

Article - Insurance

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§3-119.

(a) In this section, “equity security” means:

- (1) stock or a similar security;
- (2) a security convertible, with or without consideration, into stock or a similar security;
- (3) a security carrying a warrant or right to subscribe to or purchase stock or a similar security;
- (4) any other warrant or right to subscribe to or purchase stock or a similar security; or
- (5) any other security that the Commissioner considers to be of a similar nature and necessary or appropriate to treat as an equity security, based on regulations adopted by the Commissioner in the public interest or to protect investors.

(b) (1) Subsections (d), (e), and (f) of this section do not apply to foreign or domestic arbitrage transactions unless those transactions are made in contravention of regulations adopted by the Commissioner to carry out this section.

(2) Subsections (d), (e), and (f) of this section do not apply to equity securities of a domestic stock insurer if:

- (i) the securities are registered or required to be registered under § 12 of the Securities Exchange Act of 1934; or
- (ii) the domestic stock insurer did not have any class of its equity securities held of record by 100 or more persons on the last business day of the year immediately preceding the year in which equity securities of the insurer otherwise would be subject to subsections (d), (e), and (f) of this section.

(c) (1) The Commissioner:

- (i) may adopt regulations necessary to carry out this section; and
- (ii) for the purpose of adopting regulations, may classify domestic stock insurers, securities, and other persons or matters within the Commissioner’s jurisdiction.

(2) The provisions of subsections (d), (e), and (f) of this section that impose liability may not be applied to an act committed or omitted in good faith in conformity with a regulation of the Commissioner, notwithstanding that the regulation is later

amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(d) (1) A person shall file with the Commissioner, in the form the Commissioner requires, a statement of the amount of all equity securities of a domestic stock insurer of which the person is the beneficial owner within 10 days after the person becomes:

(i) directly or indirectly the beneficial owner of more than 10% of any class of equity security of the domestic stock insurer; or

(ii) a director or officer of the domestic stock insurer.

(2) Within 10 days after the end of each calendar month in which there has been a change in ownership of securities that are subject to reporting under paragraph (1) of this subsection, the person whose ownership has changed shall file with the Commissioner, in the form the Commissioner requires, a statement indicating the person's ownership at the end of the calendar month and the changes in ownership that have occurred during that calendar month.

(e) (1) The purpose of this subsection is to prevent the unfair use of information that may have been obtained by a beneficial owner, director, or officer of a domestic stock insurer because of that person's relationship to the domestic stock insurer.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, any profit realized by a beneficial owner, director, or officer of a domestic stock insurer from a purchase and sale, or a sale and purchase, of an equity security of the domestic stock insurer within a period of less than 6 months inures to and is recoverable by the domestic stock insurer, regardless of the intention of the beneficial owner, director, or officer in entering into the transaction of holding the equity security purchased or of not repurchasing the security sold for more than 6 months.

(ii) An equity security acquired in good faith in connection with a debt contracted prior to the 6-month period is not subject to subparagraph (i) of this paragraph.

(3) (i) A suit to recover any profit obtained in violation of this subsection may be brought in a court of competent jurisdiction by:

1. the domestic stock insurer; or

2. the owner of any security of the domestic stock insurer in the name and on behalf of the domestic stock insurer, if the domestic stock insurer fails or refuses to bring the suit within 60 days after a request to do so or fails to prosecute the suit diligently.

(ii) A suit under this subsection may not be brought more than 2

years after the date the profit was realized.

(4) This subsection may not be construed to apply to:

(i) a transaction in which the beneficial owner was not a beneficial owner both at the time of the purchase and sale, or the sale and purchase, of the security involved; or

(ii) a transaction that the Commissioner exempts by regulation as not within the purpose of this subsection.

(f) (1) A beneficial owner, director, or officer of a domestic stock insurer may not sell, directly or indirectly, an equity security of the domestic stock insurer if the person selling the equity security or the person's principal does not own the equity security sold.

(2) A beneficial owner, director, or officer of a domestic stock insurer may not sell, directly or indirectly, an equity security of the domestic stock insurer owned by the person selling the security or the person's principal if the person or the person's principal:

(i) does not deliver the equity security against the sale within 20 days after the sale; or

(ii) within 5 days after the sale does not deposit the equity security in the mail or other usual channels of transportation.

(3) A person is not considered to have violated this subsection if the person proves that, notwithstanding the exercise of good faith, the person was unable to make the delivery or deposit within the time allowed or proves that to do so would cause undue inconvenience or expense.

(g) (1) The following provisions do not apply to a dealer acting in the ordinary course of the dealer's business and incident to the establishment or maintenance by that dealer of a primary or secondary market, other than on an exchange as defined in the Securities Exchange Act of 1934, for an equity security, except for equity securities held by the dealer in an investment account:

(i) subsection (e) of this section, for any purchase and sale, or sale and purchase, of an equity security of a domestic stock insurer; and

(ii) subsection (f) of this section, for any sale of an equity security of a domestic stock insurer.

(2) By regulation as the Commissioner considers necessary or appropriate in the public interest, the Commissioner may define and require terms and conditions for:

- (i) securities held in an investment account; and
- (ii) transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

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