806 KAR 24:010. Information required during incorporation and subsequent issue of equity securities.

RELATES TO: KRS 304.3-150, 304.26-090

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation requires submission of certain materials during the incorporation of a domestic insurer. Additionally, this administrative regulation sets forth procedures to be followed by a domestic insurer when it makes a subsequent issue of equity securities.

Section 1. Incorporation and Promotion of New Insurance Companies. In addition to the requirements and conditions expressly prescribed in KRS Chapter 304 relative to the organization and promotion of new insurance companies, the commissioner will require that the incorporators of the new company submit to him, in duplicate, authenticated copies of the following items, to the extent that they are involved or used in the corporation or promotion procedures, namely:

(1) Any and all contracts, letters, memoranda, plans, resolutions, or other documents pertaining in any way to the organization or promotion of the subject company or to the rights and duties of the organizers inter se or in relation to the company, or pertaining to the gain or profits the organizers contemplate receiving from the corporate venture.

(2) An affidavit in the form prescribed by and obtainable from the Department of Insurance, herein filed by reference, is to be submitted by each organizer, promoter, incorporator, director, trustee, officer, proposed management personnel or other person similarly situated, if a company being formed. The affidavit shall be typewritten.

(3) Copies of equity security subscription agreements, equity security certificates to be used, per value of same, sale price to general public, sale price to organizers, promoters, incorporators and proposed officers or managers, the number of shares to be offered in the first issue, prospects, and any other promotional literature or exhibits for use in selling equity securities.

(4) An estimate of the maximum expense of issuing and selling equity securities of the first issue and in accomplishing all other organization procedures.

(5) Monies received from organizers, Prospective policyholders, and prospective subscribers, not subject to impounding by requirements of the Office of Banking and Securities shall be impounded and held in escrow upon such terms and conditions as the commissioner may prescribe.

(6) An agreement executed by all the incorporators obligating the incorporators to submit promptly to the Department of Insurance any items of information specifically or generally described in the foregoing enumeration which come into existence during the period of organization.

(7) A questionnaire and check list, on a form prescribed by the commissioner, showing compliance with this section and the sections of the Kentucky Revised Statutes to which this administrative regulation relates.

(8) After the requirements of subsection (1) of this section have been complied with to the satisfaction of the commissioner, he will examine such persons referred to in this section concerning the data and documents above referred to and other pertinent and necessary matters; and on the basis of the items enumerated above, together with other information available to him from his examination, he will, prior to approving the Articles of Incorporation for filing with the Secretary of State and completion of the

company's incorporation, advise the incorporators whether or not such filed material can meet the requirements necessary for a certificate of authority.

Section 2. Second or Subsequent Issues of Equity Securities by an Insurance Company Heretofore or Hereafter Organized.

(1) A second or subsequent issue of equity securities by a stock insurance company heretofore or hereafter organized (equity securities issued as a dividend excepted) shall be cleared with the commissioner through the identical process described above in relation to a company in the process of incorporation, except that the commissioner will not require the submission of information already in his files.

(2) With respect to a second or subsequent issue of equity securities by a company which has been in existence for a period less than six (6) hears, the information and agreements described in paragraphs (a) and (b) of this subsection shall be submitted to the commissioner in addition to the data required in subsection (1) of this section, namely:

(a) A statement showing in parallel columns the names and addresses of the directors, officers, and the ten (10) largest security holders of the company, of any related or subsidiary company, and the number of shares of the company or companies, respectively, owned by each of such persons.

(b) An agreement on the part of each director, officer or security holder owning, in the case of the latter, ten (10) percent or more of the respective equity securities described above, to the effect that such director, officer, or security holder will not, during the period the equity securities are being offered and for the period of six (6) months following the termination of the offering period, sell or offer for sale any equity securities he may own or which he controls in such company or companies at a price higher than the price at which same was acquired by him or by any other person for his use and benefit. In applying this paragraph to any director, officer or security holder, he shall be regarded as owning equity securities in which he has a beneficial interest or which, regardless of discernible beneficial interest, are registered in the name of his wife, child, father, or mother, or any or all of same.

(3) The commissioner's approval of a second or subsequent issue of equity securities will not be granted if it appears from all the facts and circumstances presented to the commissioner that the notification of such issue is the personal advantage of directors, officer, or security holders as distinguished from a need of the company for additional capital.

Section 3. Collaboration with Commissioner of Department of Financial Institutions. The commissioner, in administering the administrative regulations propounded above, will be mindful of the requirements and administrative procedures under the Kentucky Securities Law; and he may consult with the Commissioner of Financial Institutions relative to decisions which both officers are respectively required to make pursuant to law or this administrative regulation.

Section 4. Rules and Principles. The Commissioner of Insurance, in considering questions relating to the organization of a new stock insurance company, or relating to the enlargement of the capital of an established stock company, will be guided by the following concepts, rules and principles, among others:

(1) The organization and promotion of new insurance companies on a sound basis is to be commended and encouraged.

(2) The business of insurance, because of its direct and vital effect upon security holders, policyholders, and the economy generally, is vital to the public interest and welfare.

(3) The organization and capitalization of insurance companies should be carefully scrutinized in keeping with the concepts, rules, and principles therein enunciated.

(4) Organization and promotion expenses, inclusive of commissions paid for the sale of equity securities, legal expenses, and statutory organization fees and charges, should not under any circumstances exceed fifteen (15) percent of the sale price of equity securities actually sold.

(5) In the event a new equity securities issue is approved by the office within a period of five (5) years immediately subsequent to the date of the company's original license to do an insurance business, the sale price for the new issue shall be subject to the commissioner's approval and may not exceed 200 percent of the lowest price at which any shares were previously issued, except that a higher price may be fixed for a new issue, if in the opinion of the commissioner the condition of the company justifies it, taking into considerate the company's financial condition, business in force, and facts relating to the equity security's history, such as splits, dividends, changes in par value, and the like.

(6) The sale price of equity securities shall be paid in cash or approved assets.

(7) With respect to stock companies hereafter organized, any arrangement, devise, plan or scheme, however contrived or formulated, having as its end or purpose a diversion, either directly or indirectly of the company's funds, other than in payment of legitimate dividends or costs of doing business to any officer(s), director(s), organizer(s), promoter(s) or equity holder(s) of ten (10) percent or more of the company, or to any association, corporation, partnership, or trust owned or controlled by any officer(s), director(s), organizer(s), promoter(s), or equity security holder(s) of ten (10) percent or more of the company, as in violation of this administrative regulation and the insurance laws of this state.

(8) No domestic stock insurer will be granted a certificate of authority if the funds used for its formation have come, in any part, from an organization in which there was a difference in the net price per share paid by the organizers as compared to other equity security holders during the first two (2) years of its business operation.

Section 5. This administrative regulation, representing as it does implementation of the workings of the insurance law in a specific area, shall not be regarded either as a contraction or enlargement of insurance law, but rather, as an administrative application or interpretation of such law.

Section 6. This administrative regulation does not apply to changes in corporate structure, amendments to articles of incorporation, mergers, consolidations, or other corporate changes which do not involve the public offering of equity securities.

(I-24.01; 1 Ky.R. 1084; eff. 7-2-75; TAm eff. 8-9-2007; Crt eff. 2-26-2020; TAm eff. 3-10-2020.)