

**RULES
OF
TENNESSEE DEPARTMENT OF INSURANCE
INSURANCE DIVISION**

**CHAPTER 0780-1-14
RULES AND REGULATIONS CONCERNING THE INSIDER TRADING OF EQUITY
SECURITIES OF A DOMESTIC STOCK INSURANCE COMPANY**

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0780-1-14-.01 DEFINITION OF CERTAIN TERMS.

- (1) “Insurer” means any domestic stock insurance company with an equity security subject to the provisions of Chapter 95 of the Public Acts of 1965. T.C.A. §§ 56-3-702 through 56-3-708.
- (2) “Act” means T.C.A. §§ 56-3-702 through 56-3-708.
- (3) “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.
- (4) “Equity security” means any stock or similar security; or any voting trust certificate or certificate of deposit for such a security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.
- (5) Securities “held of record”.
 - (a) For the purpose of determining whether the equity securities of an insurer are held of record by one hundred or more persons, securities shall be deemed to be “held of record” by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the insurer, subject to the following:

1. In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.
 2. 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.
 3. 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.
 4. Securities held by two or more persons as co-owners shall be included as held by one person.
 5. 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 such securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of persons.
 6. Securities registered in substantially similar names where the insurer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.
- (b) Notwithstanding subparagraph (a) of this paragraph:
1. 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 such securities; provided however, that the insurer may rely in good faith on such information as is received in response to its request from a non-affiliated insurer of the certificates or evidences of interest.
 2. 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 such securities shall be deemed to be the record owners thereof.
- (6) "Class" means all securities of an insurer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.02 TRANSACTIONS EXEMPTED FROM THE OPERATION OF T.C.A. § 56-3-703. 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 such insurer shall not be subject to the operation of T.C.A. § 56-3-703.

(Rule 0780-1-14-.02, continued)

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.03 FILING OF STATEMENTS. Initial statements of beneficial ownership of equity securities required by T.C.A. § 56-3-702 shall be filed on Form 1 attached hereto. Statements of changes in such beneficial ownership required by T.C.A. § 56-3-702 shall be filed on Form 2 attached hereto. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.04 OWNERSHIP OF MORE THAN 10 PERCENT OF AN EQUITY SECURITY. In determining, for the purpose of T.C.A. § 56-3-702 whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of any equity security, such class shall be deemed to consist of the total amount of such class outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited. For the purpose of this section of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to 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 all of such 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 thereof issuable.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.05 DISCLAIMER OF BENEFICIAL OWNERSHIP. Any person filing a statement may expressly declare therein that the filing of such statement shall not be construed as an admission that such person is, for the purpose of the Act, the beneficial owner of any equity securities covered by the statement.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.06 EXEMPTIONS FROM T.C.A. § 56-3-702 AND § 56-3-703.

- (1) During the period of 12 months following their appointment and qualification, securities held by the following persons shall be exempt from T.C.A. § 56-3-702 and § 56-3-703.
 - (a) Executors or administrators of the estate of a decedent;
 - (b) Guardians or committees for an incompetent; and
 - (c) 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.
- (2) After the 12-month period following their appointment of qualification the foregoing persons shall be required to file reports with respect to the securities held by the estates which they administer under T.C.A. § 56-3-702 and shall be liable for profits realized from trading in such securities pursuant to T.C.A. § 56-3-703 only when the estate being administered is a beneficial owner of more than 10 percent of any class of equity security of an insurer subject to the Act.

- (3) Securities reacquired by or for the account of an insurer and held by it for its account shall be exempt from T.C.A. § 56-3-702 and § 56-3-703 during the time they are held by the insurer.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.07 EXEMPTION FROM THE ACT OF SECURITIES PURCHASED OR SOLD BY ODD-LOT DEALERS. Securities purchased or sold by an odd-lot dealer (a) in odd lots so far as reasonably necessary to carry on odd-lot transactions or (b) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of the Act with respect to participation by such odd-lot dealer in such transactions.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.08 CERTAIN TRANSACTIONS SUBJECT TO T.C.A. § 56-3-702. The acquisition or disposition of any transferable option, put, call, spread or straddle shall be deemed such a change in the beneficial ownership of the security to which such privilege relates as to require the filing of a statement reflecting the acquisition or disposition of such privilege. Nothing in this section, however, shall exempt any person from filing the statements required upon the exercise of such option, put, call, spread or straddle.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.09 OWNERSHIP OF SECURITIES HELD IN TRUST.

- (1) Beneficial ownership of a security for the purpose of T.C.A. § 56-3-702 shall include:
 - (a) 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,
 - (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 all beneficiaries.
- (2) Except as provided in paragraph (3) hereof, beneficial ownership of securities solely as a settlor or beneficiary of a trust shall be exempt from the provisions of T.C.A. § 56-3-702 where less than twenty percent in market value of the securities having a readily ascertainable market value held by such trust, determined as of the end of the preceding fiscal year of the trust, consists of equity securities from T.C.A. § 56-3-702 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 such securities by the trust is made without prior approval by the settlor or beneficiary. No exemption pursuant to this subsection shall, however, 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 the securities otherwise subject to the reporting requirements of T.C.A. § 56-3-702.
- (3) In the event that 10 percent of any class of any equity security of an insurer is held in a trust, that trust and the trustees thereof as such shall be deemed a person required to file the reports specified in T.C.A. § 56-3-702.

(Rule 0780-1-14-.09, continued)

- (4) 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 percent stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed shall disclose the names of all trustees, settlors and beneficiaries who are officers, directors or ten percent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file any such report so long as he relies in good faith upon an understanding that the trustee of such trust will file whatever reports might otherwise be required by such beneficiary.
- (5) As used in this section the "immediate family" of a trustee means:
 - (a) a son or daughter of the trustee, or a descendant of either,
 - (b) a stepson or stepdaughter of the trustee,
 - (c) the father or mother of the trustee, or an ancestor of either,
 - (d) a stepfather or stepmother of the trustee,
 - (e) a spouse of the trustee.

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

- (6) In determining, for the purposes of T.C.A. § 56-3-702 whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of any equity security, the interest of such person in the remainder of a trust shall be excluded from the computation.
- (7) No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under T.C.A. § 56-3-702, with respect to his 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,
 - (b) a business trust with over 25 beneficiaries.
- (8) Nothing in this section shall be deemed to impose any duties or liabilities with respect to reporting any transaction or holding prior to its effective date.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.10 EXEMPTION FOR SMALL TRANSACTIONS

- (1) Any acquisition of securities shall be exempt from Section 1 where
 - (a) The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the same class, and
 - (b) The person effecting such 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.

(Rule 0780-1-14-.10, continued)

- (2) Any acquisition or disposition of securities by way of gift, where the total amount of such gifts does not exceed \$3,000 in market value for any six months' period, shall be exempt from T.C.A. § 56-3-702 and may be excluded from the computations prescribed in subparagraph (b) of paragraph (1).
- (3) Any person exempted by paragraph (1) or (2) or 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 thereof which has elapsed since his last filing.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14.11 EXEMPTION FROM T.C.A. § 56-3-703 OF TRANSACTIONS WHICH NEED NOT BE REPORTED UNDER T.C.A. § 56-3-702. Any transaction which has been or shall be exempted from the requirements of T.C.A. § 56-3-702 shall, insofar as it is otherwise subject to the provisions of T.C.A. § 56-3-703, be likewise exempted from T.C.A. § 56-3-703.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14.12 EXEMPTION FROM T.C.A. § 56-3-703 OF CERTAIN TRANSACTIONS EFFECTED IN CONNECTION WITH A DISTRIBUTION.

- (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 shall be exempt from the provisions of T.C.A. § 56-3-703 to the extent specified in this section as not comprehended within the purpose of said section of the Act, 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:
 1. 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
 2. 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; and
 - (c) Other persons not within the purview of T.C.A. § 56-3-703 are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of T.C.A. § 56-3-703 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 such functions shall not preclude an exemption which would otherwise be available under this section.

(Rule 0780-1-14-.12, continued)

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

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.13 EXEMPTION FROM T.C.A. § 56-3-703 OF ACQUISITIONS OF SHARES OF STOCK AND STOCK OPTIONS UNDER CERTAIN STOCK BONUS, STOCK OPTION OR SIMILAR PLANS.

- (1) 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 such stock or stock option shall be exempt from the operation of T.C.A. § 56-3-703 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 such insurer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State of Tennessee, or
2. by the written consent of the holders of a majority of the securities of such insurer entitled to vote; provided, however, that if such vote or written consent was not solicited substantially in accordance with the proxy rules and regulations prescribed by the National Association of Insurance Commissioners, if any, in effect at the time of such 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 any such rules and regulations so prescribed and in effect at the time such 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 such insurer, or

- (ii) the acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last address of the security holders of record within 30 days prior to the date of mailing. Four copies of such 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 paragraph, 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.

(b) If the selection of any director or officer of the insurer to whom stock may be allocated or to whom qualified, restricted or employees 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 such director or officer of which may be covered by qualified, restricted or employee stock purchase plan stock options granted to any such director or officer, is subject to the discretion of any person, then such discretion shall be exercised only as follows:

1. With respect to the participation of directors –

- (i) 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;
- (ii) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or
- (iii) otherwise in accordance with the plan, if the plan a. 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 b. 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.

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

For the purpose of this paragraph, a director or committee member shall be deemed to be a disinterested person only if such person is not at the time such discretion is exercised eligible and has not at any time within one year prior thereto 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 therein 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 paragraph shall not apply with respect to any option granted, or other equity security acquired, prior to the date that

T.C.A. §§ 56-3-702, 56-3-703 and 56-3-704 first become applicable with respect to any class of equity securities of any insurer.

- (c) 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.
- (d) Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act and in Rule 0780-1-14-.01. 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, shall be applied to that term as used in this section, provided, however, that for the purposes of this section an option which meets all of the conditions of that section, other than the date of issuance shall be deemed to be a “restricted stock option.”

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.14 EXEMPTION FROM T.C.A. § 56-3-703 CERTAIN TRANSACTIONS IN WHICH SECURITIES ARE RECEIVED BY REDEEMING OTHER SECURITIES.

- (1) 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 shall be exempt from the operation of T.C.A. § 56-3-703 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 issuer issuing the equity security so acquired, and which
1. represented substantially and in practical effect a stated or readily ascertainable amount of such equity security,
 2. had a value which was substantially determined by the value of such equity security, and

3. 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 six months prior to such redemption or is acquired within six months after such redemption;
- (c) the insurer issuing the equity security acquired has recognized the applicability of subparagraph (a) by appropriate corporate action.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.15 EXEMPTION OF LONG-TERM PROFITS INCIDENT TO SALES WITHIN SIX MONTHS OF THE EXERCISE OF AN OPTION.

- (1) To the extent specified in paragraph (2) of this rule the Commissioner hereby exempts as not comprehended within the purposes of T.C.A. § 56-3-703 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 (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) In respect of transactions specified in paragraph (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 six 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 such insurer in the absence of this section.
- (3) The Commissioner also hereby exempts, as not comprehended within the purpose of T.C.A. § 56-3-703, the disposition of a security, purchased in a transaction specified in paragraph (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 Section 368 (c) of the Internal Revenue Code of 1954, of a person which has acquired its assets, where the terms of such 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 approved by this section shall not apply to any transaction made unlawful by T.C.A. § 56-3-704 or by any rules and regulations thereunder.
- (5) The burden of establishing market price of a security for the purpose of this section shall rest upon the person claiming the exemption.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.16 EXEMPTION FROM T.C.A. § 56-3-703 OF CERTAIN ACQUISITIONS AND DISPOSITIONS OF SECURITIES PURSUANT TO MERGER OR CONSOLIDATIONS.

- (1) The following transactions shall be exempt from the provisions of T.C.A. § 56-3-703 as not comprehended within the purpose of said 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 said merger or consolidation, owned 85 percent 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 said merger or consolidation, owned 85 percent 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 said merger or consolidation, held over 85 percent 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 said merger or consolidation, held over 85 percent 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 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.
 - (3) 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 such officer, director, or stockholder.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.17 EXEMPTION FROM T.C.A. § 56-3-703 OF CERTAIN SECURITIES RECEIVED UPON SURRENDER OF SIMILAR EQUITY SECURITIES.

- (1) Any receipt by a person from an insurer of shares of stock of a class having general voting power, upon the surrender by such 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 and accompanied simultaneously or followed immediately by the sale of the shares so received, shall be exempt from the operation of T.C.A. § 56-3-703 as a transaction not comprehended within the purpose of said section, if the following conditions exist:
 - (a) The person so receiving such shares is not an officer or director, or the beneficial owner, directly or indirectly, immediately prior to such receipt, of more than 10 percent of an equity security of the insurer;

(Rule 0780-1-14-.17, continued)

- (b) The shares surrendered and the shares issued upon such surrender shall be of classes which are freely transferable and entitle the holders thereof to participate equally per share in all 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 such 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 such shares and the immediate sale by such holder of such shares for that purpose, or in connection with a gift of such 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 such surrender, have been or are purchased (otherwise than in a transaction exempted by this section), by the person surrendering such shares, within six months before or after such surrender or issuance.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.18 EXEMPTION FROM T.C.A. § 56-3-703 OF CERTAIN TRANSACTIONS INVOLVING AN EXCHANGE OF SIMILAR SECURITIES.

- (1) Any acquisition or disposition of securities made in an exchange of shares of a class (or series thereof) of stock of an insurer for an equivalent number of shares of another class (or series thereof) of stock of the same insurer, pursuant to a right of conversion under the terms of insurer's charter or other governing instruments shall be exempt from the operation of T.C.A. § 56—3—703 if-
 - (a) The shares surrendered and those acquired in exchange therefor 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 therefor, 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 T.C.A. § 56-3-703 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.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-.19 EXEMPTION OF CERTAIN SECURITIES FROM T.C.A. § 56-3-704. Any security shall be exempt from the operation of T.C.A. § 56-3-704 to the extent necessary to render lawful under such section the execution by a broker of an order for an account in which he has no direct or indirect interest.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. *Administrative History:* Original rule certified June 10, 1974.

0780-1-14-20 EXEMPTION FROM T.C.A. § 56-3-704 OF CERTAIN TRANSACTIONS EFFECTED IN CONNECTION WITH A DISTRIBUTION.

- (1) Any security shall be exempt from the operation of T.C.A. § 56-3-704 to the extent necessary to render lawful under such 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 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 T.C.A. § 56-3-704 are participating in the distribution of such block of securities on terms at least as favorable as those on which such dealer is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of T.C.A. § 56-3-704 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 such functions shall not preclude an exemption which would otherwise be available under this section.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-21 EXEMPTION FROM T.C.A. § 56-3-702 OF SALES OF SECURITIES TO BE ACQUIRED.

- (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 shall be exempted from the operation of T.C.A. § 56-3-702 provided that:
 - (a) the sale is made subject to the same conditions as those attaching to the right of acquisition, and
 - (b) such person exercises reasonable diligence to deliver such security to the purchaser promptly after this right of acquisition matures, and
 - (c) such person reports the sale on the appropriate form for reporting transactions by persons subject to T.C.A. § 56-3-702.
- (2) This section shall not be construed as exempting transactions involving both a sale of 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.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.

0780-1-14-.22 ARBITRAGE TRANSACTIONS UNDER T.C.A. § 56-3-706. 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 such insurer, unless he shall include such transaction in the statements required by T.C.A. § 56-3-702 and shall account to such insurer for the profits arising from such transaction, as provided in T.C.A. § 56-3-703. The provisions of T.C.A. § 56-3-704 shall not apply to such arbitrage transactions. The provisions of the Act shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or officer of the insurer.

Authority: T.C.A. §56-3-708 to implement T.C.A. §56-3-702. **Administrative History:** Original rule certified June 10, 1974.