

(2) The corporation's total assets would be less than the sum of the corporation's total liabilities plus, unless the charter permits otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

(b) The board of directors may base a determination that a distribution is not prohibited under subsection (a) of this section either on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable in the circumstances.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) The date money or other property is transferred or [debt] THE INDEBTEDNESS IS incurred by the corporation; or

(ii) The date the stockholder ceases to be a stockholder with respect to the acquired shares;

(2) In the case of any OTHER distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of:

(i) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) The date the payment is made if it occurs more than 120 days after the date of authorization.

(d) A corporation's indebtedness to a stockholder, incurred by reason of a distribution made in accordance with this section, is at parity with the corporation's indebtedness to the corporation's general, unsecured creditors, except to the extent subordinated by agreement.

(e) (1) If terms of the indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to stockholders could then be made under this section, indebtedness of a corporation, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection [(b)] (A) of this section.

(2) If the indebtedness REFERRED TO IN PARAGRAPH (1) OF THIS SUBSECTION is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.