§ 58-10-315. Stock offerings.

(a) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the Commissioner.

(b) Every application for approval of a stock offering shall contain the following information:

(1) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.

(2) The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, and the intended date or range of dates for the offer.

(3) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.

(4) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any such entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the United States Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application.

(5) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering.

(6) A detailed description of all expenses to be incurred in conjunction with the stock offering.

(7) An explanation of how funds raised by the stock offering are to be used.

(8) Any other information requested by the Commissioner.

(c) No application regarding a planned stock offering shall be approved unless the plan contains the following provisions:

(1) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from purchase or ownership of shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors, and insiders, in excess of five percent (5%) of the stock offering. The Commissioner may waive this requirement upon a showing of good cause. This subdivision does not limit the rights of officers, directors, and insiders from exercising subscription rights that are generally accorded members of the mutual insurance holding company. However, pursuant to those subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than five percent (5%) of the stock offering.

(2) Requiring that, after the initial stock offering, a majority of the board of directors of the mutual insurance holding company be persons who are not interested persons of the mutual insurance holding company or of an affiliated person of the company. For purposes of this subdivision, a member of the mutual insurance holding company or a policyholder of any of its

insurance company subsidiaries shall not be considered an "interested person" or an "affiliated person." The Commissioner may waive this requirement upon a showing of good cause.

(3) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the Commissioner.

(4) Requiring that, after the initial stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary of a mutual insurance holding company, the boards of directors of each insurance company or intermediate holding company include at least three directors who are not interested persons of the mutual insurance holding company. The Commissioner may waive this requirement upon a showing of good cause.

(5) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not members of management of the insurance company subsidiary whose responsibility is to evaluate and approve the price of any stock offering.

(d) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one class of stock, provided, however, that the issuer complies with all of the following requirements:

(1) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary.

(2) No class of common stock may possess greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.

(e) The Commissioner may retain, at the expense of the person filing the application, any attorneys, actuaries, economists, accountants, consultants, or other professional advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the application. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(f) The expenses of mailing any notices and other materials required by this section shall be borne by the person filing the application.

(g) Upon receipt and review by the Commissioner of all information provided under this section, the Commissioner may establish a period during which the Department will receive and consider public comments about the proposed offering. The Commissioner shall inform the public of the offering by posting information about the application in a manner deemed appropriate by the Commissioner. The Commissioner may hold a public hearing concerning the application or the proposed offering. Following any public comment period or hearing, if applicable, the Commissioner may approve, conditionally approve, or deny the application. The Commissioner may approve the application if the following apply:

(1) The offering complies with this Part and other provisions of law.

(2) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions.

(3) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

Nothing in this subsection shall be deemed to prohibit the filing of a registration statement with the United States Securities and Exchange Commission before or concurrently with the giving of notice to members.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, stock offerings which are not an initial stock offering, and which are proposed by entities with a class of securities regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the Commissioner, or designated on the National Association of Securities Dealers Automated Quotations national market system (NASDAQ), may be sold in accordance with the following procedure: if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of this subsection, that entity shall deliver to the Commissioner, not less than 60 days prior to the offering, a notice of the planned stock offering and all of the following information:

(1) The total number of shares intended to be offered.

(2) The intended date of sale.

(3) Evidence the stock is regularly traded on one of the public exchanges specified in this subsection.

(4) A record of the trading price and trading volume of the stock during the prior 52 weeks.

The Commissioner shall be deemed to have approved the sale unless, within 60 days following receipt of such notice, the Commissioner issues an objection to the sale. If the Commissioner issues an objection to the sale, the application process set forth in subsections (a) through (g) of this section shall be followed to determine whether the Commissioner approves of the proposed sale.

(i) Approval of a stock offering obtained under either subsection (g) or (h) of this section shall expire 120 days following the date of the approval or deemed approval, except as otherwise provided by order of the Commissioner.

(j) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant, shall contain a representation that the Commissioner has endorsed the price, price range, or any other information relating to the stock.

(k) No company making a stock offering under this section shall engage in any of the following practices:

(1) Borrow funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering.

(2) Pay any commissions, "special fees," or any other special payments or extraordinary compensation to officers, directors, interested persons, and affiliates for arranging, promoting, aiding, or assisting in reorganization to a mutual insurance holding company or for arranging, promoting, aiding, assisting, or participating in the structuring and placement of a stock offering.

(3) Enter into an understanding or agreement transferring legal or beneficial ownership of stock to another person to avoid the requirements of this Part. (2012-161, s. 1.)