

**FORC QUARTERLY JOURNAL  
OF  
INSURANCE LAW AND REGULATION**

**Fall 1998 September 12, 1998 Vol. X, Edition III**

**MUTUAL HOLDING COMPANIES AUTHORIZED IN MASSACHUSETTS,**

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Substantial opposition notwithstanding, Massachusetts has enacted legislation that will allow mutual insurers to reorganize under a policyholder-owned mutual holding company structure. The controversial statute is being touted as more "policyholder-friendly" than the comparable laws that have been approved by other states.

Under the new statute, a domestic mutual insurer may reorganize as a domestic stock insurer that is owned, directly or indirectly, by a mutual holding company. The reorganization must be effected pursuant to a written plan that has been approved by a three-fourths majority vote of the insurer's board of directors, not less than two-thirds of the members of the insurer voting at a meeting of the members called for that purpose, and the Massachusetts Commissioner of Insurance after a public hearing. The plan must provide that the members of the reorganizing mutual insurer will become members of the mutual holding company at such time as the reorganization takes effect; that the owners of insurance policies issued by the mutual insurer and in effect as of the effective date of the reorganization have equity rights in the mutual holding company; and that the mutual holding company will acquire and maintain, directly or through one or more intermediate stock holding companies, at least 51% of the voting stock of the reorganized insurer. Because the mutual holding company is prohibited from issuing any voting stock, it is exclusively owned by the reorganizing insurer's current policyholders.

The purpose of the hearing that the Commissioner is required to hold is to determine the fairness of the reorganization plan's terms conditions; the reason(s) and purpose(s) for the reorganization; and whether the reorganization is in the insurer's best interests, is fair and equitable to its policyholders, and is not detrimental to the insuring public. The Commissioner is obligated to approve or disapprove the reorganization plan in writing within sixty days after the public hearing has concluded. Approval is required if the Commissioner finds that (i) the proposed reorganization is in the best interests of the reorganizing insurer, (ii) the plan is fair and equitable to the insurer's policyholders, (iii) the plan provides for the enhancement of the insurer's business operations, (iv) the plan will not substantially lessen competition in any line of insurance business in Massachusetts, (v) the plan will, when completed, provide that the reorganized insurer's paid-in capital stock will be at least equal to the minimum paid-in capital stock and the net surplus required of a new domestic stock insurer upon its initial authorization to transact like kinds of insurance, and (vi) the plan complies with the statute's requirements. If the Commissioner determines that the reorganization plan is not fair and equitable to the insurer's policyholders, he/she may request that the reorganizing insurer modify the plan. Any denial of the plan must be in writing and must state the reasons for that action. The reorganizing insurer has the right to a further hearing before the Commissioner within thirty days of the date of denial.

The new law was enacted over strong and vocal opposition. As has been the case in other states that have considered mutual holding company laws, consumer advocates contended that permitting a mutual insurer to reorganize under a mutual holding company structure would deprive policyholders of ownership interests without sufficient compensation. A variety of provisions were included in the statute to deflect such criticism and protect policyholder interests. These provisions include the following:

- All of the voting stock initially issued by the reorganized insurer must be owned directly or through one or more intermediate stock holding companies by the mutual holding company. Though public stock offerings are thereafter

intermediate stock holding companies by the mutual holding company. Though public stock offerings are thereafter permitted, at least 51% of the issued and outstanding voting stock of the reorganized insurer must at all times be owned by the mutual holding company or an intermediate stock holding company, and at least 51% of the issued and outstanding voting stock of an intermediate stock holding company must be owned by a mutual holding company or another intermediate stock holding company.

- The Commissioner of Insurance maintains jurisdiction at all times over a mutual holding company to ensure adequate protection of the reorganizing insurer's policyholders.
- Owners of policies that provide for the right to vote issued by the reorganizing insurer and in force on the effective date of the reorganization have equity rights in the mutual holding company for such period as the pertinent policy remains in force. Owners of policies that provide for the right to vote that are issued by the reorganized insurer after the effective date of the reorganization have equity rights in the mutual holding company for such period as those policies remain in force.
- Mutual holding companies are prohibited from transferring domicile to any other state for a period of five years after the effective date of the reorganization unless otherwise approved by the Commissioner.
- Restrictions are imposed on the beneficial ownership of the voting stock of a reorganized insurer or an intermediate stock holding company by the officers and directors of the mutual holding company, reorganized insurer and intermediate stock holding company.

Additional opposition to the new statute was presented by American International Group and by a coalition of ten out-of-state stock insurers that included Allstate, Consec, Lincoln National, SunAmerica and Transamerica Group. Registered to lobby in Massachusetts as the Companies for Demutualization Fairness, this group contended that the proposed law provided mutual insurers with an unfair competitive advantage because the statutory requirements concerning ownership of a reorganized insurer would render that entity immune from acquisition or takeover. An amendment proposed by this group--requiring companies that reorganize under the statute to undergo a full and traditional demutualization within two years--was overwhelmingly rejected.

The extent to which any mutual insurer will take advantage of the new statute remains uncertain. It is anticipated that Massachusetts Mutual Life Insurance Company, a leading proponent of the law, will commence efforts to establish a mutual holding company structure at some future date. However, John Hancock Mutual Life Insurance Company, initially a prime advocate of the law, has recently announced plans to demutualize. Whether any of the state's property/casualty mutual insurers -- who lack statutory authority to demutualize -- seek to establish mutual holding company structures will likely be dictated by the competitive pressures of the marketplace and the need to generate capital to support future growth.