

### **386A.6-080 Distributions.**

- (1) Subject to any restriction in the governing instrument and the limitations in subsection (3) of this section, the trustees may authorize and the statutory trust may make distributions to its beneficial owners, including distributions to the beneficial owners associated with a series out of property of or associated with a series.
- (2) If there is no record date for determining the beneficial owners entitled to a distribution other than one involving a purchase, redemption, or other acquisition of beneficial interests in the statutory trust, it shall be the date the distribution is authorized.
- (3) No distribution shall be made if, after giving it effect:
  - (a) The statutory trust would not be able to pay its debts as they become due in the usual course of business;
  - (b) The statutory trust's total assets would be less than the sum of its total liabilities plus, unless the governing instrument permits otherwise, the amount that would be needed, if the statutory trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of beneficial owners whose preferential rights are superior to those receiving the distribution; or
  - (c) The distribution is impermissible under the governing instrument.
- (4) With respect to any distribution to the beneficial owners associated with a series out of property of or associated with a series, subsection (3) of this section shall be applied with respect to that series and not the statutory trust or any other series thereof.
- (5) The trustees may base a determination that a distribution is not prohibited under subsection (3) or (4) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- (6) Except as provided in subsection (7) of this section, for purposes of subsections (3) and (4) of this section, the effect of a distribution shall be measured:
  - (a) In the case of distribution by purchase, redemption, or other acquisition of the statutory trust's beneficial interests, as of the earlier of:
    1. The date money or other property is transferred or debt incurred by the statutory trust; or
    2. The date the beneficial owner ceases to be a beneficial owner with respect to the acquired beneficial interests;
  - (b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
  - (c) In all other cases, as of:
    1. The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
    2. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

- (7) Indebtedness of a statutory trust or a series thereof, including indebtedness issued as a distribution, shall not be considered a liability for purposes of subsections (3) or (4) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to beneficial owners could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which is measured on the date the payment is actually made.

**Effective:** July 12, 2012

**History:** Created 2012 Ky. Acts ch. 81, sec. 52, effective July 12, 2012.