

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

INSURANCE BUREAU

GENERAL RULES

(By authority conferred on the commissioner of insurance by sections 210 and 4424(6) of Act No. 218 of the Public Acts of 1956, as amended, being SS500.210 and 500.4424(6) of the Michigan Compiled Laws)

REGULATIONS UNDER SECTION 5283 OF THE ACT

R 500.521 Exemption of transactions in connection with a distribution.

Rule 521. (1) Any transaction of purchase and sale, or sale and purchase of a security which is effected in connection with the distribution of a substantial block of securities is exempt from the provisions of section 5283 of the act to the extent specified in this rule as not comprehended within the purpose of section 5283, upon the following conditions:

(a) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities.

(b) The security involved in the transaction is a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the insurer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities or a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(c) Other persons not within the purview of section 5283 of the act are participating in the distribution of such block of securities on terms at least as favorable as those on which the person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 5283 of the act by this rule. The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this rule.

(2) The exemption of a transaction pursuant to this rule with respect to the participation therein of 1 party thereto shall not render the transaction exempt with respect to participation of any other party therein unless the other party also meets the conditions of this rule.

History: 1979 AC.

R 500.522 Exemption of acquisition under certain stock plans.

Rule 522. Any acquisition of shares of stock, other than stock acquired upon the exercise of an option, warrant or right, pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan, or a stock option pursuant to an employee stock purchase plan, by a director or officer of an insurer issuing the stock or stock option is exempt from the operation of section 5283 of the act if the plan meets the conditions of R 500.523 and R 500.526.

History: 1979 AC.

R 500.523 Approval of plans; proxies.

Rule 523. The plan has been approved, directly or indirectly, by the affirmative votes of the holders of a majority of the securities of such insurer present, or represented, and entitled to a vote at a meeting duly held in accordance with the applicable laws of the state or by the written consent of the holders of a majority of the securities of the insurer entitled to vote. If the vote or written consent was not solicited substantially in accordance with the proxy rules and regulations prescribed by the commissioner in effect at the time of the vote or written consent, the insurer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by such rules and regulations in effect at the time the information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of the date the act first applies to the insurer, or the acquisition of an equity security for which exemption is claimed. The written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of the written information shall be filed with the commissioner not later than the date on which it is first sent or given to security holders of the insurer. For the purposes of this rule, the term "insurer" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the insurer in connection with the succession.

History: 1979 AC.

R 500.524 Selection of participants in plan.

Rule 524. (1) If the selection of any director or officer of the insurer to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to any director or officer or which may be covered by qualified, restricted or employee stock purchase plan stock options granted to any director or officer, is subject to the discretion of any person, then such discretion shall be exercised only as prescribed in this rule.

(2) With respect to the participation of directors:

(a) By the board of directors of the insurer, a majority of which board and a majority of the directors acting in the matter are disinterested persons.

(b) By, or only in accordance with the recommendations of, a committee of

3 or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons.

(c) In accordance with the plan, if it specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to qualified, restricted or employee stock purchase plan stock options granted to directors and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options may be acquired and exercised; or sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors.

(3) With respect to the participation of officers who are not directors:

(a) By the board of directors of the insurer or a committee of 3 or more directors.

(b) By, or only in accordance with the recommendations of, a committee of

3 or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons.

(4) For the purpose of this rule, a director or committee member shall be deemed to be a disinterested person only if he is not eligible at the time the discretion is exercised and has not been eligible at any time within 1 year prior thereto for selection as a person to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan or any other plan of the insurer or any of its affiliates entitling the participants therein to acquire stock or qualified, restricted or employee stock purchase plan stock options of the insurer or any of its affiliates.

(5) The provisions of this rule shall not apply with respect to any option granted, or other equity security acquired, prior to the date that sections 5282, 5283 and 5284 of the act first become applicable with respect to any class of equity securities of any insurer.

History: 1979 AC.

R 500.525 Limitations required in plans.

Rule 525. As to each participant or as to all participants the plan effectively limits the aggregate dollar amount or the aggregate number of shares of stock which may be allocated or which may be subject to qualified, restricted or employee stock purchase plan stock options granted pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date; and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provisions for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

History: 1979 AC.

REGULATIONS UNDER SECTION 5283 OF THE ACT

R 500.526 Definitions for R 500.522 to R 500.526.

Rule 526. Unless the context otherwise requires, all terms used in R 500.522 to R 500.526 shall have the same meaning as in the act or elsewhere in these rules. In addition, the following definitions apply:

(a) "Plan" includes any plan, whether or not set forth in any formal written document or documents and whether or not approved in its entirety at 1 time.

(b) The definition of the terms "qualified stock option" and "employee stock purchase plan" that are set forth in sections 422 and 423 of the internal revenue code of 1954, as amended, are to be applied to those terms where used in R 500.523 to R 500.526. The term "restricted stock option" as defined in section 424(b) of the internal revenue code of 1954, as amended, shall be applied to that term as used in R 500.523 to R 500.526, but an option which meets all of the conditions of section 424(b), other than the date of issuance shall be deemed to be a "restricted stock option."

(c) The term "exercise of an option, warrant or right" contained in R 500.522 shall not include (i) the making of any election to receive under any plan and award of compensation in the form of stock or credits therefor if the election is made prior to the making of the award and if the election is irrevocable until at least 6 months after termination of employment; (ii) the subsequent crediting of the stock; (iii) the making of any election as to time for delivery of the stock after termination of employment if the election is made at least 6 months prior to any delivery; (iv) the fulfillment of any condition to the absolute right to receive stock; or (v) the acceptance of certificates for shares of stock.

History: 1979 AC.

R 500.527 Exemption of transactions in which securities are received by redemption.

Rule 527. Any acquisition of an equity security, other than a convertible security or right to purchase a security, by a director or officer of the insurer issuing such security is exempt from the operation of section 5283 of the act upon condition that:

(a) The equity security is acquired by way of redemption of another security of an insurer substantially all of whose assets other than cash or government bonds consist of securities of the insurer issuing the equity security so acquired, and which:

(i) Represented substantially and in practical effect a stated or readily ascertainable amount of the equity security;

(ii) Had a value which was substantially determined by the value of such equity security; and

(iii) Conferred upon the holder the right to receive such equity security without the payment of any consideration other than the security redeemed.

(b) No security of the same class as the security redeemed was acquired by the director or officer within 6 months prior to the redemption or is acquired within 6 months after the redemption.

(c) The insurer issuing the equity security acquired has recognized the applicability of subdivision (a) of this rule by appropriate corporate action.

History: 1979 AC.

R 500.528 Exemption of long-term profits incident to sales within 6 months of the exercise of an option.

Rule 528. (1) To the extent specified in subrule (2) of this rule, the commissioner exempts as not comprehended within the purposes of section 5283 of the act any transaction or transactions involving the purchase and sale, or sale and purchase, of any equity security where such purchase is pursuant to the exercise of an option or similar right either acquired more than 6 months before its exercise, or acquired pursuant to the terms of an employment contract entered into more than 6 months before its exercise.

(2) In respect of transactions specified in subrule (1) the profits inuring to the insurer shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within 6 months before or after the date of sale. Nothing in this section shall be deemed to enlarge the amount of profit which would inure to the insurer in the absence of this rule.

(3) The commissioner also exempts, as not comprehended within the purposes of section 5283 of the act, the disposition of a security, purchased in a transaction specified in subrule (1) of this rule, pursuant to a plan or agreement for merger or consolidation, or reclassification of the insurer's securities, or for the exchange of its securities for the securities of another person which has acquired its assets, or which is in control, as defined in section 368(c) of the internal revenue code of 1954, of a person which has acquired its assets, where the terms of the plan or agreement are binding upon all stockholders of the insurer except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(4) The exemptions provided by this rule shall not apply to any transaction made unlawful by section 5284 of the act or by any rules thereunder.

(5) The burden of establishing market price of a security for the purpose of this rule rests upon the person claiming the exemption.

History: 1979 AC.

R 500.529 Exemption of transactions pursuant to mergers or consolidations.

Rule 529. (1) The following transactions are exempt from the provisions of section 5283 of the act as not comprehended within the purpose of the section:

(a) The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to the merger or consolidation, owned 85% or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company.

(b) The disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to the merger or consolidation, owned 85% or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company.

(c) The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to the merger or consolidation, held over

85% of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.

(d) The disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to the merger or consolidation, held over 85% of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.

(2) A merger within the meaning of this rule includes the sale or purchase of substantially all the assets of 1 insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.

(3) Notwithstanding the provisions of subrules (1) and (2), if an officer, director or stockholder makes any purchase, other than a purchase exempted by this rule, of a security in any company involved in the merger or consolidation and any sale, other than a sale exempted by this rule, of a security in any other company involved in the merger or consolidation within any period of less than 6 months during which the merger or consolidation took place, the exemption provided by this rule is unavailable to the officer, director or stockholder to the extent of the purchase and sale.

History: 1979 AC.

R 500.530 Exemption of transactions in securities under voting trusts or deposit agreements.

Rule 530. Any acquisition or disposition of an equity security involved in the deposit of the security under, or the withdrawal of the security from, a voting trust or deposit agreement, and the acquisition or disposition in connection therewith of the certificate representing the security, is exempt from the operation of section 5283 of the act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal, consisted of equity securities of the same class as the security deposited or withdrawn. This rule shall not apply to the extent that there have been either (a) a purchase of an equity security of the class deposited and a sale of any certificate representing an equity security of that class, or (b) a sale of an equity security of the class deposited and purchase of any certificate representing an equity security of that class, otherwise than in a transaction involved in the deposit or withdrawal or in a transaction exempted by any other provision of R 500.521 to R 500.531, within a period of less than 6 months which includes the date of the deposit or withdrawal.

History: 1979 AC.

R 500.531 Exemption of transactions involving conversion of equity securities.

Rule 531. (1) Any acquisition or disposition of an equity security involved in the conversion of an equity security which, by its terms or pursuant to the terms of the insurer's charter or other governing instruments, is convertible immediately or after a stated period of time into another equity security of the same insurer, is exempt from the

operation of section 5283 of the act. This rule shall not apply to the extent that there shall have been either (a) a purchase of any equity security of the class convertible, including any acquisition of or change in a conversion privilege, and a sale of any equity security of the class issuable upon conversion, or (b) a sale of any equity security of the class convertible and any purchase of any equity security issuable upon conversion, otherwise than in a transaction involved in the conversion or in a transaction exempted by any other provision of R 500.521 to R 500.531, within a period of less than 6 months which includes the date of conversion.

(2) For the purpose of this rule, an equity security shall not be deemed to be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with such conversion, of cash or other property other than equity securities involved in the conversion, equal in value at the time of conversion to more than 15% of the value of the equity security issued upon conversion.

(3) For the purpose of this rule, an equity security shall be deemed convertible if it is convertible at the option of the holder or of some other person or by operation of the terms of the security or the governing instruments.

History: 1979 AC.

R 500.532 Exemption of transactions involving sale of subscription rights.

Rule 532. (1) Any sale of a subscription right to acquire any subject security of the same insurer is exempt from the provisions of section 5283 of the act, to the extent prescribed in this rule, as not comprehended within the purpose of section 5283 of the act, if all of the following occur:

(a) The subscription right is acquired, directly or indirectly, from the insurer without the payment of consideration.

(b) The subscription right by its terms expires within 45 days after the issuance thereof.

(c) The subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the insurer.

(d) A registration statement under the securities act of 1933 is in effect as to each subject security or the applicable terms of any exemption from such registration have been met in respect to each subject security.

(2) When used in this rule:

(a) "Subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security.

(b) "Beneficiary security" means a security registered pursuant to section 12 of the securities exchange act, to the holders of which a subscription right is granted.

(c) "Subject security" means a security which is the subject of a subscription right.

(3) Notwithstanding any provision of this rule, if a person purchases subscription rights for cash or other consideration, a sale by that person of subscription rights otherwise exempted by this rule will not be so exempted to the extent of such purchases within the 6-month period preceding or following the sale.

History: 1979 AC.

REGULATIONS UNDER SECTION 5284 OF THE ACT

R 500.541 Exemption of certain securities.

Rule 541. Any security is exempt from the operation of section 5284 of the act to the extent necessary to render lawful under section 5284 the execution by a broker of an order for an account in which he has no direct or indirect interest.

History: 1979 AC.

R 500.542 Exemption of transactions in connection with a distribution.

Rule 542. Any security is exempt from the operation of section 5284 of the act to the extent necessary to render lawful under section 5284 any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, upon the following conditions:

(a) The sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and

(b) Other persons not within the purview of section 5284 of the act are participating in the distribution of the block of securities on terms at least as favorable as those on which the dealer is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 5284 of the act by this rule. The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this rule.

History: 1979 AC.

R 500.543 Exemption of sales of securities to be acquired.

Rule 543. (1) Whenever any person is entitled, as an incident to his ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the security to be acquired is exempt from the operation of section 5284 if:

(a) The sale is made subject to the same conditions as those attaching to the right of acquisition; and

(b) The person exercises reasonable diligence to deliver the security to the purchaser promptly after his right of acquisition matures; and

(c) The person reports the sale on the appropriate form for reporting transactions by persons subject to section 5282 of the act.

(2) This rule shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when-issued" or "when-distributed" security, if the 2

transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.

History: 1979 AC.

REGULATION UNDER SECTION 5286 OF THE ACT

R 500.545 Arbitrage transactions.

Rule 545. It is unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of the insurer, unless he includes the transaction in the statements required by section 5282 of the act and accounts to the insurer for the profits arising from the transaction, as provided in section 5283. The provisions of section 5284 do not apply to such arbitrage transactions. The provisions of the act do not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than a director or officer of the insurer.

History: 1979 AC.