b) THE EFFECTUATION OF, OR ANY ATTEMPT TO EFFECTUATE, AN ACQUISITION OF CONTROL OF, OR MERGER WITH, A DOMESTIC INSURER

UNLESS THE COMMISSIONER HAS GIVEN HIS OR HER APPROVAL TO THE ACQUISITION OR MERGER.

(12) THE COURTS OF THIS STATE HAVE JURISDICTION OVER EVERY PERSON NOT RESIDENT, DOMICILED, OR AUTHORIZED TO DO BUSINESS IN THIS STATE WHO FILES A STATEMENT WITH THE COMMISSIONER UNDER THIS SECTION AND OVER ALL ACTIONS INVOLVING THE PERSON ARISING OUT OF VIOLATIONS OF THIS SECTION, AND EACH SUCH PERSON IS DEEMED TO HAVE PERFORMED ACTS EQUIVALENT TO AND CONSTITUTING AN APPOINTMENT BY THE PERSON OF THE COMMISSIONER TO BE HIS OR HER TRUE AND LAWFUL ATTORNEY UPON WHOM MAY BE SERVED ALL LAWFUL PROCESS IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF A VIOLATION OF THIS SECTION. COPIES OF ALL SUCH LAWFUL PROCESS SHALL BE SERVED ON THE COMMISSIONER AND THE COMMISSIONER SHALL TRANSMIT THE PROCESS BY REGISTERED OR CERTIFIED MAIL TO THE PERSON AT HIS OR HER LAST-KNOWN ADDRESS.

(13) IF THE PROCEDURES SET FORTH IN THIS SECTION ARE NOT FOLLOWED BEFORE THE ISSUANCE OF THE ORDER OF THE COMMISSIONER THAT APPROVES OR DISAPPROVES THE MERGER, THE AGGRIEVED PARTY MAY SEEK REMEDIES PURSUANT TO SECTION 10-3-814.

(14) NOTHING IN THIS SECTION LIMITS THE COMMISSIONER'S ABILITY TO CONDUCT A HEARING FOR TRANSACTIONS THAT DO NOT MEET THE REQUIREMENTS IN SUBSECTION (6) OF THIS SECTION.

**10-3-803.5. Acquisitions involving insurers not otherwise covered - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACQUISITION" MEANS AN AGREEMENT, ARRANGEMENT, OR ACTIVITY THE CONSUMMATION OF WHICH RESULTS IN A PERSON ACQUIRING DIRECTLY OR INDIRECTLY THE CONTROL OF ANOTHER PERSON, AND INCLUDES THE ACQUISITION OF VOTING SECURITIES, THE ACQUISITION OF ASSETS, BULK REINSURANCE, AND MERGERS.

(b) FOR THE PURPOSES OF SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, "INSURER" INCLUDES ANY COMPANY OR GROUP OF COMPANIES UNDER COMMON MANAGEMENT, OWNERSHIP, OR CONTROL.

(c) "INVOLVED INSURER" INCLUDES AN INSURER THAT EITHER ACQUIRES OR IS ACQUIRED THROUGH AN ACQUISITION, IS AFFILIATED WITH AN INSURER THAT ACQUIRES OR IS ACQUIRED THROUGH AN ACQUISITION, OR IS THE RESULT OF A MERGER.

(d) "MARKET" MEANS:

(I) FOR THE PURPOSES OF SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, DIRECT WRITTEN INSURANCE PREMIUM IN THIS STATE FOR A LINE OF BUSINESS AS CONTAINED IN THE ANNUAL STATEMENT REQUIRED TO BE FILED BY INSURERS LICENSED TO DO BUSINESS IN THIS STATE.

(II) FOR THE PURPOSES OF PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION, THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS. IN DETERMINING THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS, THE COMMISSIONER SHALL GIVE DUE CONSIDERATION TO, AMONG OTHER THINGS, THE DEFINITIONS OR GUIDELINES, IF ANY, PROMULGATED BY THE NAIC AND TO INFORMATION, IF ANY, SUBMITTED BY PARTIES TO THE ACQUISITION. IN THE ABSENCE OF SUFFICIENT INFORMATION TO THE CONTRARY, THE RELEVANT PRODUCT MARKET IS ASSUMED TO BE THE DIRECT WRITTEN INSURANCE PREMIUM FOR A LINE OF BUSINESS, SUCH LINE BEING THAT USED IN THE ANNUAL STATEMENT REQUIRED TO BE FILED BY INSURERS DOING BUSINESS IN THIS STATE, AND THE RELEVANT GEOGRAPHICAL MARKET IS ASSUMED TO BE THIS STATE.

(2) **Scope.** (a) EXCEPT AS EXEMPTED IN PARAGRAPH (b) OF THIS SUBSECTION (2), THIS SECTION APPLIES TO ANY ACQUISITION IN WHICH THERE IS A CHANGE IN CONTROL OF AN INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE.

(b) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

(I) A PURCHASE OF SECURITIES SOLELY FOR INVESTMENT PURPOSES IF THE SECURITIES ARE NOT USED BY VOTING OR OTHERWISE TO CAUSE OR ATTEMPT TO CAUSE THE SUBSTANTIAL LESSENING OF COMPETITION IN ANY INSURANCE MARKET IN THIS STATE. IF A PURCHASE OF SECURITIES RESULTS IN A PRESUMPTION OF CONTROL UNDER SECTION 10-3-801 (3), THE PURCHASE IS NOT SOLELY FOR INVESTMENT PURPOSES UNLESS THE INSURANCE COMMISSIONER OF THE INSURER'S STATE OF DOMICILE ACCEPTS

A DISCLAIMER OF CONTROL OR AFFIRMATIVELY FINDS THAT CONTROL DOES NOT EXIST AND THE DISCLAIMER ACTION OR AFFIRMATIVE FINDING IS COMMUNICATED BY THE DOMICILIARY COMMISSIONER TO THE COMMISSIONER OF THIS STATE.

(II) THE ACQUISITION OF A PERSON BY ANOTHER PERSON WHEN BOTH PERSONS ARE NEITHER DIRECTLY NOR THROUGH AFFILIATES PRIMARILY ENGAGED IN THE BUSINESS OF INSURANCE, IF PREACQUISITION NOTIFICATION IS FILED WITH THE COMMISSIONER IN ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION THIRTY DAYS BEFORE THE PROPOSED EFFECTIVE DATE OF THE ACQUISITION; EXCEPT THAT PREACQUISITION NOTIFICATION IS NOT REQUIRED FOR EXCLUSION FROM THIS SECTION IF THE ACQUISITION WOULD OTHERWISE BE EXCLUDED FROM THIS SECTION BY ANY OTHER SUBPARAGRAPH OF THIS PARAGRAPH (b);

(III) THE ACQUISITION OF ALREADY AFFILIATED PERSONS;

(IV) AN ACQUISITION IF, AS AN IMMEDIATE RESULT OF THE ACQUISITION:

(A) IN NO MARKET WOULD THE COMBINED MARKET SHARE OF THE INVOLVED INSURERS EXCEED FIVE PERCENT OF THE TOTAL MARKET;

(B) THERE WOULD BE NO INCREASE IN ANY MARKET SHARE; OR

(C) IN NO MARKET WOULD THE COMBINED MARKET SHARE OF THE INVOLVED INSURERS EXCEED TWELVE PERCENT OF THE TOTAL MARKET AND THE COMBINED MARKET SHARE INCREASE BY MORE THAN TWO PERCENT OF THE TOTAL MARKET;

(V) AN ACQUISITION FOR WHICH A PREACQUISITION NOTIFICATION WOULD BE REQUIRED PURSUANT TO THIS SECTION DUE SOLELY TO THE RESULTING EFFECT ON THE OCEAN MARINE INSURANCE LINE OF BUSINESS; OR

(VI) AN ACQUISITION OF AN INSURER WHOSE DOMICILIARY INSURANCE COMMISSIONER AFFIRMATIVELY FINDS THAT THE INSURER IS IN FAILING CONDITION; THERE IS A LACK OF FEASIBLE ALTERNATIVES TO IMPROVING ITS CONDITION; THE PUBLIC BENEFITS OF IMPROVING THE INSURER'S CONDITION THROUGH THE ACQUISITION EXCEED THE PUBLIC

BENEFITS THAT WOULD ARISE FROM NOT LESSENING COMPETITION; AND THE FINDINGS ARE COMMUNICATED BY THE DOMICILIARY COMMISSIONER TO THE COMMISSIONER OF THIS STATE.

(3) (a) AN ACQUISITION COVERED BY SUBSECTION (2) OF THIS SECTION MAY BE SUBJECT TO AN ORDER PURSUANT TO SUBSECTION (5) OF THIS SECTION UNLESS THE ACQUIRING PERSON FILES A PREACQUISITION NOTIFICATION AND THE WAITING PERIOD HAS EXPIRED. THE ACQUIRED PERSON MAY FILE A PREACQUISITION NOTIFICATION. THE COMMISSIONER SHALL GIVE CONFIDENTIAL TREATMENT TO INFORMATION SUBMITTED UNDER THIS SUBSECTION (3) IN THE SAME MANNER AS OTHERWISE PROVIDED IN THIS PART 8.

(b) THE PREACQUISITION NOTIFICATION MUST BE IN THE FORM AND CONTAIN THE INFORMATION AS PRESCRIBED BY THE NAIC RELATING TO THOSE MARKETS WHICH, UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, CAUSE THE ACQUISITION NOT TO BE EXEMPTED FROM THIS SECTION. THE COMMISSIONER MAY REQUIRE ADDITIONAL MATERIAL AND INFORMATION AS DEEMED NECESSARY TO DETERMINE WHETHER THE PROPOSED ACQUISITION, IF CONSUMMATED, WOULD VIOLATE THE COMPETITIVE STANDARD OF SUBSECTION (4) OF THIS SECTION. THE REQUIRED INFORMATION MAY INCLUDE AN OPINION OF AN ECONOMIST AS TO THE COMPETITIVE IMPACT OF THE ACQUISITION IN THIS STATE ACCOMPANIED BY A SUMMARY OF THE EDUCATION AND EXPERIENCE OF THE ECONOMIST INDICATING HIS OR HER ABILITY TO RENDER AN INFORMED OPINION.

(c) THE WAITING PERIOD BEGINS ON THE DATE OF RECEIPT BY THE COMMISSIONER OF A PREACQUISITION NOTIFICATION AND ENDS ON THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE OF RECEIPT OR TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER. BEFORE THE END OF THE WAITING PERIOD, THE COMMISSIONER ON A ONE-TIME BASIS MAY REQUIRE THE SUBMISSION OF ADDITIONAL NEEDED INFORMATION RELEVANT TO THE PROPOSED ACQUISITION, IN WHICH EVENT THE WAITING PERIOD ENDS ON THE EARLIER OF THE THIRTIETH DAY AFTER RECEIPT OF THE ADDITIONAL INFORMATION BY THE COMMISSIONER OR TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER.

(4) **Competitive standard.** (a) THE COMMISSIONER MAY ENTER AN ORDER UNDER PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION WITH



RESPECT TO AN ACQUISITION IF:

(I) THERE IS SUBSTANTIAL EVIDENCE THAT THE EFFECT OF THE ACQUISITION MAY BE SUBSTANTIALLY TO LESSEN COMPETITION IN ANY LINE OF INSURANCE IN THIS STATE OR TEND TO CREATE A MONOPOLY; OR

(II) THE INSURER FAILS TO FILE ADEQUATE INFORMATION IN COMPLIANCE WITH SUBSECTION (3) OF THIS SECTION.

(b) IN DETERMINING WHETHER A PROPOSED ACQUISITION WOULD VIOLATE THE COMPETITIVE STANDARD OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE COMMISSIONER SHALL CONSIDER THE FOLLOWING:

(I) AN ACQUISITION COVERED UNDER SECTION 10-3-803 (2) INVOLVING TWO OR MORE INSURERS COMPETING IN THE SAME MARKET IS PRIMA FACIE EVIDENCE OF VIOLATION OF THE COMPETITIVE STANDARDS IF ONE OF THE FOLLOWING OCCURS:

(A) THE MARKET IS HIGHLY CONCENTRATED AND THE INVOLVED INSURERS POSSESS THE FOLLOWING SHARES OF THE MARKET:

INSURER A	INSURER B
4%	4% OR MORE
10%	2% OR MORE
15% OR MORE	1% OR MORE

(B) THE MARKET IS NOT HIGHLY CONCENTRATED AND THE INVOLVED INSURERS POSSESS THE FOLLOWING SHARES OF THE MARKET:

INSURER A	INSURER B
5%	5% OR MORE
10%	4% OR MORE
15%	3% OR MORE
19% OR MORE	1% OR MORE

(II) A HIGHLY CONCENTRATED MARKET IS ONE IN WHICH THE SHARE OF THE FOUR LARGEST INSURERS IS SEVENTY-FIVE PERCENT OR MORE OF THE MARKET. PERCENTAGES NOT SHOWN IN THE TABLES OF SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) ARE INTERPOLATED PROPORTIONATELY TO THE

PERCENTAGES THAT ARE SHOWN. FOR THE PURPOSE OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE INSURER WITH THE LARGEST SHARE OF THE MARKET IS DEEMED TO BE INSURER A.

(III) WHETHER THERE IS A SIGNIFICANT TREND TOWARD INCREASED CONCENTRATION IN THE MARKET. THERE IS A SIGNIFICANT TREND TOWARD INCREASED CONCENTRATION IN THE MARKET WHEN THE AGGREGATE MARKET SHARE OF ANY GROUPING OF THE LARGEST INSURERS IN THE MARKET, FROM THE TWO LARGEST TO THE EIGHT LARGEST, HAS INCREASED BY SEVEN PERCENT OR MORE OF THE MARKET OVER A PERIOD OF TIME EXTENDING FROM ANY BASE YEAR FIVE TO TEN YEARS PRIOR TO THE ACQUISITION UP TO THE TIME OF THE ACQUISITION. AN ACQUISITION COVERED UNDER SUBSECTION (2) OF THIS SECTION INVOLVING TWO OR MORE INSURERS COMPETING IN THE SAME MARKET IS PRIMA FACIE EVIDENCE OF VIOLATION OF THE COMPETITIVE STANDARD IN PARAGRAPH (a) OF THIS SUBSECTION (4) IF:

(A) THERE IS A SIGNIFICANT TREND TOWARD INCREASED CONCENTRATION IN THE MARKET;

(B) ONE OF THE INSURERS INVOLVED IS ONE OF THE INSURERS IN A GROUPING OF LARGE INSURERS SHOWING THE REQUISITE INCREASE IN THE MARKET SHARE; AND

(C) ANOTHER INVOLVED INSURER'S MARKET IS TWO PERCENT OR MORE; AND

(IV) EVEN THOUGH AN ACQUISITION IS NOT PRIMA FACIE VIOLATIVE OF THE COMPETITIVE STANDARD UNDER SUBPARAGRAPH (I) OR (III) OF THIS PARAGRAPH (b), THE COMMISSIONER MAY ESTABLISH THE REQUISITE ANTICOMPETITIVE EFFECT BASED UPON OTHER SUBSTANTIAL EVIDENCE. EVEN THOUGH AN ACQUISITION IS PRIMA FACIE VIOLATIVE OF THE COMPETITIVE STANDARD UNDER SUBPARAGRAPH (I) OR (III) OF THIS PARAGRAPH (b), A PARTY MAY ESTABLISH THE ABSENCE OF THE REQUISITE ANTICOMPETITIVE EFFECT BASED UPON OTHER SUBSTANTIAL EVIDENCE. RELEVANT FACTORS IN MAKING A DETERMINATION UNDER THIS SUBPARAGRAPH (IV) INCLUDE THE FOLLOWING: MARKET SHARES, VOLATILITY OF RANKING OF MARKET LEADERS, NUMBER OF COMPETITORS, CONCENTRATION, TREND OF CONCENTRATION IN THE INDUSTRY, AND EASE OF ENTRY AND EXIT INTO THE MARKET.

(c) THE BURDEN OF SHOWING PRIMA FACIE EVIDENCE OF VIOLATION OF THE COMPETITIVE STANDARD RESTS UPON THE COMMISSIONER.

(d) THE COMMISSIONER SHALL NOT ENTER AN ORDER UNDER PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION IF THE ACQUISITION WILL:

(I) YIELD SUBSTANTIAL ECONOMIES OF SCALE OR ECONOMIES IN RESOURCE UTILIZATION THAT CANNOT BE FEASIBLY ACHIEVED IN ANY OTHER WAY AND THE PUBLIC BENEFITS THAT WOULD ARISE FROM SUCH ECONOMIES EXCEED THE PUBLIC BENEFITS THAT WOULD ARISE FROM NOT LESSENING COMPETITION; OR

(II) SUBSTANTIALLY INCREASE THE AVAILABILITY OF INSURANCE AND THE PUBLIC BENEFITS OF THE INCREASE EXCEED THE PUBLIC BENEFITS THAT WOULD ARISE FROM NOT LESSENING COMPETITION.

(5) **Orders and penalties.** (a) (I) IF AN ACQUISITION VIOLATES THE STANDARDS OF THIS SECTION, THE COMMISSIONER MAY ENTER AN ORDER:

(A) REQUIRING AN INVOLVED INSURER TO CEASE AND DESIST FROM DOING BUSINESS IN THIS STATE WITH RESPECT TO THE LINE OR LINES OF INSURANCE INVOLVED IN THE VIOLATION; OR

(B) DENYING THE APPLICATION OF AN ACQUIRED OR ACQUIRING INSURER FOR A LICENSE TO DO BUSINESS IN THIS STATE.

(II) THE COMMISSIONER SHALL NOT ENTER AN ORDER UNDER THIS PARAGRAPH (a) UNLESS:

(A) THERE IS A HEARING ON THE PROPOSED ORDER;

(B) NOTICE OF THE HEARING IS ISSUED BEFORE THE END OF THE WAITING PERIOD AND NOT LESS THAN FIFTEEN DAYS BEFORE THE HEARING; AND

(C) THE HEARING IS CONCLUDED AND THE ORDER IS ISSUED NO LATER THAN SIXTY DAYS AFTER THE DATE OF THE FILING OF THE PREACQUISITION NOTIFICATION WITH THE COMMISSIONER.

(III) EVERY ORDER MUST BE ACCOMPANIED BY A WRITTEN DECISION OF THE COMMISSIONER SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(IV) AN ORDER ENTERED PURSUANT TO THIS PARAGRAPH (a) DOES NOT APPLY IF THE ACQUISITION IS NOT CONSUMMATED.

(b) A PERSON WHO VIOLATES A CEASE-AND-DESIST ORDER OF THE COMMISSIONER UNDER PARAGRAPH (a) OF THIS SUBSECTION (5) AND WHILE THE ORDER IS IN EFFECT IS, AFTER NOTICE AND HEARING AND UPON ORDER OF THE COMMISSIONER, SUBJECT AT THE DISCRETION OF THE COMMISSIONER TO ONE OR MORE OF THE FOLLOWING:

(I) A MONETARY PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EVERY DAY OF VIOLATION; OR

(II) SUSPENSION OR REVOCATION OF THE PERSON'S LICENSE.

(c) AN INSURER OR OTHER PERSON WHO FAILS TO MAKE ANY FILING REQUIRED BY THIS SECTION, AND WHO ALSO FAILS TO DEMONSTRATE A GOOD-FAITH EFFORT TO COMPLY WITH ANY FILING REQUIREMENT, IS SUBJECT TO A FINE OF NOT MORE THAN FIFTY THOUSAND DOLLARS.

(6) SECTIONS 10-3-810 (2) AND (3) AND 10-3-812 DO NOT APPLY TO ACQUISITIONS COVERED UNDER SUBSECTION (2) OF THIS SECTION.

**10-3-804. Registration of insurers.** (1) (a) EVERY INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND THAT IS A MEMBER OF AN INSURANCE HOLDING COMPANY SYSTEM SHALL REGISTER WITH THE COMMISSIONER; EXCEPT THAT REGISTRATION IS NOT REQUIRED FOR A FOREIGN INSURER THAT IS SUBJECT TO REGISTRATION REQUIREMENTS AND STANDARDS ADOPTED BY STATUTE OR REGULATION IN THE JURISDICTION OF ITS DOMICILE THAT ARE SUBSTANTIALLY SIMILAR TO THOSE CONTAINED IN:

(I) THIS SECTION;

(II) SECTION 10-3-805 (1) (a), (2), OR (3); AND

(III) EITHER SECTION 10-3-805 (1) (b) OR A PROVISION SUCH AS THE FOLLOWING: "EACH REGISTERED INSURER MUST KEEP CURRENT THE

INFORMATION REQUIRED TO BE DISCLOSED IN ITS REGISTRATION STATEMENT BY REPORTING ALL MATERIAL CHANGES OR ADDITIONS WITHIN FIFTEEN DAYS AFTER THE END OF THE MONTH IN WHICH IT LEARNS OF EACH CHANGE OR ADDITION."

(b) AN INSURER THAT IS SUBJECT TO REGISTRATION UNDER THIS SECTION SHALL REGISTER WITHIN FIFTEEN DAYS AFTER IT BECOMES SUBJECT TO REGISTRATION, AND ANNUALLY THEREAFTER BY APRIL 30 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR, UNLESS THE COMMISSIONER FOR GOOD CAUSE SHOWN EXTENDS THE TIME FOR REGISTRATION, AND THEN WITHIN THE EXTENDED TIME. THE COMMISSIONER MAY REQUIRE ANY INSURER AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS A MEMBER OF AN INSURANCE HOLDING COMPANY SYSTEM AND THAT IS NOT SUBJECT TO REGISTRATION UNDER THIS SECTION TO FURNISH A COPY OF THE REGISTRATION STATEMENT, THE SUMMARY SPECIFIED IN SUBSECTION (3) OF THIS SECTION, OR OTHER INFORMATION FILED BY THE INSURANCE COMPANY WITH THE INSURANCE REGULATORY AUTHORITY OF ITS DOMICILIARY JURISDICTION.

(2) EVERY INSURER SUBJECT TO REGISTRATION SHALL FILE THE REGISTRATION STATEMENT WITH THE COMMISSIONER ON A FORM AND IN A FORMAT PRESCRIBED BY THE NAIC, WHICH MUST CONTAIN THE FOLLOWING CURRENT INFORMATION:

(a) THE CAPITAL STRUCTURE, GENERAL FINANCIAL CONDITION, AND OWNERSHIP AND MANAGEMENT OF THE INSURER AND ANY PERSON CONTROLLING THE INSURER;

(b) THE IDENTITY AND RELATIONSHIP OF EVERY MEMBER OF THE INSURANCE HOLDING COMPANY SYSTEM;

(c) THE FOLLOWING AGREEMENTS IN FORCE, AND TRANSACTIONS CURRENTLY OUTSTANDING OR THAT HAVE OCCURRED DURING THE LAST CALENDAR YEAR BETWEEN THE INSURER AND ITS AFFILIATES:

(I) LOANS, OTHER INVESTMENTS, OR PURCHASES, SALES, OR EXCHANGES OF SECURITIES OF THE AFFILIATES BY THE INSURER OR OF THE INSURER BY ITS AFFILIATES;

(II) PURCHASES, SALES, OR EXCHANGE OF ASSETS;

(III) TRANSACTIONS NOT IN THE ORDINARY COURSE OF BUSINESS;

(IV) GUARANTEES OR UNDERTAKINGS FOR THE BENEFIT OF AN AFFILIATE THAT RESULT IN AN ACTUAL CONTINGENT EXPOSURE OF THE INSURER'S ASSETS TO LIABILITY, OTHER THAN INSURANCE CONTRACTS ENTERED INTO IN THE ORDINARY COURSE OF THE INSURER'S BUSINESS;

(V) ALL MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, AND COST-SHARING ARRANGEMENTS;

(VI) REINSURANCE AGREEMENTS;

(VII) DIVIDENDS AND OTHER DISTRIBUTIONS TO SHAREHOLDERS;

(VIII) CONSOLIDATED TAX ALLOCATION AGREEMENTS;

(IX) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS NOT AN AFFILIATE, WHERE THE INSURER MAKES SUCH LOANS OR EXTENSIONS OF CREDIT WITH THE AGREEMENT OR UNDERSTANDING THAT THE PROCEEDS OF SUCH TRANSACTIONS, IN WHOLE OR IN SUBSTANTIAL PART, ARE TO BE USED TO MAKE LOANS OR EXTENSIONS OF CREDIT TO, PURCHASE ASSETS OF, OR MAKE INVESTMENTS IN ANY AFFILIATE OF THE INSURER MAKING SUCH LOANS OR EXTENSIONS OF CREDIT; AND

(X) ANY MATERIAL TRANSACTIONS, SPECIFIED BY RULE, THAT THE COMMISSIONER DETERMINES MAY ADVERSELY AFFECT THE INTEREST OF SUCH INSURER'S POLICYHOLDERS;

(d) INFORMATION ABOUT EACH PLEDGE OF THE INSURER'S STOCK, INCLUDING STOCK OF ANY SUBSIDIARY OR CONTROLLING AFFILIATE, FOR A LOAN MADE TO ANY MEMBER OF THE INSURANCE HOLDING COMPANY SYSTEM;

(e) IF REQUESTED BY THE COMMISSIONER, FINANCIAL STATEMENTS OF OR WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL AFFILIATES. FINANCIAL STATEMENTS MAY INCLUDE ANNUAL AUDITED FINANCIAL STATEMENTS FILED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77a ET SEQ., AS AMENDED, OR THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78a ET SEQ., AS

AMENDED. AN INSURER REQUIRED TO FILE FINANCIAL STATEMENTS PURSUANT TO THIS PARAGRAPH (e) MAY SATISFY THE REQUEST BY PROVIDING THE COMMISSIONER WITH THE MOST RECENTLY FILED PARENT CORPORATION FINANCIAL STATEMENTS THAT HAVE BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

(f) OTHER MATTERS CONCERNING TRANSACTIONS BETWEEN REGISTERED INSURERS AND ANY AFFILIATES AS MAY BE INCLUDED FROM TIME TO TIME IN ANY REGISTRATION FORMS ADOPTED OR APPROVED BY THE COMMISSIONER;

(g) STATEMENTS THAT THE INSURER'S BOARD OF DIRECTORS OVERSEES CORPORATE GOVERNANCE AND INTERNAL CONTROLS AND THAT THE INSURER'S OFFICERS OR SENIOR MANAGEMENT HAVE APPROVED, IMPLEMENTED, AND CONTINUE TO MAINTAIN AND MONITOR CORPORATE GOVERNANCE AND INTERNAL CONTROL PROCEDURES; AND

(h) ANY OTHER INFORMATION REQUIRED BY THE COMMISSIONER BY RULE.

(3) ALL REGISTRATION STATEMENTS MUST CONTAIN A SUMMARY OUTLINING ALL ITEMS IN THE CURRENT REGISTRATION STATEMENT REPRESENTING CHANGES FROM THE PRIOR REGISTRATION STATEMENT.

(4) NO INFORMATION NEED BE DISCLOSED ON THE REGISTRATION STATEMENT FILED PURSUANT TO SUBSECTION (2) OF THIS SECTION IF THE INFORMATION IS NOT MATERIAL FOR THE PURPOSES OF THIS SECTION. UNLESS THE COMMISSIONER BY RULE OR ORDER PROVIDES OTHERWISE, SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, INVESTMENTS, OR GUARANTEES INVOLVING ONE-HALF OF ONE PERCENT OR LESS OF AN INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER ARE NOT MATERIAL FOR PURPOSES OF THIS SUBSECTION (4).

(5) SUBJECT TO SECTION 10-3-805 (2), EACH REGISTERED INSURER SHALL REPORT TO THE COMMISSIONER ALL DIVIDENDS AND OTHER DISTRIBUTIONS TO SHAREHOLDERS WITHIN FIFTEEN BUSINESS DAYS FOLLOWING THE DECLARATION OF THE DIVIDENDS OR DISTRIBUTION.

(6) A PERSON WITHIN AN INSURANCE HOLDING COMPANY SYSTEM

SUBJECT TO REGISTRATION SHALL PROVIDE COMPLETE AND ACCURATE INFORMATION TO AN INSURER WHERE THE INFORMATION IS REASONABLY NECESSARY TO ENABLE THE INSURER TO COMPLY WITH THIS PART 8.

(7) THE COMMISSIONER SHALL TERMINATE THE REGISTRATION OF ANY INSURER THAT DEMONSTRATES THAT IT NO LONGER IS A MEMBER OF AN INSURANCE HOLDING COMPANY SYSTEM.

(8) THE COMMISSIONER MAY REQUIRE OR ALLOW TWO OR MORE AFFILIATED INSURERS SUBJECT TO REGISTRATION TO FILE A CONSOLIDATED REGISTRATION STATEMENT.

(9) THE COMMISSIONER MAY ALLOW AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND THAT IS PART OF AN INSURANCE HOLDING COMPANY SYSTEM TO REGISTER ON BEHALF OF ANY AFFILIATED INSURER THAT IS REQUIRED TO REGISTER UNDER SUBSECTION (1) OF THIS SECTION AND TO FILE ALL INFORMATION AND MATERIAL REQUIRED TO BE FILED UNDER THIS SECTION.

(10) THIS SECTION DOES NOT APPLY TO ANY INSURER, INFORMATION, OR TRANSACTION IF AND TO THE EXTENT THAT THE COMMISSIONER BY RULE OR ORDER EXEMPTS IT FROM THIS SECTION.

(11) A PERSON, INCLUDING AN INSURER OR ANY MEMBER OF AN INSURANCE HOLDING COMPANY SYSTEM, MAY FILE WITH THE COMMISSIONER A DISCLAIMER OF AFFILIATION WITH ANY AUTHORIZED INSURER. THE DISCLAIMER MUST FULLY DISCLOSE ALL MATERIAL RELATIONSHIPS AND BASES FOR AFFILIATION BETWEEN THE PERSON AND THE INSURER AS WELL AS THE BASIS FOR DISCLAIMING THE AFFILIATION. A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO HAVE BEEN GRANTED UNLESS THE COMMISSIONER, WITHIN THIRTY DAYS FOLLOWING RECEIPT OF A COMPLETE DISCLAIMER, NOTIFIES THE FILING PARTY THE DISCLAIMER IS DISALLOWED. IN THE EVENT OF DISALLOWANCE, THE DISCLAIMING PARTY MAY REQUEST AN ADMINISTRATIVE HEARING, WHICH THE COMMISSIONER SHALL GRANT. THE DISCLAIMING PARTY NEED NOT REGISTER UNDER THIS SECTION IF APPROVAL OF THE DISCLAIMER HAS BEEN GRANTED BY THE COMMISSIONER OR IF THE DISCLAIMER IS DEEMED TO HAVE BEEN APPROVED.

(12) THE ULTIMATE CONTROLLING PERSON OF EVERY INSURER SUBJECT TO REGISTRATION SHALL ALSO FILE AN ANNUAL ENTERPRISE RISK



REPORT. THE REPORT MUST, TO THE BEST OF THE ULTIMATE CONTROLLING PERSON'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE ENTERPRISE RISK TO THE INSURER. THE CONTROLLING PERSON SHALL FILE THE REPORT WITH THE LEAD STATE COMMISSIONER OF THE INSURANCE HOLDING COMPANY SYSTEM AS DETERMINED BY THE PROCEDURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NAIC.

(13) THE FAILURE TO FILE A REGISTRATION STATEMENT OR ANY SUMMARY OF THE REGISTRATION STATEMENT OR ENTERPRISE RISK FILING REQUIRED BY THIS SECTION WITHIN THE TIME SPECIFIED FOR FILING IS A VIOLATION OF THIS SECTION.

**10-3-805. Standards and management of an insurer within an insurance holding company system. (1) Transactions 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 THE FOLLOWING STANDARDS:**

(I) THE TERMS MUST BE FAIR AND REASONABLE;

(II) AGREEMENTS FOR COST SHARING SERVICES AND MANAGEMENT MUST INCLUDE SUCH PROVISIONS AS REQUIRED BY RULES ISSUED BY THE COMMISSIONER;

(III) CHARGES OR FEES FOR SERVICES PERFORMED MUST BE REASONABLE;

(IV) EXPENSES INCURRED AND PAYMENT RECEIVED SHALL BE ALLOCATED TO THE INSURER IN CONFORMITY WITH CUSTOMARY INSURANCE ACCOUNTING PRACTICES CONSISTENTLY APPLIED;

(V) 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; AND

(VI) THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS

FOLLOWING ANY DIVIDENDS OR DISTRIBUTIONS TO SHAREHOLDER AFFILIATES MUST BE REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO MEET ITS FINANCIAL NEEDS.

(b) THE FOLLOWING TRANSACTIONS INVOLVING A DOMESTIC INSURER AND ANY PERSON IN ITS INSURANCE HOLDING COMPANY SYSTEM, INCLUDING AMENDMENTS OR MODIFICATIONS OF AFFILIATE AGREEMENTS PREVIOUSLY FILED PURSUANT TO THIS SECTION, THAT ARE SUBJECT TO ANY MATERIALITY STANDARDS CONTAINED IN SUBPARAGRAPHS (I) TO (VII) OF THIS PARAGRAPH (b), SHALL NOT BE ENTERED INTO UNLESS THE INSURER HAS NOTIFIED THE COMMISSIONER IN WRITING OF ITS INTENTION TO ENTER INTO THE TRANSACTION AT LEAST THIRTY DAYS BEFORE ENTERING INTO THE TRANSACTION, OR SUCH SHORTER PERIOD AS THE COMMISSIONER MAY PERMIT, AND THE COMMISSIONER HAS NOT DISAPPROVED IT WITHIN THAT PERIOD:

(I) SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, OR INVESTMENTS, IF THE TRANSACTIONS ARE EQUAL TO OR EXCEED:

(A) WITH RESPECT TO NONLIFE INSURERS, THE LESSER OF THREE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER; OR

(B) WITH RESPECT TO LIFE INSURERS, THREE PERCENT OF THE INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER;

(II) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS NOT AN AFFILIATE, WHERE THE INSURER MAKES 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, PURCHASE ASSETS OF, OR MAKE INVESTMENTS IN, ANY AFFILIATE OF THE INSURER MAKING THE LOANS OR EXTENSIONS OF CREDIT IF THE TRANSACTIONS ARE EQUAL TO OR EXCEED:

(A) WITH RESPECT TO NONLIFE INSURERS, THE LESSER OF THREE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER; OR

(B) WITH RESPECT TO LIFE INSURERS, THREE PERCENT OF THE INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER;

(III) REINSURANCE AGREEMENTS OR MODIFICATIONS, INCLUDING:

(A) ALL REINSURANCE POOLING AGREEMENTS; AND

(B) AGREEMENTS IN WHICH THE REINSURANCE PREMIUM OR A CHANGE IN THE INSURER'S LIABILITIES, OR THE PROJECTED REINSURANCE PREMIUM OR A CHANGE IN THE INSURER'S LIABILITIES IN ANY OF THE NEXT THREE YEARS, EQUALS OR EXCEEDS FIVE PERCENT OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS, AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER, INCLUDING THOSE 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;

(IV) ALL MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, TAX ALLOCATION AGREEMENTS, GUARANTEES, AND COST-SHARING ARRANGEMENTS;

(V) GUARANTEES WHEN MADE BY A DOMESTIC INSURER; EXCEPT THAT A GUARANTEE THAT IS QUANTIFIABLE AS TO AMOUNT IS NOT SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBPARAGRAPH (V) UNLESS IT EXCEEDS THE LESSER OF ONE-HALF OF ONE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TEN PERCENT OF SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER. GUARANTEES THAT ARE NOT QUANTIFIABLE AS TO AMOUNT ARE SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBPARAGRAPH (V).

(VI) DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN A PERSON THAT CONTROLS THE INSURER OR IN AN AFFILIATE OF THE INSURER IN AN AMOUNT THAT, TOGETHER WITH ITS PRESENT HOLDINGS IN SUCH INVESTMENTS, EXCEEDS TWO AND ONE-HALF PERCENT OF THE INSURER'S SURPLUS TO POLICYHOLDERS; EXCEPT THAT DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN SUBSIDIARIES ACQUIRED PURSUANT TO SECTION 10-3-802 OR AUTHORIZED UNDER ANY OTHER SECTION OF

COLORADO LAW, OR IN NONSUBSIDIARY INSURANCE AFFILIATES THAT ARE SUBJECT TO THIS PART 8, ARE EXEMPT FROM THIS REQUIREMENT; AND

(VII) ANY MATERIAL TRANSACTIONS, SPECIFIED BY RULE, THAT THE COMMISSIONER DETERMINES MAY ADVERSELY AFFECT THE INTERESTS OF THE INSURER'S POLICYHOLDERS.

(c) THE NOTICE FOR AMENDMENTS OR MODIFICATIONS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (1) MUST INCLUDE THE REASONS FOR THE CHANGE AND THE FINANCIAL IMPACT ON THE DOMESTIC INSURER. INFORMAL NOTICE SHALL BE REPORTED, WITHIN THIRTY DAYS AFTER A TERMINATION OF A PREVIOUSLY FILED AGREEMENT, TO THE COMMISSIONER FOR DETERMINATION OF THE TYPE OF FILING REQUIRED, IF ANY.

(d) NOTHING IN PARAGRAPH (b) OF THIS SUBSECTION (1) 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.

(e) A DOMESTIC INSURER SHALL 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 OCCUR OTHERWISE. IF THE COMMISSIONER DETERMINES THAT SEPARATE TRANSACTIONS WERE ENTERED INTO OVER ANY TWELVE-MONTH PERIOD FOR THAT PURPOSE, THE COMMISSIONER MAY EXERCISE HIS OR HER AUTHORITY UNDER SECTION 10-3-811.

(f) THE COMMISSIONER, IN REVIEWING TRANSACTIONS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), SHALL CONSIDER WHETHER THE TRANSACTIONS COMPLY WITH THE STANDARDS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (1) AND WHETHER THEY MAY ADVERSELY AFFECT THE INTERESTS OF POLICYHOLDERS.

(g) A DOMESTIC INSURER SHALL NOTIFY THE COMMISSIONER WITHIN THIRTY DAYS AFTER 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.

**(2) Dividends and other distributions.** (a) A DOMESTIC INSURER SHALL NOT PAY ANY EXTRAORDINARY DIVIDEND OR MAKE ANY OTHER EXTRAORDINARY DISTRIBUTION TO ITS SHAREHOLDERS UNTIL THIRTY DAYS AFTER THE COMMISSIONER HAS RECEIVED NOTICE OF THE DECLARATION OF THE DIVIDEND OR DISTRIBUTION AND HAS NOT WITHIN THAT PERIOD DISAPPROVED THE PAYMENT, OR UNTIL THE COMMISSIONER HAS APPROVED THE PAYMENT WITHIN THE THIRTY-DAY PERIOD.

(b) 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 TWELVE MONTHS, EXCEEDS THE LESSER OF:

(I) TEN PERCENT OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER; 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 TWELVE-MONTH PERIOD ENDING THE THIRTY-FIRST DAY OF THE PRECEDING DECEMBER, BUT NOT INCLUDING PRO RATA DISTRIBUTIONS OF ANY CLASS OF THE INSURER'S OWN SECURITIES.

(c) IN DETERMINING WHETHER A DIVIDEND OR DISTRIBUTION IS EXTRAORDINARY, AN INSURER OTHER THAN A LIFE INSURER MAY CARRY FORWARD NET INCOME FROM THE PREVIOUS TWO CALENDAR YEARS THAT HAS NOT ALREADY BEEN PAID OUT AS DIVIDENDS. THIS CARRY-FORWARD SHALL BE COMPUTED BY TAKING THE NET INCOME FROM THE SECOND AND THIRD PRECEDING CALENDAR YEARS, NOT INCLUDING REALIZED CAPITAL GAINS, LESS DIVIDENDS PAID IN THE SECOND AND IMMEDIATELY PRECEDING CALENDAR YEARS.

(d) 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 CONFERS NO RIGHTS UPON SHAREHOLDERS UNTIL:

(I) THE COMMISSIONER HAS APPROVED THE PAYMENT OF THE

DIVIDEND OR DISTRIBUTION; OR

(II) THE COMMISSIONER HAS NOT DISAPPROVED PAYMENT WITHIN THE THIRTY-DAY PERIOD REFERRED TO IN PARAGRAPH (a) OF THIS SUBSECTION (2).

(3) FOR PURPOSES OF THIS PART 8, IN DETERMINING WHETHER AN INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IS REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO MEET ITS FINANCIAL NEEDS, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING FACTORS, AMONG OTHERS:

(a) THE SIZE OF THE INSURER AS MEASURED BY ITS ASSETS, CAPITAL AND SURPLUS, RESERVES, PREMIUM WRITINGS, INSURANCE IN FORCE, AND OTHER APPROPRIATE CRITERIA;

(b) THE EXTENT TO WHICH THE INSURER'S BUSINESS IS DIVERSIFIED AMONG SEVERAL LINES OF INSURANCE;

(c) THE NUMBER AND SIZE OF RISKS INSURED IN EACH LINE OF BUSINESS;

(d) THE EXTENT OF THE GEOGRAPHICAL DISPERSION OF THE INSURER'S INSURED RISKS;

(e) THE NATURE AND EXTENT OF THE INSURER'S REINSURANCE PROGRAM;

(f) THE QUALITY, DIVERSIFICATION, AND LIQUIDITY OF THE INSURER'S INVESTMENT PORTFOLIO;

(g) THE RECENT PAST AND PROJECTED FUTURE TREND IN THE SIZE OF THE INSURER'S INVESTMENT PORTFOLIO;

(h) THE SURPLUS AS REGARDS POLICYHOLDERS MAINTAINED BY OTHER COMPARABLE INSURERS;

(i) THE ADEQUACY OF THE INSURER'S RESERVES;

(j) 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 JUDGMENT OF THE COMMISSIONER THE INVESTMENT SO WARRANTS.

(k) 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

(l) ANY OTHER SITUATION NOT DESCRIBED IN THIS SUBSECTION (3) THAT MAY RENDER THE OPERATIONS OF THE INSURER HAZARDOUS TO THE PUBLIC OR ITS POLICYHOLDERS.

**10-3-806. Examination.** (1) SUBJECT TO THE LIMITATION CONTAINED IN THIS SECTION AND IN ADDITION TO THE POWERS THAT THE COMMISSIONER HAS UNDER THIS TITLE RELATING TO THE EXAMINATION OF INSURERS, THE COMMISSIONER MAY EXAMINE ANY INSURER REGISTERED UNDER SECTION 10-3-804 AND ITS AFFILIATES TO ASCERTAIN THE FINANCIAL CONDITION OF THE INSURER, INCLUDING THE ENTERPRISE RISK TO THE INSURER BY THE ULTIMATE CONTROLLING PARTY, BY ANY ENTITY OR COMBINATION OF ENTITIES WITHIN THE INSURANCE HOLDING COMPANY SYSTEM, OR BY THE INSURANCE HOLDING COMPANY SYSTEM ON A CONSOLIDATED BASIS.

(2) **Access to books and records.** (a) THE COMMISSIONER MAY ORDER ANY INSURER REGISTERED UNDER SECTION 10-3-804 TO PRODUCE SUCH RECORDS, BOOKS, OR OTHER INFORMATION PAPERS IN THE POSSESSION OF THE INSURER OR ITS AFFILIATES AS ARE REASONABLY NECESSARY TO DETERMINE COMPLIANCE WITH THIS SECTION.

(b) TO DETERMINE COMPLIANCE WITH THIS SECTION, THE COMMISSIONER MAY ORDER ANY INSURER REGISTERED UNDER SECTION 10-3-804 TO PRODUCE INFORMATION NOT IN THE POSSESSION OF THE INSURER IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION PURSUANT TO CONTRACTUAL RELATIONSHIPS, STATUTORY OBLIGATIONS, OR OTHER METHODS. IF THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED BY THE COMMISSIONER, THE INSURER SHALL PROVIDE THE COMMISSIONER A DETAILED EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE INFORMATION AND THE IDENTITY OF THE HOLDER OF THE INFORMATION.

(3) THE COMMISSIONER MAY RETAIN, AT THE REGISTERED INSURER'S EXPENSE, SUCH ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE COMMISSIONER'S STAFF AS ARE REASONABLY NECESSARY TO ASSIST IN THE CONDUCT OF THE EXAMINATION UNDER SUBSECTION (1) OF THIS SECTION. EACH PERSON SO RETAINED IS UNDER THE DIRECTION AND CONTROL OF THE COMMISSIONER AND SHALL ACT IN A PURELY ADVISORY CAPACITY.

(4) EACH REGISTERED INSURER PRODUCING FOR EXAMINATION RECORDS, BOOKS, AND PAPERS PURSUANT TO SUBSECTION (1) OF THIS SECTION IS LIABLE FOR AND SHALL PAY THE EXPENSE OF EXAMINATION IN ACCORDANCE WITH PART 2 OF ARTICLE 1 OF THIS TITLE.

**10-3-807. Supervisory colleges.** (1) WITH RESPECT TO ANY INSURER REGISTERED UNDER SECTION 10-3-804, AND IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, THE COMMISSIONER MAY PARTICIPATE IN A SUPERVISORY COLLEGE FOR ANY DOMESTIC INSURER THAT IS PART OF AN INSURANCE HOLDING COMPANY SYSTEM WITH INTERNATIONAL OPERATIONS IN ORDER TO DETERMINE COMPLIANCE BY THE INSURER WITH THIS SECTION. THE POWERS OF THE COMMISSIONER WITH RESPECT TO SUPERVISORY COLLEGES INCLUDE THE FOLLOWING:

(a) INITIATING THE ESTABLISHMENT OF A SUPERVISORY COLLEGE;

(b) CLARIFYING THE MEMBERSHIP AND PARTICIPATION OF OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE;

(c) CLARIFYING THE FUNCTIONS OF THE SUPERVISORY COLLEGE AND THE ROLE OF OTHER REGULATORS, INCLUDING THE ESTABLISHMENT OF A GROUP-WIDE SUPERVISOR;

(d) COORDINATING THE ONGOING ACTIVITIES OF THE SUPERVISORY COLLEGE, INCLUDING PLANNING MEETINGS, SUPERVISORY ACTIVITIES, AND PROCESSES FOR INFORMATION SHARING; AND

(e) ESTABLISHING A CRISIS MANAGEMENT PLAN.

(2) EACH REGISTERED INSURER SUBJECT TO THIS SECTION IS LIABLE FOR AND SHALL PAY THE REASONABLE EXPENSES OF THE COMMISSIONER'S PARTICIPATION IN A SUPERVISORY COLLEGE IN ACCORDANCE WITH



SUBSECTION (3) OF THIS SECTION, INCLUDING REASONABLE TRAVEL EXPENSES. FOR PURPOSES OF THIS SECTION, A SUPERVISORY COLLEGE MAY BE CONVENED AS EITHER A TEMPORARY OR PERMANENT FORUM FOR COMMUNICATION AND COOPERATION BETWEEN THE REGULATORS CHARGED WITH THE SUPERVISION OF THE INSURER OR ITS AFFILIATES, AND THE COMMISSIONER MAY ESTABLISH A REGULAR ASSESSMENT TO THE INSURER FOR THE PAYMENT OF THESE EXPENSES.

(3) IN ORDER TO ASSESS THE BUSINESS STRATEGY, FINANCIAL POSITION, LEGAL AND REGULATORY POSITION, RISK EXPOSURE, AND RISK MANAGEMENT AND GOVERNANCE PROCESSES, AND AS PART OF THE EXAMINATION OF INDIVIDUAL INSURERS IN ACCORDANCE WITH SECTION 10-3-806, THE COMMISSIONER MAY PARTICIPATE IN A SUPERVISORY COLLEGE WITH OTHER REGULATORS CHARGED WITH SUPERVISION OF THE INSURER OR ITS AFFILIATES, INCLUDING OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES. THE COMMISSIONER MAY ENTER INTO AGREEMENTS, IN ACCORDANCE WITH SECTION 10-3-808 (3), PROVIDING THE BASIS FOR COOPERATION BETWEEN THE COMMISSIONER AND THE OTHER REGULATORY AGENCIES AND THE ACTIVITIES OF THE SUPERVISORY COLLEGE. NOTHING IN THIS SECTION DELEGATES TO THE SUPERVISORY COLLEGE THE COMMISSIONER'S AUTHORITY TO REGULATE OR SUPERVISE THE INSURER OR ITS AFFILIATES WITHIN HIS OR HER JURISDICTION.

**10-3-808. Confidential treatment.** (1) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE DIVISION THAT ARE OBTAINED BY OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF AN EXAMINATION OR INVESTIGATION MADE PURSUANT TO SECTION 10-3-806 AND ALL INFORMATION REPORTED PURSUANT TO SECTION 10-3-803 (2) (1) AND (2) (m), 10-3-804, OR 10-3-805 ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE COMMISSIONER IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE COMMISSIONER'S OFFICIAL DUTIES. THE COMMISSIONER SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER TO WHICH

THEY PERTAIN UNLESS THE COMMISSIONER, AFTER GIVING THE INSURER AND ITS AFFILIATES WHO WOULD BE AFFECTED NOTICE AND OPPORTUNITY TO BE HEARD, DETERMINES THAT THE INTEREST OF POLICYHOLDERS, SHAREHOLDERS, OR THE PUBLIC WILL BE SERVED BY THE PUBLICATION, IN WHICH EVENT THE COMMISSIONER MAY PUBLISH ALL OR ANY PART IN SUCH MANNER AS THE COMMISSIONER DEEMS APPROPRIATE.

(2) NEITHER THE COMMISSIONER NOR ANY PERSON WHO RECEIVED DOCUMENTS, MATERIALS, OR OTHER INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER OR WITH WHOM THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS PART 8 SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBSECTION (1) OF THIS SECTION.

(3) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE COMMISSIONER:

(a) MAY SHARE DOCUMENTS, MATERIALS, OR OTHER INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBSECTION (1) OF THIS SECTION, WITH OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES, AND WITH STATE, FEDERAL, AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN SECTION 10-3-807, IF THE RECIPIENT AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY;

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (3), SHALL SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIAL, OR INFORMATION REPORTED PURSUANT TO SECTION 10-3-804 (12) ONLY WITH COMMISSIONERS OF STATES HAVING STATUTES OR REGULATIONS SUBSTANTIALLY SIMILAR TO SUBSECTION (1) OF THIS SECTION AND WHO HAVE AGREED IN WRITING NOT TO DISCLOSE SUCH INFORMATION;

(c) MAY RECEIVE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION FROM THE NAIC AND ITS AFFILIATES AND

SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR INFORMATION; AND

(d) SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NAIC GOVERNING THE SHARING AND USE OF INFORMATION PROVIDED PURSUANT TO THIS PART 8 CONSISTENT WITH THIS SUBSECTION (3) THAT MUST:

(I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8, INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC WITH OTHER STATE, FEDERAL, OR INTERNATIONAL REGULATORS;

(II) SPECIFY THAT OWNERSHIP OF INFORMATION SHARED WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8 REMAINS WITH THE COMMISSIONER AND THAT THE NAIC'S USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF THE COMMISSIONER;

(III) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NAIC PURSUANT TO THIS PART 8 IS SUBJECT TO A REQUEST OR SUBPOENA TO THE NAIC FOR DISCLOSURE OR PRODUCTION; AND

(IV) REQUIRE THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES TO CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8.

(4) THE SHARING OF INFORMATION BY THE COMMISSIONER PURSUANT TO THIS PART 8 DOES NOT CONSTITUTE A DELEGATION OF REGULATORY AUTHORITY OR RULE-MAKING, AND THE COMMISSIONER IS SOLELY RESPONSIBLE FOR THE ADMINISTRATION, EXECUTION, AND ENFORCEMENT OF THIS PART 8.

(5) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, OR INFORMATION OCCURS AS A RESULT OF DISCLOSURE TO THE COMMISSIONER UNDER THIS SECTION OR AS A RESULT OF SHARING AS AUTHORIZED IN SUBSECTION (3) OF THIS SECTION.

(6) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE NAIC PURSUANT TO THIS PART 8 ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.

**10-3-809. Rules.** THE COMMISSIONER MAY, UPON NOTICE AND OPPORTUNITY FOR ALL INTERESTED PERSONS TO BE HEARD, ISSUE SUCH RULES AND ORDERS AS ARE NECESSARY TO CARRY OUT THIS PART 8.

**10-3-810. Injunctions - prohibitions against voting securities - sequestration of voting securities.** (1) WHENEVER IT APPEARS TO THE COMMISSIONER THAT ANY INSURER OR ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF AN INSURER HAS COMMITTED OR IS ABOUT TO COMMIT A VIOLATION OF THIS PART 8 OR OF ANY RULE OR ORDER ISSUED BY THE COMMISSIONER UNDER THIS PART 8, THE COMMISSIONER MAY APPLY TO THE DISTRICT COURT FOR THE COUNTY IN WHICH THE PRINCIPAL OFFICER OF THE INSURER IS LOCATED OR, IF THE INSURER HAS NO OFFICE IN THIS STATE, THEN TO THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, FOR AN ORDER ENJOINING THE INSURER OR DIRECTOR, OFFICER, EMPLOYEE, OR AGENT FROM VIOLATING OR CONTINUING TO VIOLATE THIS PART 8 OR ANY RULE OR ORDER, AND FOR SUCH OTHER EQUITABLE RELIEF AS THE NATURE OF THE CASE AND THE INTEREST OF THE INSURER'S POLICYHOLDERS, CREDITORS, AND SHAREHOLDERS OR THE PUBLIC MAY REQUIRE.

(2) (a) A SECURITY THAT IS THE SUBJECT OF ANY AGREEMENT OR ARRANGEMENT REGARDING ACQUISITION, OR THAT IS ACQUIRED OR TO BE ACQUIRED, IN CONTRAVENTION OF THIS PART 8 OR OF ANY RULE OR ORDER ISSUED BY THE COMMISSIONER UNDER THIS PART 8 SHALL NOT BE VOTED AT ANY SHAREHOLDER'S MEETING OR COUNTED FOR QUORUM PURPOSES, AND ANY ACTION OF SHAREHOLDERS REQUIRING THE AFFIRMATIVE VOTE OF A PERCENTAGE OF SHARES MAY BE TAKEN AS THOUGH THE SECURITIES WERE NOT ISSUED AND OUTSTANDING; BUT AN ACTION TAKEN AT ANY SUCH

MEETING SHALL NOT BE INVALIDATED BY THE VOTING OF THE SECURITIES UNLESS THE ACTION WOULD MATERIALLY AFFECT CONTROL OF THE INSURER OR UNLESS THE COURTS OF THIS STATE HAVE SO ORDERED.

(b) IF AN INSURER OR THE COMMISSIONER HAS REASON TO BELIEVE THAT ANY SECURITY OF THE INSURER HAS BEEN OR IS ABOUT TO BE ACQUIRED IN CONTRAVENTION OF THIS PART 8 OR OF ANY RULE OR ORDER ISSUED BY THE COMMISSIONER UNDER THIS PART 8, THE INSURER OR THE COMMISSIONER MAY APPLY TO THE DISTRICT COURT FOR THE COUNTY IN WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF BUSINESS TO ENJOIN ANY OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION MADE IN CONTRAVENTION OF SECTION 10-3-803 OR ANY RULE OR ORDER ISSUED BY THE COMMISSIONER UNDER SECTION 10-3-803 TO ENJOIN THE VOTING OF ANY SECURITY SO ACQUIRED, TO VOID ANY VOTE OF THE SECURITY ALREADY CAST AT ANY MEETING OF SHAREHOLDERS, AND FOR SUCH OTHER EQUITABLE RELIEF AS THE NATURE OF THE CASE AND THE INTEREST OF THE INSURER'S POLICYHOLDERS, CREDITORS, AND SHAREHOLDERS OR THE PUBLIC MAY REQUIRE.

(3) IF A PERSON HAS ACQUIRED OR IS PROPOSING TO ACQUIRE ANY VOTING SECURITIES IN VIOLATION OF THIS PART 8 OR ANY RULE OR ORDER ISSUED BY THE COMMISSIONER UNDER THIS PART 8, THE DISTRICT COURT FOR THE COUNTY IN WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF BUSINESS MAY, ON SUCH NOTICE AS THE COURT DEEMS APPROPRIATE, UPON THE APPLICATION OF THE INSURER OR THE COMMISSIONER, SEIZE OR SEQUESTER ANY VOTING SECURITIES OF THE INSURER OWNED DIRECTLY OR INDIRECTLY BY THE PERSON AND ISSUE SUCH ORDER AS MAY BE APPROPRIATE TO EFFECTUATE THIS PART 8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR THE PURPOSES OF THIS PART 8, THE SITUS OF THE OWNERSHIP OF THE SECURITIES OF DOMESTIC INSURERS IS DEEMED TO BE IN THIS STATE.

**10-3-811. Criminal proceedings - civil penalties - definition.**

(1) WHENEVER IT APPEARS TO THE COMMISSIONER THAT AN INSURER OR A DIRECTOR, OFFICER, EMPLOYEE, OR AGENT THEREOF HAS COMMITTED A WILLFUL VIOLATION OF THIS PART 8, THE COMMISSIONER MAY CAUSE CRIMINAL PROCEEDINGS TO BE INSTITUTED IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE PRINCIPAL OFFICE OF THE INSURER IS LOCATED OR, IF SUCH INSURER HAS NO SUCH OFFICE IN THIS STATE, IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER AGAINST SUCH INSURER OR

THE INSURER'S RESPONSIBLE DIRECTOR, OFFICER, EMPLOYEE, OR AGENT. AN INSURER OR INDIVIDUAL THAT WILLFULLY VIOLATES THIS PART 8 COMMITS A CLASS 6 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401, C.R.S.

(2) (a) AN INSURER OR AN INSURER'S DIRECTOR, OFFICER, EMPLOYEE, OR AGENT THAT FAILS, WITHOUT JUST CAUSE, TO FILE ANY REGISTRATION STATEMENT, AMENDMENT, OR NOTICE OF SHAREHOLDER DISTRIBUTION AS REQUIRED IN THIS PART 8 MAY BE REQUIRED, AFTER NOTICE AND HEARING, TO PAY A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. EACH VIOLATION IS A SEPARATE OFFENSE. THE COMMISSIONER SHALL ISSUE AN ORDER SETTING FORTH THE AMOUNT OF THE CIVIL PENALTY, WHICH AMOUNT MUST BE BASED ON THE ALLEGED VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS, THE GOOD FAITH OF THE ALLEGED VIOLATOR IN ATTEMPTING TO ACHIEVE RAPID COMPLIANCE AFTER NOTIFICATION OF THE VIOLATION, THE GRAVITY AND WILLFULNESS OF THE VIOLATION, THE POTENTIAL DETERRENT EFFECT OF THE CIVIL PENALTY, AND SUCH OTHER CONSIDERATIONS AS MAY BE SPECIFIED BY THE COMMISSIONER. THE COMMISSIONER MAY COMPROMISE, MITIGATE, OR REMIT ANY SUCH CIVIL PENALTY.

(b) FOR PURPOSES OF THIS SUBSECTION (2), "CIVIL PENALTY" MEANS ANY MONETARY PENALTY LEVIED AGAINST AN INSURER OR AN INSURER'S DIRECTOR, OFFICER, EMPLOYEE, OR AGENT BECAUSE OF A VIOLATION OF THIS PART 8. "CIVIL PENALTY" DOES NOT INCLUDE ANY CRIMINAL PENALTY LEVIED UNDER SUBSECTION (1) OF THIS SECTION.

(c) THE COMMISSIONER SHALL TRANSMIT ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION (2) TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE GENERAL FUND.

**10-3-812. Receivership.** WHENEVER IT APPEARS TO THE COMMISSIONER THAT ANY PERSON HAS COMMITTED A VIOLATION OF THIS PART 8 THAT SO IMPAIRS THE FINANCIAL CONDITION OF A DOMESTIC INSURER AS TO THREATEN INSOLVENCY OR MAKE THE FURTHER TRANSACTION OF BUSINESS BY IT HAZARDOUS TO ITS POLICYHOLDERS, CREDITORS, SHAREHOLDERS, OR THE PUBLIC, THE COMMISSIONER MAY PROCEED AS PROVIDED IN PART 4 OR 5 OF THIS ARTICLE.

**10-3-813. Revocation, suspension, or nonrenewal of insurer's**

**license.** WHENEVER IT APPEARS TO THE COMMISSIONER THAT A PERSON HAS COMMITTED A VIOLATION OF THIS PART 8 THAT MAKES THE CONTINUED OPERATION OF AN INSURER CONTRARY TO THE INTERESTS OF POLICYHOLDERS OR THE PUBLIC, THE COMMISSIONER MAY, AFTER GIVING NOTICE AND AN OPPORTUNITY TO BE HEARD, SUSPEND, REVOKE, OR REFUSE TO RENEW THE INSURER'S LICENSE OR AUTHORITY TO DO BUSINESS IN THIS STATE FOR SUCH PERIOD AS THE COMMISSIONER FINDS IS REQUIRED FOR THE PROTECTION OF POLICYHOLDERS OR THE PUBLIC. THE DETERMINATION MUST BE ACCOMPANIED BY SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW.

**10-3-814. Judicial review - mandamus.** (1) A PERSON AGGRIEVED BY AN ACT, DETERMINATION, RULE, ORDER, OR OTHER ACTION OF THE COMMISSIONER PURSUANT TO THIS PART 8 MAY APPEAL THE ACTION TO THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. THE COURT SHALL CONDUCT ITS REVIEW WITHOUT A JURY AND BY TRIAL DE NOVO; EXCEPT THAT, IF ALL PARTIES, INCLUDING THE COMMISSIONER, SO STIPULATE, THE REVIEW SHALL BE CONFINED TO THE RECORD. PORTIONS OF THE RECORD MAY BE INTRODUCED BY STIPULATION INTO EVIDENCE IN A TRIAL DE NOVO AS TO THOSE PARTIES SO STIPULATING.

(2) THE FILING OF AN APPEAL PURSUANT TO THIS SECTION STAYS THE APPLICATION OF THE ACT, RULE, ORDER, OR OTHER ACTION OF THE COMMISSIONER TO THE APPEALING PARTY UNLESS THE COURT, AFTER GIVING THE PARTIES NOTICE AND AN OPPORTUNITY TO BE HEARD, DETERMINES THAT A STAY WOULD BE DETRIMENTAL TO THE INTERESTS OF POLICYHOLDERS, SHAREHOLDERS, CREDITORS, OR THE PUBLIC.

(3) A PERSON AGGRIEVED BY A FAILURE OF THE COMMISSIONER TO ACT OR MAKE A DETERMINATION REQUIRED BY THIS PART 8 MAY PETITION THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER FOR AN ACTION IN THE NATURE OF A MANDAMUS OR A PEREMPTORY MANDAMUS DIRECTING THE COMMISSIONER TO ACT OR MAKE SUCH DETERMINATION FORTHWITH.

**10-3-815. Recovery of distributions or payments.** (1) SUBJECT TO THE LIMITATIONS OF THIS SECTION, WHERE A DISTRIBUTION OR PAYMENT PURSUANT TO PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) IS MADE AT ANY TIME DURING THE ONE YEAR PRECEDING A PETITION FOR LIQUIDATION, CONSERVATION, OR REHABILITATION, AS THE CASE MAY BE, IF AN ORDER

FOR LIQUIDATION OR REHABILITATION OF A DOMESTIC INSURER HAS BEEN ENTERED, THE RECEIVER APPOINTED UNDER THE ORDER MAY RECOVER ON BEHALF OF THE INSURER:

(a) FROM ANY PARENT CORPORATION OR HOLDING COMPANY OR PERSON OR AFFILIATE WHO OTHERWISE CONTROLLED THE INSURER, THE AMOUNT OF DISTRIBUTIONS OTHER THAN DISTRIBUTIONS OF SHARES OF THE SAME CLASS OF STOCK PAID BY THE INSURER ON ITS CAPITAL STOCK; OR

(b) ANY PAYMENT IN THE FORM OF A BONUS, TERMINATION SETTLEMENT, OR EXTRAORDINARY LUMP SUM SALARY ADJUSTMENT MADE BY THE INSURER OR ITS SUBSIDIARY TO A DIRECTOR, OFFICER, OR EMPLOYEE.

(2) A DISTRIBUTION IS NOT RECOVERABLE IF THE PARENT OR AFFILIATE SHOWS THAT, WHEN PAID, THE DISTRIBUTION WAS LAWFUL AND REASONABLE AND THAT THE INSURER DID NOT KNOW AND COULD NOT REASONABLY HAVE KNOWN THAT THE DISTRIBUTION MIGHT ADVERSELY AFFECT THE ABILITY OF THE INSURER TO FULFILL ITS CONTRACTUAL OBLIGATIONS.

(3) A PERSON WHO WAS A PARENT CORPORATION OR HOLDING COMPANY OR A PERSON WHO OTHERWISE CONTROLLED THE INSURER OR AFFILIATE AT THE TIME THE DISTRIBUTIONS WERE PAID IS LIABLE UP TO THE AMOUNT OF DISTRIBUTIONS OR PAYMENTS UNDER SUBSECTION (1) OF THIS SECTION THAT THE PERSON RECEIVED. A PERSON WHO OTHERWISE CONTROLLED THE INSURER AT THE TIME THE DISTRIBUTIONS WERE DECLARED IS LIABLE UP TO THE AMOUNT OF DISTRIBUTIONS THAT WOULD HAVE BEEN RECEIVED IF THEY HAD BEEN PAID IMMEDIATELY. IF TWO OR MORE PERSONS ARE LIABLE WITH RESPECT TO THE SAME DISTRIBUTIONS, THEY ARE JOINTLY AND SEVERALLY LIABLE.

(4) THE MAXIMUM AMOUNT RECOVERABLE UNDER THIS SECTION IS THE AMOUNT NEEDED IN EXCESS OF ALL OTHER AVAILABLE ASSETS OF THE IMPAIRED OR INSOLVENT INSURER TO PAY THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED OR INSOLVENT INSURER AND TO REIMBURSE THE COLORADO INSURANCE GUARANTY ASSOCIATION, AS THAT TERM IS DEFINED IN SECTION 10-3-502 (9).

(5) TO THE EXTENT THAT A PERSON LIABLE UNDER SUBSECTION (3) OF THIS SECTION IS INSOLVENT OR OTHERWISE FAILS TO PAY CLAIMS DUE



FROM IT, ITS PARENT CORPORATION, HOLDING COMPANY, OR A PERSON WHO OTHERWISE CONTROLLED IT AT THE TIME THE DISTRIBUTION WAS PAID IS JOINTLY AND SEVERALLY LIABLE FOR ANY RESULTING DEFICIENCY IN THE AMOUNT RECOVERED FROM THE PARENT CORPORATION, HOLDING COMPANY, OR PERSON WHO OTHERWISE CONTROLLED IT.

**10-3-816. Conflict with other laws.** ALL LAWS AND PARTS OF LAWS OF THIS STATE INCONSISTENT WITH THIS PART 8 ARE HEREBY SUPERSEDED WITH RESPECT TO MATTERS COVERED BY THIS PART 8.

**SECTION 3.** In Colorado Revised Statutes, **amend** 10-16-421.5 as follows:

**10-16-421.5. Acquisition of control of or merger of a health maintenance organization.** No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, (or by conversion or by exercise of any right to acquire) be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization information required by sections 10-3-801, 10-3-802, 10-3-803 (2) to ~~(10)~~ (11), and 10-3-803.5 and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner.

**SECTION 4. Effective date.** This act takes effect July 1, 2014.

**SECTION 5. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Morgan Carroll  
PRESIDENT OF  
THE SENATE

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Mark Ferrandino  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

---

Cindi L. Markwell  
SECRETARY OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

---

John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO