Nebraska Department of Insurance
Guidance Document
CB-89

Title: Capital Gains Considerations in Dividend Determinations of Property and Casualty Insurers

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The Department has been asked to clarify its position regarding the calculation of extraordinary dividends under Neb.Rev.Stat. §44-2134 relating to property and casualty insurers. Specifically, Neb.Rev.Stat. §44-2134 states that an extraordinary dividend or distribution includes any dividend or distribution which exceeds the greater of (a) 10% of an insurer's policyholder surplus, or (b) the "net gains from operations if such insurer is a life insurer or net income if such insurer is not a life insurer, not including realized capital gains." There has been some confusion with regard to the treatment of capital gains in calculating whether a dividend is extraordinary. Insurers should determine their net gain or net income in a manner that fairly considers capital gains taxes.

For the purpose of determining when a dividend or distribution is deemed extraordinary, it is the opinion of the Department that an insurer's results should be reviewed without regard to capital gains and, therefore, without regard to capital gains taxes.

With respect to property and casualty insurers, in order to determine net income without regard to capital gains, after-tax realized capital gains should be subtracted from after-tax net income. After-tax realized capital gains would be pre-tax net realized capital gains less that portion of the city, state, federal and foreign income taxes incurred as a result of the net realized capital gains. This reduction should apply only if the net realized capital gains are positive, and the reduction may never exceed the amount of net realized capital gains.

Thus, in determining whether a dividend is extraordinary, the insurer should determine its net income, not including realized capital gains, based upon the Underwriting And Investment Exhibit Statement of Income of the insurer's Annual Statement for the year ending December 31, next preceding by applying the following formula:

1) Net Income less

2) Realized Capital Gains net of that portion of the city, state, federal and foreign income taxes incurred which are attributed to realized capital gains (but in no event less than zero).

The information needed to compute that portion of the city, state, federal and foreign income taxes incurred attributable to net realized capital gains is not listed in the Annual Statement of property and casualty insurance companies. A property or casualty insurer desiring to subtract capital gains in determining net income pursuant to this Bulletin **must** provide the Department with a notice signed by an officer of the company setting forth the insurer's calculations pursuant to the above formula in order to demonstrate that the dividend is not extraordinary. The notice must be issued to the Department no later than (15) days following the declaration of a dividend.

In the event the insurer fails to provide such notice, the Department will disallow the reduction in capital gains for purposes of determining whether a dividend is extraordinary and will resort to its previous calculation in determining whether a dividend is extraordinary. That is, the Department will require that the insurer subtract pre-tax net realized capital gains as shown in the insurer's Annual Statement from after-tax net income as shown in the Statement. This could result in an unintended extraordinary dividend for which prior approval has not been granted.