

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact x

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-68

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S. 2700 W.
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

Contact persons:

Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R590-68. Insider Trading of Equity Securities of Domestic Stock Insurance Companies

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove redundant and unnecessary sections, add clarifying sections, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-5-303	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	

Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:	05/31/2023	
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

9. This rule change MAY become effective on:	06/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	04/14/2023

R590. Insurance, Administration.

R590-68. Insider Trading of Equity Securities of Domestic Stock Insurance Companies.

~~R590-68-1. Authority.~~

~~This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Subsection 31A-5-303(3)(a), which allows the commissioner to adopt a rule to "define terms and prescribe conditions regarding securities held in the ordinary course of business and incident to the establishment of maintenance of a primary or secondary market."~~

~~R590-68-2. Definition of Certain Terms.~~

~~A. "Insurer" means any domestic stock insurance company with an equity security subject to the provisions of Section 31A-5-303.~~

~~B. "Act" means the Federal Securities Exchange Act of 1934.~~

~~C. "Officer" means a president, vice president, treasurer, actuary, secretary, controller and any other person who performs for the insurer functions corresponding to those performed by the foregoing officers.~~

~~D. "Equity security" means any stock or similar security; or any voting trust certificate or certificate of deposit for a security; or any security convertible, with or without consideration, into a security, or carrying any warrant or right to subscribe to or purchase a security; or warrant or right.~~

~~E. Securities "held of record."~~

~~1. For the purpose of determining whether the equity securities of an insurer are held of record by 100 or more persons, securities shall be considered "held of record" by each person who is identified as the owner of securities on records of security holders maintained by or on behalf of the insurer, subject to the following:~~

~~(a) where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as an owner on these records if they had been maintained in accordance with accepted practice shall be included as a holder of record;~~

~~(b) securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person;~~

~~(c) securities identified as held of record by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person;~~

~~(d) securities held by two or more persons as co-owners shall be included as held by one person;~~

~~(e) each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the insurer can establish that, if securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of person; and~~

~~(f) Securities registered in substantially similar names where the insurer has reason to believe, because of the address or other indications, represent the same person and may be included as held of record by one person.~~

_____ 2. Notwithstanding Subsection E.(1) of this section:

_____ (a) securities held to the knowledge of the insurer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in these securities; provided however, that the insurer may rely in good faith on information received in response to its request from a nonaffiliated insurer of the certificates or evidences of interest; and

_____ (b) if the insurer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of the Act, the beneficial owners of securities shall be considered the record owners.

_____ E. "Class" means securities of an insurer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.

~~R590-68-3. Transactions Exempted From the Operation of Section 31A-5-303.~~

_____ Any acquisition or disposition of any equity security by a director or officer of an insurer within six months prior to the date on which the Act shall first become applicable with respect to the equity securities of the insurer shall not be subject to the operation of Section 31A-5-303.

~~R590-68-4. Filing of Statements.~~

_____ Initial statements of beneficial ownership of equity securities required by Section 31A-5-303 shall be filed on Form A, entitled "Initial Statement of Beneficial Ownership of Equity Securities." The statements shall be prepared and ownership required by Section 31A-5-303, and shall be filed on Form B, entitled "Statement of Changes in Beneficial Ownership of Securities." Statements of changes in a beneficial ownership shall be filed in accordance with the requirements of the applicable form. These forms are available from the Insurance Department.

_____ In determining, for the purpose of Section 31A-5-303, whether a person is the beneficial owner, directly or indirectly, of more than ten per cent of any class of any equity security, the class shall consist of the total amount of the class outstanding, exclusive of any securities of the class held by or for the account of the insurer or a subsidiary of the insurer; except that for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not outstanding securities have been so deposited. For the purpose of this section a person acting in good faith may rely on the information contained in the latest Convention Form Statement filed with the commissioner with respect to the amount of Securities of a class outstanding, or in the case of voting trust certificates or certificates of deposit, the amount issuable.

~~R590-68-5. Disclaimer of Beneficial Ownership.~~

_____ Any person filing a statement may expressly declare, for the purpose of the Act, that the filing of the statement shall not be construed as an admission that a person is the beneficial owner of any equity securities covered by the statement.

~~R590-68-6. Exemptions from Section 31A-5-303.~~

_____ A. During the period of 12 months following their appointment and qualification, securities held by the following persons shall be exempt from Section 31A-5-303:

_____ 1. executors or administrators of the estate of a decedent;

_____ 2. guardians or committees for an incompetent; and

_____ 3. receivers, trustees in bankruptcy, assignees for the benefit of creditors, conservators, liquidating agents, and other similar persons duly authorized by law to administer the estate or assets of other persons.

_____ B. After the 12 month period following their appointment or qualification, the foregoing persons shall be required to file reports with respect to the securities held by the estates which they administer under Section 31A-5-303, and shall be liable for profits realized from trading securities pursuant to Section 31A-5-303, only when the estate being administered is a beneficial owner of more than ten per cent of any class of equity security of an insurer subject to the Act.

_____ C. Securities reacquired by or for the account of an insurer and held by it for its account shall be exempt from Section 31A-5-303 during the time they are held by the insurer.

~~R590-68-7. Exemption From the Act of Securities Purchased or Sold by Odd Lot Dealers.~~

_____ Securities exempt from the provisions of the Act are purchased or sold by an odd lot dealer:

_____ (1) in odd lots so far as reasonably necessary to carry on odd lot transactions; or

_____ (2) in round lots to offset odd lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business.

~~R590-68-8. Certain Transactions Subject to Section 31A-5-303.~~

_____ The acquisition or disposition of any transferable option, put, call, spread or straddle shall be considered a change in the beneficial ownership of the security to which the privilege relates to require the filing of a statement reflecting the acquisition or disposition of the privilege. Nothing in this section, however, shall exempt any person from filing the statements required upon the exercise of the option, put, call, spread or straddle.

R590-68-9. Ownership of Securities Held in Trust.

~~_____ A. Beneficial ownership of a security for the purpose of Section 31A-5-303 shall include:~~

- ~~_____ 1. the ownership of securities as a trustee where either the trustee or members of his immediate family have a vested interest in the income or corpus of the trust;~~
- ~~_____ 2. the ownership of a vested beneficial interest in a trust; and~~
- ~~_____ 3. the ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of the beneficiaries.~~

~~_____ B. Except as provided in Subsection C., beneficial ownership of securities solely as a settlor or beneficiary of a trust shall be exempt from the provisions of Section 31A-5-303 where less than 20% in market value of the securities having a readily ascertainable market value held by the trust, determined as of the end of the preceding fiscal year of the trust, consists of equity securities with respect to which reports would otherwise be required. Exemption is likewise accorded from Section 31A-5-303 with respect to any obligation which would otherwise be imposed solely by reason of ownership as settlor or beneficiary of securities held in trust, where the ownership, acquisition, or disposition of securities by the trust is made without prior approval by the settlor or beneficiary. No exemption pursuant to this subsection shall, be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in securities otherwise subject to the reporting requirements of Section 31A-5-303.~~

~~_____ C. In the event that ten per cent of any class of any equity security of an insurer is held in a trust, that trust and the trustees shall be required to file the reports specified in Section 31A-5-303.~~

~~_____ D. Not more than one report need be filed to report any holdings or with respect to any transaction in securities held by a trust, regardless of the number of officers, directors, or ten per cent stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed shall disclose the names of trustees, settlors and beneficiaries who are officers, directors or ten per cent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file a report so long as he relies in good faith upon an understanding that the trustee of a trust will file whatever reports might otherwise be required of the beneficiary.~~

~~_____ E. As used in this section the "immediate family" of a trustee means:~~

- ~~_____ 1. a son or daughter of the trustee, or a descendant of either;~~
- ~~_____ 2. a stepson or stepdaughter of the trustee;~~
- ~~_____ 3. the father or mother of the trustee, or an ancestor of either;~~
- ~~_____ 4. a stepfather or stepmother of the trustee; and~~
- ~~_____ 5. a spouse of the trustee.~~

~~_____ For the purpose of determining whether any of the foregoing relations exists, a legally adopted child of a person shall be considered a child of the person by blood.~~

~~_____ F. In determining, for the purposes of Section 31A-5-303, whether a person is the beneficial owner, directly or indirectly, of more than ten per cent of any class of any equity security, the interest of a person in the remainder of a trust shall be excluded from the computation.~~

~~_____ G. No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under Section 31A-5-303, with respect to his indirect interest in portfolio securities held by:~~

- ~~_____ 1. a pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan; and~~
- ~~_____ 2. a business trust with over 25 beneficiaries.~~

~~_____ H. Nothing in this section shall impose any duties or liabilities with respect to reporting any transaction or holding prior to its effective date.~~

R590-68-10. Exemption for Small Transactions.

~~_____ A. Any acquisition of securities shall be exempt from Section 31A-5-303 where:~~

- ~~_____ 1. the person effecting the acquisition does not, within six months after, effect any disposition than by way of gift of securities of the same class; and~~
- ~~_____ 2. the person effecting an acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of \$3,000 for any six months' period during which the acquisition occurs.~~

~~_____ B. Any acquisition or disposition of securities, by way of gift, where the total amount of gifts does not exceed \$3,000 in market value for any six months' period, shall be exempt from Section 31A-5-303 and may be excluded from the computations prescribed in Subsection A.2.~~

~~_____ C. Any person exempted by Subsection A. or B. of this section shall include in the first report filed by him, after a transaction within the exemption, a statement showing his acquisitions and dispositions for each six months' period or portion which has elapsed since his last filing.~~

R590-68-11. Exemption From Section 31A-5-303 of Transactions Which Need Not Be Reported Under Section 31A-5-303.

~~_____ Any transaction which has been or shall be exempted from the requirements of Subsection 31A-5-303(1) shall, as it is otherwise subject to the provisions of Subsection 31A-5-303(2), be likewise exempted from Subsection 31A-5-303(2).~~

R590-68-12. Exemption From Section 31A-5-303 of Certain Transactions Effected in Connection With a Distribution.

~~_____ A. 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 shall be exempt from the provisions of Subsection 31A-5-303(2), to the extent specified~~

in this section as not included within the purpose of Section 31A-5-303, upon the following conditions:

1. the person effecting the transaction is engaged in the business of distributing securities and is participating in good faith in the ordinary course of business in the distribution of a block of securities;

2. the security involved in the transaction is:

(A) a part of a block of securities and is acquired by the person effecting the transaction with a view to distribution from the insurer or other person on whose behalf securities are being distributed, or from a person who is participating in good faith in the distribution of a block of securities; or

(B) 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 the distribution; and

3. other persons not within the purview of Section 31A-5-303, are participating in the distribution of a block of securities on terms at least as favorable as those on which a person is participating and to an extent at least equal to the aggregate participation of persons exempted from the provisions of Section 31A-5-303 by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions shall not preclude an exemption which would otherwise be available under this section.

B. The exemption of a transaction pursuant to this section, with respect to the participation of one party, shall not render the transaction exempt with respect to participation of any other party unless the other party also meets the conditions of this section.

R590-68-13. Exemption From Section 31A-5-303 of Acquisitions of Shares of Stock and Stock Options Under Certain Stock Bonus, Stock Option or Similar Plans.

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 a stock or stock option, shall be exempt from the operation of Subsection 31A-5-303(2) if the plan meets the following conditions:

A. The plan has been approved, directly or indirectly:

(1) by the affirmative votes of the holders of a majority of the securities of the insurer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State of Utah; or

(2) by the written consent of the holders of a majority of the securities of an insurer entitled to vote: provided, however, that if the vote or written consent was not solicited substantially in accordance with the proxy rules prescribed by the National Association of Insurance Commissioners in effect at the time of a 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 rules so prescribed and in effect at the time 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:

(i) the date the Act first applies to insurer; or

(ii) the acquisition of an equity security for which exemption is claimed. 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, or mailed for filing to, 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 subsection, the term "insurer" includes a predecessor corporation if the plan or obligations to participate were assumed by the insurer in connection with the succession.

B. 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 a 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 discretion shall be exercised only as follows:

1. 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 three or more persons having full authority to act in the matter of the members of which committee are disinterested persons; or

(c) otherwise in accordance with the plan, if the plan:

(i) 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, the stock may be acquired or the options may be acquired and exercised; or

(ii) 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 outstanding from time to time, or similar factors.

2. with respect to the participation of officers who are not directors:

(a) by the board of directors of the insurer or a committee of three or more directors; or

(b) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, of the members of which committee are disinterested persons.

_____ For the purpose of this subsection, a director or committee member shall be considered a disinterested person only if the person is not eligible at the time the discretion is exercised, and has not at any time within one year prior to this, been eligible 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 to acquire stock, or qualified, restricted, or employee stock purchase plan stock options of the insurer, or any of its affiliates.

_____ 3. The provisions of this subsection shall not apply with respect to any option granted, or other equity security acquired, prior to the date that Subsections 31A 5 303(1)(2) and (3) first became applicable with respect to any class of equity securities of any insurer.

_____ C. As to each participant or as to 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 outstanding from time to time, or similar factors which will result in an effective and determinable limitation. These limitations may be subject to any provisions for adjustment of the plan or of stock allocable or portions outstanding to prevent dilution or enlargement of rights.

_____ D. Unless the context otherwise requires, terms used in this section shall have the same meaning as in the Act and in Section 1 of this rule. In addition, the following definitions apply:

_____ 1. the term "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 one time.

_____ 2. 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 this section. The term "restricted stock option" as defined in Subsection 424(b) of the Internal Revenue Code of 1954, as amended, shall be applied to that term as used in this section, provided however, that for the purposes of this section an option which meets the conditions of that section, other than the date of issuance shall be considered a "restricted stock option."

~~R590-68-14. Exemption From Subsection 31A 5 303(2) of Certain Transactions in Which Securities Are Received by Redeeming Other Securities.~~

_____ 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 the security shall be exempt from the operation of Subsection 31A 5 303(2) 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:

- _____ 1. represented substantially and in practical effect a stated or readily ascertainable amount of the equity security;
- _____ 2. had a value which was substantially determined by the value of the equity security; and
- _____ 3. conferred upon the holder the right to receive the 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 six months prior to redemption or is acquired within six months after redemption; and

_____ C. the insurer issuing the equity security acquired has recognized the applicability of Subsection (a) of this section by appropriate corporate action.

~~R590-68-15. Exemption of Long Term Profits Incident to Sales Within Six Months of the Exercise of an Option.~~

_____ A. To the extent specified in Subsection B. of this section, the commissioner shall exempt as not included within the purposes of Subsection 31A 5 303(2) any transaction or transactions involving the purchase and sale, or sale and purchase, of any equity security where the purchase is pursuant to the exercise of an option or similar right either:

- _____ (1) acquired more than six months before its exercise; or
- _____ (2) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

_____ B. Regarding transactions specified in Subsection A., 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 six months before or after the date of sale. Nothing in this section shall enlarge the amount of profit which would inure to the insurer in the absence of this section.

_____ C. The commissioner also exempts, as not included within the purposes of Subsection 31A 5 303(2), the disposition of a security purchased in a transaction specified in Subsection A. of this section, 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 Subsection 368(e) 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 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.

_____ D. The exemptions provided by this section shall not apply to any transaction made unlawful by Subsection 31A 5 303(3) or by any rules.

_____ E. The burden of establishing market price of a security for the purpose of this section shall rest upon the person claiming the exemption.

R590-68-16. Exemption From Section 31A-5-303 of Certain Acquisitions and Dispositions of Securities Pursuant to Merger or Consolidations.

_____ A. The following transactions shall be exempt from the provisions of Subsection 31A-5-303(2) as not included within the purpose of this section:

_____ 1. 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 merger or consolidation, owned 85% or more of the equity securities of companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

_____ 2. The disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to merger or consolidation, owned 85% or more of the equity securities of companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

_____ 3. 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 merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidations as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.

_____ 4. The disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to merger or consolidation, held over 85% of the combined assets of 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.

_____ B. A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.

_____ C. Notwithstanding the foregoing, if an officer, director or stockholder shall make any purchase, other than a purchase exempted by this section, of a security in any company involved in the merger or consolidation and any sale, other than a sale exempted by this section, of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this section shall be unavailable to the officer, director, or stockholder.

R590-68-17. Exemption From Section 31A-5-303(2) of Certain Securities Received Upon Surrender of Similar Equity Securities.

_____ Receipt by a person from an insurer of shares of stock of a class having general voting power, upon the surrender by the person of an equal number of shares of stock of the insurer of a class which does not have general voting power, pursuant to provisions of the insurer's certificate of incorporation, for the purpose of an accompanied simultaneously or followed immediately by the sale of the shares so received, shall be exempt from the operation of Section 31A-5-303(2) as a transaction not included within the purpose of the section, if the following conditions exist:

_____ A. The person receiving shares is not an officer or director, or the beneficial owner, directly or indirectly, immediately prior to the receipt of more than ten per cent of an equity security of the insurer;

_____ B. The shares surrendered and the shares issued upon the surrender shall be of classes which are freely transferable and entitle the holders to participate equally per share in distributions of earnings and assets;

_____ C. The surrender and issuance are made pursuant to provisions of a certificate of incorporation which require that the shares issued upon the surrender shall be registered upon issuance in the name of a person or persons, other than the holder of the shares surrendered, and may be required to be issued as of right only in connection with the public offering, sale and distribution of the shares and the immediate sale by the holder of the shares for that purpose, or in connection with a gift of the shares;

_____ D. Neither the shares so surrendered, nor any shares of the same class, nor other shares of the same class as those issued upon the surrender, have been or are purchased, otherwise than in a transaction exempted by this section, by the person surrendering the shares within six months before or after the surrender or issuance.

R590-68-18. Exemption From Section 31A-5-303(2) of Certain Transactions Involving an Exchange of Similar Securities.

_____ Any acquisition or disposition of securities made in an exchange of shares of a class or series of stock of an insurer for an equivalent number of shares of another class or series of stock of the same insurer, pursuant to a right of conversion under the terms of the insurer's charter or other governing instruments, shall be exempt from the operation of Section 31A-5-303(2) if:

_____ A. the shares surrendered and those acquired in exchange, evidence substantially the same rights and privileges except that, pursuant to the provisions of the insurer's charter or other governing instruments, the board of directors may declare and pay a lesser dividend per share on shares of the class surrendered than on shares of the class acquired in exchange, or may declare and pay no dividend on shares of the class surrendered; and

_____ B. the transaction was effected in contemplation of a public sale of the shares acquired in the exchange; provided, that this section shall not be construed to exempt from the operation of Section 31A-5-303(2), any purchase or sale of shares of the class surrendered, and any sale or purchase of shares of the class acquired in the exchange, otherwise than in the transaction of exchange exempted by this section, within a period of less than six months.

R590-68-19. Exemption of Certain Securities From Section 31A-5-303(3).

_____ Securities shall be exempt from the operation of Section 31A-5-303(3) to the extent necessary to render lawful under the section the execution by a broker of an order for an account in which he has no direct or indirect interest.

R590-68-20. Exemption From Section 31A-5-303(3) of Certain Transactions Effected in Connection With a Distribution.

Securities shall be exempt from the operation of Section 31A-5-303(3) to the extent necessary to render lawful under this section 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 the 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 31A-5-303(3), 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 persons exempted from the provisions of Section 31A-5-303(3) by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions shall not preclude an exemption which would otherwise be available under this section.

R590-68-21. Exemption From Section 31A-5-303(3) of Sales of Securities to Be Acquired.

A. 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 shall be exempt from the operation of Section 31A-5-303(3), provided that:

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

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

(3) a person reports the sale on the appropriate form for reporting transactions by persons subject to Section 31A-5-303(1).

B. This section 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 two 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.

R590-68-22. Arbitrage Transactions under Section 31A-5-303(3).

It shall be unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of an insurer, unless he shall include the transaction in the statements required by Section 31A-5-303(1) and shall account to an insurer for the profits arising from the transaction, as provided in Section 31A-5-303(2). The provisions of Section 31A-5-303(3) shall not apply to arbitrage transactions. The provisions of the Act shall not apply to any bona fide foreign or domestic arbitrage transaction to the extent it is effected by any person other than the director or officer of the insurer.]

R590-68-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-5-303.

R590-68-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) define terms; and

(b) prescribe conditions regarding securities held in the ordinary course of business and incident to the establishment of maintenance of a primary or secondary market.

(2) This rule applies to a domestic stock insurance company.

R590-68-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-5-303. Additional terms are defined as follows:

(1) "Class" means all securities of an insurer that:

(a) are of substantially similar character; and

(b) provide substantially similar rights and privileges to the security holders.

(2) "Insurer," for purposes of this rule, means a domestic stock insurance company with an equity security subject to Section 31A-5-303.

(3) "Officer" means:

(a) a president;

(b) a vice president;

(c) a treasurer;

(d) an actuary;

(e) a secretary;

(f) a controller; or

(g) any other person who performs a similar policy-making function for an insurer.

R590-68-4. Securities Held of Record.

(1) This section sets forth the method for determining whether the equity securities of an insurer are held of record by 100 or

more persons.

(2) Securities are held of record by each person identified as the owner of the securities on records of security holders maintained by or on behalf of the insurer, subject to the following:

(a) where the records of a security holder are not maintained in accordance with an accepted practice, an additional person who is identified as an owner on the records if they are maintained in accordance with an accepted practice are included as a holder of the record;

(b) securities are held by one person if they are identified as held of record:

(i) by two or more persons as co-owners;

(ii) by a corporation;

(iii) by a partnership;

(iv) by a trust, whether or not the trustees are named;

(v) by another organization;

(vi) by one or more persons as trustees, executors, guardians, or custodians; or

(vii) in other fiduciary capacities with respect to a single trust, estate, or account;

(c) each outstanding unregistered or bearer certificate is included as held of record by a separate person, except to the extent that the insurer can establish that, if the securities were registered, they are held of record, under this rule, by a lesser number of persons; and

(d) securities registered in substantially similar names where the insurer has reason to believe that the names represent the same person, because of the address or other indications, may be included as held of record by one person.

(3)(a) Notwithstanding Subsections (1) and (2):

(i) securities held, to the knowledge of the insurer, subject to a voting trust, deposit agreement, or similar arrangement, are included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of interest in the securities; and

(ii) if the insurer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq, the beneficial owners of the securities are the record owners.

(b) An insurer may rely in good faith on such information as is received in response to its request from a nonaffiliated insurer of the certificates or evidence of interest.

R590-68-5. Filing Statements.

(1) The following statements shall be used by an insurer when complying with this rule:

(a) Form A, Initial Statement of Beneficial Ownership of Equity Securities; and

(b) Form B, Statement of Changes in Beneficial Ownership of Securities.

(2) The forms listed in Subsection (1) are available on the department's website, <https://insurance.utah.gov>.

(3) An initial statement of beneficial ownership of an equity security under Section 31A-5-303 shall be filed on Form A.

(4) A statement regarding a change in beneficial ownership of equity securities shall be filed on Form B.

(a) A director or officer required to file a statement on Form B regarding a change in beneficial ownership of equity securities that occurs within six months after the director or officer became a director or officer of the insurer, or within six months after equity securities of the insurer are registered under Subsection 31A-5-303(1), shall include the information that caused the filing of the statement.

(b) A person who ceased to be a director or officer of an insurer with equity securities registered under Subsection 31A-5-303(1) shall file a statement on Form B regarding:

(i) a change in the person's beneficial ownership of equity securities of the insurer that occur on or after the date that the person ceased to be a director or officer; or

(ii) the date that the insurer ceased to have an equity security registered, if the change occurs within six months after any change in the beneficial ownership of the securities before that date.

(c) The statement on Form B shall be filed within 10 days after the end of the month in which the reported change in beneficial ownership occurs.

R590-68-6. Ownership of More Than 10% of an Equity Security.

(1)(a) To determine if a person is the beneficial owner, directly or indirectly, of more than 10% of a class of an equity security, the class consists of the total amount of the class outstanding, excluding any securities of the class held by or for the account of the insurer or a subsidiary of the insurer.

(b) Except for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class that may be deposited under the voting trust agreement or deposit agreement in question, whether all of the outstanding securities are deposited.

(c) A person acting in good faith may rely on the information contained in the latest annual statement filed with the commissioner with respect to the number of securities of a class outstanding or, in the case of voting trust certificates or certificates of deposit, the amount issuable.

(2)(a) To determine if a person is the beneficial owner, directly or indirectly, of more than 10% of a class of equity securities, the person is the beneficial owner of securities of a class that the person has the right to acquire through the exercise of

presently exercisable options, warrants, or rights, or through the conversion of presently convertible securities.

(b) The securities subject to such options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by that person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

(3) Subsection (2) does not relieve a person of a duty to comply with Section 31A-5-303 with respect to an equity security consisting of options, warrants, rights, or convertible securities that are subject as a class to Section 31A-5-303.

R590-68-7. Disclaimer of Beneficial Ownership.

A person filing a statement may expressly declare, under Section 31A-5-303, that the filing of the statement may not be construed as an admission that a person is the beneficial owner of an equity security covered by the statement.

R590-68-8. Exemptions from Subsections 31A-5-303(1) and 31A-5-303(2).

(1) During the 12-month period following their appointment and qualification, securities held by the following persons are exempt from Subsections 31A-5-303(1) and 31A-5-303(2):

(a) an executor or administrator of the estate of a decedent;

(b) a guardian or committee for an incompetent; and

(c) a receiver, trustee in bankruptcy, assignee for the benefit of a creditor, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of other persons.

(2) After the 12-month period following the appointment or qualification, the persons in Subsection (1) shall file reports regarding the securities held by the estates they administer under Subsection 31A-5-303(1), and are liable for profits realized from trading securities pursuant to Subsection 31A-5-303(2), only when the estate being administered is a beneficial owner of more than 10% of a class of equity security of an insurer subject to Section 31A-5-303.

(3) Securities reacquired by or for the account of an insurer and held by it for its account are exempt from Section 31A-5-303 during the time the securities are held by the insurer.

R590-68-9. Transactions Exempted from Subsection 31A-5-303(2).

An acquisition or disposition of an equity security by a director or officer of an insurer within six months before the effective date of Section 31A-5-303 applicable to the equity securities of the insurer is exempt from Subsection 31A-5-303(2).

R590-68-10. Exemption From Section 31A-5-303 of Securities Purchased or Sold by Odd-Lot Dealers.

Securities purchased or sold by an odd-lot dealer in odd lots to carry on odd-lot transactions, or in round lots to offset odd-lot transactions, executed in the usual course of business are exempt from Section 31A-5-303 regarding participation by the odd-lot dealer.

R590-68-11. Certain Transactions Subject to Subsection 31A-5-303(1).

(1) The acquisition or disposition of a transferable option, put, call, spread, or straddle is a change in the beneficial ownership of a security to which the privilege relates and requires the filing of a statement reflecting the acquisition or disposition of the privilege.

(2) Subsection (1) does not exempt a person from filing a statement required upon the exercise of an option, put, call, spread, or straddle.

R590-68-12. Ownership of Securities Held in Trust.

(1)(a) "Immediate family of a trustee," as used in this section, means:

(i) a son or daughter of the trustee, or a descendant of either;

(ii) a stepson or stepdaughter of the trustee;

(iii) a father or mother of the trustee, or an ancestor of either;

(iv) a stepfather or stepmother of the trustee; and

(v) a spouse of the trustee.

(b) When determining a relation under Subsection (5)(a), a legally adopted child of a person is a child of the person by blood.

(2) Beneficial ownership of a security under Subsection 31A-5-303(1) includes:

(a) the ownership of securities as a trustee where either the trustee or a member of the trustee's immediate family has a vested interest in the income or corpus of the trust;

(b) the ownership of a vested beneficial interest in a trust; and

(c) the ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of the beneficiaries.

(3)(a) Except as provided in Subsection (4), beneficial ownership of securities solely as a settlor or beneficiary of a trust are exempt from Section 31A-5-303 where less than 20% in market value of the securities having a readily ascertainable market value held by the trust, determined as of the end of the preceding fiscal year of the trust, consists of equity securities where reports would otherwise be required.

(b) Section 31A-5-303 exempts an obligation that is imposed solely by reason of ownership as settlor or beneficiary of securities held in trust, where the ownership, acquisition, or disposition of securities by the trust is made without prior approval by the

settlor or beneficiary.

(c) An exemption under this Subsection (3) may not be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in securities otherwise subject to the reporting requirements of Subsection 31A-5-303(1).

(4) If 10% of a class of an equity security of an insurer is held in a trust, that trust and the trustees shall file the reports specified in Section 31A-5-303.

(5)(a) Only one report is required to report any holdings or with respect to any transaction in securities held by a trust, regardless of the number of officers, directors, or 10% stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed discloses the names of trustees, settlors, and beneficiaries who are officers, directors, or 10% stockholders.

(b) A person having an interest only as a beneficiary of a trust is not required to file a report if the filer relies in good faith upon an understanding that the trustee of a trust will file the required reports of the beneficiary.

(6) To determine, for the purposes of Subsection 31A-5-303(1), whether a person is the beneficial owner, directly or indirectly, of more than 10% of any class of any equity security, the interest of a person in the remainder of a trust is excluded from the computation.

(7) A report is not required by any person, whether subject to the requirement of filing reports under Section 31A-5-303, regarding the person's indirect interest in portfolio securities held by:

(a) a pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan; and

(b) a business trust with over 25 beneficiaries.

R590-68-13. Exemption for Small Transactions.

(1) An acquisition of a security is exempt from Subsection 31A-5-303(1) if:

(a) the person effecting the acquisition does not, within six months after, effect any disposition other than by way of gift of a security of the same class; and

(b) the person effecting the acquisition does not participate in an acquisition or a disposition of a security of the same class having a total market value more than \$3,000 for any six-month period during which the acquisition occurs.

(2) An acquisition or disposition of a security, by way of gift, where the total amount of gifts does not exceed \$3,000 in market value for any six-month period, is exempt from Section 31A-5-303 and is excluded from the computations of Subsection (1)(b).

(3) A person exempted by Subsection (1) or (2) shall include in the first report filed, after a transaction within the exemption, a statement showing each acquisition and disposition for each six-month period or portion that elapsed since the last filing.

R590-68-14. Exemption From Subsection 31A-5-303(2) of Transactions That Need Not Be Reported Under Subsection 31A-5-303(1).

A transaction exempted from Subsection 31A-5-303(1), insofar as it is otherwise subject to the provisions of Subsection 31A-5-303(2), is likewise exempted from Subsection 31A-5-303(2).

R590-68-15. Exemption from Subsection 31A-5-303(2) of Certain Transactions in Connection With a Distribution.

(1) A transaction of purchase and sale, or sale and purchase, of a security in connection with the distribution of a substantial block of securities is exempt from Subsection 31A-5-303(2), to the extent specified in this section, upon the following conditions:

(a) the person carrying out the transaction is engaged in the business of distributing securities and is participating in good faith in the ordinary course of business in the distribution of a block of securities;

(b) the security involved in the transaction is:

(i) a part of a block of securities and is acquired by the person carrying out the transaction with a view to distribution from the insurer or other person on whose behalf securities are being distributed, or from a person who is participating in good faith in the distribution of a block of securities; or

(ii) a security purchased in good faith by or for the account of the person carrying out 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 the distribution; and

(c) other persons not within the purview of Section 31A-5-303 are participating in the distribution of a block of securities on terms at least as favorable as those that a person is participating and to an extent at least equal to the aggregate participation of persons exempted from Section 31A-5-303.

(2) The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions does not preclude an exemption that is available under this section.

(3) The exemption of a transaction under this section regarding the participation of one party may not make the transaction exempt with respect to participation of any other party unless the other party also meets the conditions of this section.

R590-68-16. Exemption From Subsection 31A-5-303(2) of Acquisitions of Shares of Stock and Stock Options Under Certain Stock Bonus, Stock Option, or Similar Plans.

(1) For purposes of this section, the following terms apply:

(a) "Plan" means any plan, whether set forth in a formal written document and whether approved in its entirety at one time.

(b) "Qualified stock option" and "employee stock purchase plan" mean the same as those terms are defined in Sections 422 and 423 of the Internal Revenue Code.

(c) "Restricted stock option" means the same as that term is defined in Subsection 424(b) of the Internal Revenue Code.

(d) "Exercise of an option, warrant, or right" does not include:

(i) the making of an election to receive, under a plan, an award of compensation in the form of stock or credits, provided that the election is made before the making of the award and that the election is irrevocable until at least six months after termination of employment;

(ii) the subsequent crediting of such stock;

(iii) the making of an election as to a time for delivery of the stock after termination of employment, provided that the election is made at least six months before delivery;

(iv) the fulfillment of a condition to the absolute right to receive stock; or

(v) the acceptance of certificates for shares of stock.

(2)(a) An acquisition of shares of stock is exempt from Subsection 31A-5-303(2) if the plan complies with this section.

(b) Notwithstanding Subsection (2)(a), an acquisition of shares of stock is not exempt if it is:

(i) acquired upon the exercise of an option, warrant, or right, pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings, or similar plan;

(ii) an acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan; or

(iii) a stock option pursuant to an employee stock purchase plan by a director or officer of an insurer issuing a stock or stock option.

(3)(a) The plan shall be approved, directly or indirectly, by:

(i) affirmative votes of the holders of a majority of the securities of the insurer present, or represented, and entitled to vote at a duly held meeting; or

(ii) written consent of the holders of a majority of the securities of an insurer entitled to vote.

(b) The insurer shall furnish the same information concerning the plan, in writing, to the holders of record of the securities entitled to vote for the plan, if:

(i) the vote or written consent was not solicited under the proxy rules of the NAIC in effect at the time of a vote or written consent; and

(ii) a proxy vote was solicited to approve or disapprove the plan.

(c) The information required by Subsection (2)(b) shall be furnished on or before the date of the first annual meeting of security holders held after the later of:

(i) the date Section 31A-5-303 first applies to the insurer; or

(ii) the acquisition of an equity security for which an exemption is claimed.

(d)(i) Written information may be furnished by mail to the last known address of the security holders of record within 30 days before the date of mailing.

(ii) The written information shall be filed with the commissioner no later than the date the written information is first provided to security holders of the insurer.

(e) "Insurer," for the purposes of this Subsection (3), includes a predecessor corporation if the plan or obligation to participate is assumed by the insurer in connection with the succession.

(4) Selection of a director or officer of the insurer may be subject to discretion if:

(a) the director or officer may be allocated stock;

(b) the director or officer may be granted qualified, restricted, or employee stock purchase plan stock options pursuant to the plan;

(c) a determination must be made regarding the number or maximum number of shares of stock that may be allocated to a director or officer, or that may be covered by qualified, restricted, or employee stock purchase plan stock options granted to a director or officer.

(5) If a selection in Subsection (4) is subject to discretion, the discretion shall be exercised as follows:

(a) with respect to the participation of a director:

(i) by the board of directors of the insurer, a majority of the board and a majority of the directors acting in the matter are disinterested persons;

(ii) by a committee of three or more persons having full authority to act in the matter, of the members of which are disinterested persons; or

(iii) in accordance with the plan if the plan:

(A) specifies the number or maximum number of shares of stock that directors may acquire or are 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, the stock may be acquired or the options may be acquired and exercised; or

(B) sets forth, by formula or otherwise, effective and determinable limitations based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages outstanding from time to time, or similar factors; or

(b) with respect to the participation of officers who are not directors:

(i) by the board of directors of the insurer or a committee of three or more directors; or

(ii) by a committee of three or more persons having full authority to act in the matter, of the members of which are disinterested persons.

(c) For the purposes of this Subsection (5), a director or committee member is a disinterested person only if the person is not eligible at the time the discretion is exercised, and has not at any time within the past year, been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted, or employee stock purchase plan stock options are granted pursuant to the plan, or any other plan of the insurer, or any of its affiliates entitling the participants to acquire stock, or qualified, restricted, or employee stock purchase plan stock options of the insurer or any of its affiliates.

(d) This Subsection (5) does not apply to an option granted, or other equity security acquired, before the date that Subsections 31A-5-303(1) through 31A-5-303(3) first applied to a class of equity security of an insurer.

(6)(a) For a participant that a plan limits the aggregate dollar amount or the aggregate number of shares of stock that may be allocated, or are 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 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 outstanding from time to time, or similar factors that will result in an effective and determinable limitation.

(b) The limitations may be subject to a provision for adjustment of the plan or of stock allocable or portions outstanding to prevent dilution or enlargement of rights.

R590-68-17. Exemption from Subsection 31A-5-303(2) of Certain Transactions in Which Securities Are Received by Redeeming Other Securities.

An 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 the security, is exempt from Subsection 31A-5-303(2) if:

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

(a) is a stated or readily ascertainable amount of the equity security;

(b) has a value that is determined by the value of the equity security; and

(c) confers upon the holder the right to receive the equity security without the payment of consideration other than the security redeemed;

(2) no security of the same class as the security redeemed is acquired by the director or officer within:

(a) six months before redemption; or

(b) six months after redemption; and

(3) the insurer issuing the equity security acquired recognizes the applicability of Subsection (1) by appropriate corporate action.

R590-68-18. Exemption of Long-Term Profits Incident to Sales Within Six Months of the Exercise of an Option.

(1) To the extent specified in Subsection (2), a transaction involving the purchase and sale, or sale and purchase, of an equity security, where the purchase is pursuant to the exercise of an option or similar right, is exempt if:

(a) acquired more than six months before its exercise; or

(b) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

(2)(a) The profits inuring to the insurer may not exceed the difference between the proceeds of the sale and the lowest market price of a security of the same class within six months before or after the date of sale.

(b) This Section R590-68-18 does not enlarge the amount of profit that inures to the insurer in the absence of this section.

(3) The disposition of a security purchased in a transaction under Subsection (1) is exempt from Section 31A-3-505, 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 that acquired its assets, or which is in control, as defined in Subsection 368(c) of the Internal Revenue Code, of a person who acquired its assets, where the terms of the plan or agreement are binding upon stockholders of the insurer except to the extent that dissenting stockholders are 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 under this section do not apply to a transaction prohibited by Subsection 31A-5-303(3) or this rule.

(5) The burden of establishing market price of a security under this section is on the person claiming the exemption.

R590-68-19. Exemption From Subsection 31A-5-303(2) of Certain Acquisitions and Dispositions of Securities Pursuant to Merger or Consolidation.

(1) The following transactions are exempt from Subsection 31A-5-303(2):

(a) the acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company that, before merger or consolidation, owned 85% or more of the equity securities of a company 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 that, before merger or consolidation, owned 85% or more of the equity securities of a company 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 that, before merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values before the merger or consolidations as determined by reference to their most recent available financial statements for a 12-month period before the merger or consolidation; or

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

(2) A merger includes the sale or purchase of substantially all the assets of one insurer by another in exchange for stock that is then distributed to the security holders of the insurer that sold its assets.

(3) If an officer, director, or stockholder makes a purchase, other than a purchase exempted by this section, of a security in any company involved in the merger or consolidation and any sale, other than an exempted sale, of a security in any other company involved in the merger or consolidation within a period of less than six months during which the merger or consolidation took place, the exemption is unavailable to the officer, director, or stockholder.

R590-68-20. Exemption from Subsection 31A-5-303(2) of Certain Transactions Involving the Conversion of Equity Securities.

(1) An acquisition or disposition of an equity security involved in the conversion of an equity security that, by its terms or pursuant to the terms of the insurer's charter or other governing instrument, is convertible immediately or after a stated period into another equity security of the same insurer, is exempt from Subsection 31A-5-303(2) if:

(a) a purchase of an equity security of the class convertible, including an acquisition of or change in a conversion privilege, and a sale is made of an equity security of the class issuable upon conversion; or

(b) a sale of an equity security of the class convertible and a purchase is made of an equity security issuable upon conversion, other than in a transaction involved in the conversion or in a transaction exempted under Subsection 31A-5-303(2), within a period of less than six months, including the date of conversion.

(2) An equity security may not 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 the conversion, of cash or other property in connection with the 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) An equity security is convertible if it is convertible at the option of the holder, some other person, or by operation of the terms of the security or the governing instruments.

R590-68-21. Exemption from Subsection 31A-5-303(2) of Certain Transactions Involving the Sale of Subscription Rights.

(1) For purposes of this section, the following terms apply:

(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 of 1934, 15 U.S.C. 78a, et seq., to the holders of which a subscription right is granted.

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

(2) A sale of a subscription right to acquire a subject security of the same insurer is exempt from Subsection 31A-5-303(2) if:

(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 issuance;

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

and

(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 registration are met with respect to each subject security.

(3) If a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this section is not exempted to the extent of such purchases within the six-month period preceding or following the sale.

R590-68-22. Exemption of Certain Securities From Subsection 31A-5-303(3).

A security is exempt from Subsection 31A-5-303(3) if necessary for the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

R590-68-23. Exemption From Subsection 31A-5-303(3) of Certain Transactions Effected in Connection With a Distribution.

(1) A security is exempt from Subsection 31A-5-303(3), if necessary for a sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, if:

(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 the underwriter's behalf intends, in good faith, to offset the 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 that the dealer is a member of at the time of the sale, whether the security to be 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 Subsection 31A-5-303(3) 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 persons exempted from Subsection 31A-5-303(3).

(2) The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for

performing these functions may not preclude an exemption that is otherwise available under this section.

R590-68-24. Exemption From Subsection 31A-5-303(3) of Sales of Securities to Be Acquired.

(1) When a person is entitled, as an incident to 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 Subsection 31A-5-303(3) if:

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

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

(c) a person reports the sale on the appropriate form for reporting transactions by persons subject to Subsection 31A-5-303(1).

(2) This section may not be construed as exempting a transaction 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 security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received pursuant to the right of acquisition.

R590-68-25. Arbitrage Transactions Under Subsection 31A-5-303(3).

(1) A director or officer of an insurer may not effect a foreign or domestic arbitrage transaction in an equity security of an insurer unless the director or officer:

(a) includes the transaction in the statements required by Subsection 31A-5-303(1); and

(b) accounts to an insurer for the profits arising from the transaction as provided in Subsection 31A-5-303(2).

(2) Subsection 31A-5-303(3) does not apply to an arbitrage transaction.

(3) Section 31A-5-303 does not apply to any bona fide foreign or domestic arbitrage transaction effected by a person other than the director or officer of the insurer.

R590-68-26. Severability.

If any provision of this rule, Rule R590-68, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

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