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I N S E N A T E

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Introduced by Sens. LIBOUS, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to the formation of mutual holding companies by certain domestic mutual life insurers and the reorganization in connection therewith of a domestic mutual life insurer into a domestic stock life insurer

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The insurance law is amended by adding a new article 80 to
2 read as follows:

ARTICLE 80

MUTUAL HOLDING COMPANY

SECTION 8001. DEFINITIONS.

8002. REORGANIZATION OF MUTUAL LIFE INSURER THROUGH FORMATION OF
A MUTUAL HOLDING COMPANY; CONTENTS OF PLAN.

8003. DIVIDEND PRACTICES.

9 8004. ADOPTION OF PLAN; SUBMISSION OF PLAN TO THE SUPERINTEN-
10 DENT.

11 8005. AMENDMENT OR WITHDRAWAL OF PLAN.

12 8006. CONSULTANTS.

13 8007. APPROVAL OF PLAN BY SUPERINTENDENT; HEARING.

14 8008. APPROVAL OF PLAN BY POLICYHOLDERS.

15 8009. FILING OF PLAN; EFFECTIVE DATE OF REORGANIZATION.

16 8010. EFFECT OF REORGANIZATION.

17 8011. CORPORATE EXISTENCE.

18 8012. DIRECTORS AND OFFICERS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 8013. NOTICE OF PROPOSED REORGANIZATION.
2 8014. FAILURE TO GIVE NOTICE.
3 8015. LIMITATIONS OF ACTIONS; SECURITY.
4 8016. PROHIBITED TRANSACTIONS BY OFFICERS, DIRECTORS AND EMPLOY-
5 EES.
6 8017. REQUIREMENTS APPLICABLE TO A MUTUAL HOLDING COMPANY.
7 8018. OTHER REQUIREMENTS APPLICABLE TO A STOCK HOLDING COMPANY
8 AND A MUTUAL HOLDING COMPANY.
9 8019. CONVERSION OF MUTUAL HOLDING COMPANY.
10 8020. TRANSFERS OF SUBSIDIARIES.
11 8021. LIMITATIONS ON ACCUMULATION OF SURPLUS OF MUTUAL HOLDING
12 COMPANIES.

13 S 8001. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
14 SHALL HAVE THE FOLLOWING MEANINGS:

15 (A) "ADOPTION DATE" MEANS THE DATE THE BOARD OF DIRECTORS OF THE MUTU-
16 AL LIFE INSURER ADOPTS THE PLAN OF REORGANIZATION.

17 (B) "BENEFICIAL OWNERSHIP" WITH RESPECT TO ANY SECURITY, MEANS THE
18 SOLE OR SHARED POWER TO VOTE OR DIRECT THE VOTING OF, SUCH SECURITY
19 AND/OR THE SOLE OR SHARED POWER TO DISPOSE OR DIRECT THE DISPOSITION OF
20 SUCH SECURITY.

21 (C) "EFFECTIVE DATE" MEANS, IN THE CASE OF THE REORGANIZATION OF A
22 MUTUAL LIFE INSURER, THE DATE UPON WHICH THE REORGANIZATION OF THE MUTU-
23 AL LIFE INSURER SHALL BE EFFECTIVE IN ACCORDANCE WITH SECTION EIGHT
24 THOUSAND NINE OF THIS ARTICLE AS A RESULT OF REORGANIZATION PROCEEDINGS
25 PURSUANT TO THIS ARTICLE.

26 (D) "MEMBER" WITH REFERENCE TO A MUTUAL LIFE INSURER, MEANS A PERSON
27 WHO, BY THE RECORDS OF THE MUTUAL LIFE INSURER, IS DEEMED TO BE THE
28 "POLICYHOLDER" OF A POLICY OR ANNUITY CONTRACT WHICH IS OF A TYPE
29 DESCRIBED IN PARAGRAPH ONE, TWO OR THREE OF SUBSECTION (A) OF SECTION
30 ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER FOR PURPOSES OF PARA-
31 GRAPH THREE OF SUBSECTION (A) OF SECTION FOUR THOUSAND TWO HUNDRED TEN
32 OF THIS CHAPTER. ON AND AFTER THE EFFECTIVE DATE OF A PLAN OF REORGAN-
33 IZATION THAT CREATES A MUTUAL HOLDING COMPANY, THE TERM "MEMBER" MEANS A
34 MEMBER OF SUCH MUTUAL HOLDING COMPANY AS PROVIDED IN SUBSECTION (C) OF
35 SECTION EIGHT THOUSAND SEVENTEEN OF THIS ARTICLE.

36 (E) "MEMBERSHIP INTERESTS" MEANS, WITH REFERENCE TO AN INSTITUTION
37 THAT IS A MUTUAL LIFE INSURER OR A MUTUAL HOLDING COMPANY, THE RIGHTS AS
38 MEMBERS ARISING UNDER THE CHARTER OF SUCH INSTITUTION OR THIS CHAPTER OR
39 OTHERWISE BY LAW INCLUDING THE RIGHTS TO VOTE AND TO PARTICIPATE IN ANY
40 DISTRIBUTION OF THE SURPLUS OF SUCH INSTITUTION, WHETHER OR NOT INCIDENT
41 TO A LIQUIDATION THEREOF. THE TERM "MEMBERSHIP INTERESTS" DOES NOT
42 INCLUDE RIGHTS EXPRESSLY CONFERRED UPON THE POLICYHOLDERS BY THEIR POLI-
43 CIES OR CONTRACTS (INCLUDING THE RIGHT TO PARTICIPATE IN THE DISTRIB-
44 UTION OF SURPLUS) OTHER THAN THE RIGHT TO VOTE.

45 (F) "MUTUAL HOLDING COMPANY" MEANS A CORPORATION ORGANIZED UNDER
46 SECTION EIGHT THOUSAND SEVENTEEN OF THIS ARTICLE.

47 (G) "MUTUAL LIFE INSURER" MEANS A DOMESTIC MUTUAL LIFE INSURER.

48 (H) "OFFER" INCLUDES EVERY OFFER TO BUY OR ACQUIRE, SOLICITATION OF AN
49 OFFER TO SELL, TENDER OFFER FOR, OR REQUEST OR INVITATION FOR TENDERS OF
50 A SECURITY OR INTEREST IN A SECURITY FOR VALUE.

51 (I) "OUTSIDE DIRECTOR" MEANS A DIRECTOR:

52 (1) WHO IS NOT AN OFFICER, EMPLOYEE OR CONSULTANT OF THE MUTUAL HOLD-
53 ING COMPANY, ANY STOCK HOLDING COMPANY, THE REORGANIZED INSURER OR ANY
54 OTHER SUBSIDIARY OF THE MUTUAL HOLDING COMPANY OR ANY STOCK HOLDING
55 COMPANY;

(2) WHO DOES NOT DIRECTLY OR INDIRECTLY OWN, CONTROL OR HOLD ONE PERCENT OR GREATER OF THE VOTING SECURITIES OF ANY STOCK HOLDING COMPANY, THE REORGANIZED INSURER OR ANY OTHER SUBSIDIARY OF THE MUTUAL HOLDING COMPANY OR ANY STOCK HOLDING COMPANY; AND

(3) WHO IS NOT A DIRECTOR, OFFICER OR EMPLOYEE OF ANY PERSON EXCEPT THE MUTUAL HOLDING COMPANY OR ANY STOCK HOLDING COMPANY THAT DIRECTLY OR INDIRECTLY OWNS, CONTROLS OR HOLDS SUCH PERCENTAGE OF SUCH VOTING SECURITY.

LESSER AMOUNTS OF OWNERSHIP OF VOTING SECURITIES OTHER THAN THOSE PROVIDED FOR IN THIS SUBSECTION MAY BE APPROVED BY THE SUPERINTENDENT AS A COMPONENT OF THE MUTUAL HOLDING COMPANY'S PLAN OF REORGANIZATION PURSUANT TO THIS ARTICLE.

(J) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, JOINT-STOCK COMPANY, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, TRUST, GOVERNMENT OR GOVERNMENTAL AGENCY, STATE OR POLITICAL SUBDIVISION THEREOF, PUBLIC OR PRIVATE CORPORATION, BOARD, ASSOCIATION, ESTATE, TRUSTEE OR FIDUCIARY, ANY SIMILAR ENTITY OR ANY COMBINATION OF THE FOREGOING ACTING IN CONCERT.

(K) "PLAN OF REORGANIZATION" OR "PLAN" MEANS A PLAN ADOPTED BY A MUTUAL LIFE INSURER IN COMPLIANCE WITH THIS ARTICLE.

(L) "POLICYHOLDER" MEANS A PERSON, AS DETERMINED BY THE RECORDS OF THE REORGANIZING INSURER OR REORGANIZED INSURER, WHO IS DEEMED TO BE THE "POLICYHOLDER" OF A POLICY OR ANNUITY CONTRACT WHICH IS OF A TYPE DESCRIBED IN PARAGRAPH ONE, TWO OR THREE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER FOR PURPOSES OF PARAGRAPH THREE OF SUBSECTION (A) OF SECTION FOUR THOUSAND TWO HUNDRED TEN OF THIS CHAPTER.

(M) "PUBLIC OFFERING" MEANS A STOCK OFFERING REQUIRED TO BE REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, UNITED STATES CODE, TITLE 15, SECTION 77E.

(N) "REORGANIZED INSURER" MEANS THE STOCK LIFE INSURER INTO WHICH A MUTUAL LIFE INSURER HAS BEEN REORGANIZED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

(O) "REORGANIZING INSURER" MEANS, IN THE CASE OF A PLAN OF REORGANIZATION OF A MUTUAL LIFE INSURER UNDER THIS ARTICLE, THE MUTUAL LIFE INSURER THAT IS REORGANIZING PURSUANT TO SUCH PLAN.

(P) "STOCK HOLDING COMPANY" MEANS A CORPORATION INCORPORATED UNDER THE LAWS OF ANY JURISDICTION IN THE UNITED STATES, AT LEAST FIFTY-ONE PERCENT OF THE VOTING STOCK OF WHICH IS OWNED, DIRECTLY OR THROUGH ANOTHER STOCK HOLDING COMPANY, BY A MUTUAL HOLDING COMPANY AND WHICH HOLDS, DIRECTLY OR INDIRECTLY, VOTING STOCK IN AT LEAST ONE REORGANIZED INSURER.

(Q) "VOTING SECURITY" INCLUDES VOTING SECURITIES AS DEFINED IN PARAGRAPH FORTY-FIVE OF SUBSECTION (A) OF SECTION ONE HUNDRED SEVEN OF THIS CHAPTER, ANY REORGANIZATION CERTIFICATE OR SUBSCRIPTION (INCLUDING SUBSCRIPTION RIGHTS ISSUED PURSUANT TO A PLAN OF REORGANIZATION), OR ANY SECURITY CONVERTIBLE (WITH OR WITHOUT CONSIDERATION) INTO ANY SUCH SECURITY, OR CARRYING ANY WARRANT OR RIGHT TO SUBSCRIBE FOR OR PURCHASE ANY SUCH SECURITY, OR ANY SUCH WARRANT OR RIGHT.

(R) "VOTING STOCK" MEANS CAPITAL STOCK THAT CONSTITUTES VOTING SECURITIES AS DEFINED IN PARAGRAPH FORTY-FIVE OF SUBSECTION (A) OF SECTION ONE HUNDRED SEVEN OF THIS CHAPTER. ALL REFERENCES IN THIS ARTICLE TO A SPECIFIED PERCENTAGE OF THE VOTING STOCK OF ANY PERSON SHALL MEAN SECURITIES HAVING THE SPECIFIED PERCENTAGE OF THE VOTING POWER IN SUCH PERSON FOR THE ELECTION OF DIRECTORS, TRUSTEES OR MANAGEMENT OF SUCH PERSON OTHER

1 THAN SECURITIES HAVING SUCH POWER ONLY BY REASON OF THE HAPPENING OF A
2 CONTINGENCY.

3 S 8002. REORGANIZATION OF MUTUAL LIFE INSURER THROUGH FORMATION OF A
4 MUTUAL HOLDING COMPANY; CONTENTS OF PLAN. (A) A MUTUAL LIFE INSURER
5 HAVING ON THE ADOPTION DATE ADMITTED ASSETS OF LESS THAN TEN BILLION
6 DOLLARS MAY BE REORGANIZED AS A DOMESTIC STOCK LIFE INSURER WITH A MUTU-
7 AL HOLDING COMPANY BY COMPLYING WITH THE REQUIREMENTS OF THIS ARTICLE.

8 (B) THE PLAN OF REORGANIZATION SHALL CONTAIN PROVISIONS FOR:

9 (1) THE REORGANIZING INSURER BECOMING A DOMESTIC STOCK LIFE INSURER;

10 (2) THE FORMATION OF A MUTUAL HOLDING COMPANY;

11 (3) THE MEMBERS OF THE REORGANIZING INSURER BECOMING MEMBERS OF THE
12 MUTUAL HOLDING COMPANY WITH MEMBERSHIP INTERESTS THEREIN, AND THE
13 MEMBERSHIP INTERESTS IN THE REORGANIZING INSURER BEING EXTINGUISHED; AND

14 (4) AT LEAST FIFTY-ONE PERCENT OF THE VOTING STOCK ISSUED BY THE REOR-
15 GANIZED INSURER BEING ACQUIRED AND HELD, DIRECTLY OR THROUGH ONE OR MORE
16 STOCK HOLDING COMPANIES, BY THE MUTUAL HOLDING COMPANY.

17 (5) THE GENERAL TERMS FOR THE ESTABLISHMENT OF THE CLOSED BLOCK OR AN
18 ALTERNATIVE PROVISION UNDER SUBSECTION (B) OF SECTION EIGHT THOUSAND
19 THREE OF THIS ARTICLE AND THE PROPOSED DIVIDEND POLICY UNDER SUBSECTION
20 (A) OF SECTION EIGHT THOUSAND THREE OF THIS ARTICLE; AND

21 (6) A PLAN OF OPERATION FOR THE REORGANIZED INSURER INCLUDING FINAN-
22 CIAL PROJECTIONS FOR A THREE-YEAR PERIOD AND A STATEMENT INDICATING ITS
23 INTENTIONS WITH REGARD TO ISSUING ANY NONPARTICIPATING BUSINESS.

24 (C) THE PLAN OF REORGANIZATION SHALL PROVIDE THAT THE REORGANIZATION
25 WILL NOT CHANGE PREMIUMS OR REDUCE POLICY BENEFITS, VALUES OR GUARANTEES
26 OR OTHER POLICY OBLIGATIONS OF THE MUTUAL LIFE INSURER, PROVIDED THAT
27 THE PLAN OF REORGANIZATION MAY PROVIDE THAT THE REORGANIZED INSURER WILL
28 BE ABLE TO MAKE SUCH CHANGES AND REDUCTIONS AS WOULD BE PERMITTED UNDER
29 THIS CHAPTER IF THE MUTUAL LIFE INSURER WERE NOT A REORGANIZING INSURER
30 UNDER THIS ARTICLE.

31 (D) THE PLAN MAY PROVIDE FOR THE FORMATION OF ONE OR MORE STOCK HOLD-
32 ING COMPANIES.

33 (E) THE PLAN SHALL INCLUDE THE FOLLOWING AS EXHIBITS:

34 (1) THE PROPOSED CHARTERS OR CERTIFICATES OF INCORPORATION OF THE
35 REORGANIZED INSURER, THE MUTUAL HOLDING COMPANY AND ANY STOCK HOLDING
36 COMPANY OR COMPANIES; AND

37 (2) THE PROPOSED BY-LAWS OF THE REORGANIZED INSURER, THE MUTUAL HOLD-
38 ING COMPANY AND ANY STOCK HOLDING COMPANY OR COMPANIES.

39 S 8003. DIVIDEND PRACTICES. (A) FOLLOWING THE EFFECTIVE DATE OF THE
40 PLAN, THE REORGANIZED INSURER MAY, WITH RESPECT TO ITS PARTICIPATING
41 INDIVIDUAL POLICIES AND CONTRACTS, EITHER:

42 (1) CONTINUE THE DIVIDEND PRACTICES OF THE REORGANIZING INSURER;

43 (2) CONTINUE THE DIVIDEND PRACTICES OF THE REORGANIZING INSURER AND
44 ADOPT SUCH OTHER DIVIDEND PRACTICES AS, AT THE EFFECTIVE DATE OR AT ANY
45 TIME THEREAFTER, MAY BE PERMITTED UNDER APPLICABLE LAW OR REGULATION OR
46 APPROVED BY THE SUPERINTENDENT; OR

47 (3) ADOPT SUCH OTHER ALTERNATIVE WITH RESPECT TO DIVIDEND PRACTICES AS
48 THE SUPERINTENDENT MAY APPROVE.

49 (B) FOLLOWING THE EFFECTIVE DATE OF THE PLAN, THE REORGANIZED INSURER
50 SHALL, ON OR BEFORE THE DATE ON WHICH THE MUTUAL HOLDING COMPANY HOLDS,
51 DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE STOCK HOLDING COMPANIES, LESS
52 THAN SEVENTY-FIVE PERCENT OF THE ISSUED AND OUTSTANDING VOTING STOCK OF
53 THE REORGANIZED INSURER, EITHER:

54 (1) (A) ESTABLISH A CLOSED BLOCK, FOR POLICYHOLDER DIVIDEND PURPOSES
55 ONLY, CONSISTING OF ALL OF THE PARTICIPATING INDIVIDUAL POLICIES AND
56 CONTRACTS OF THE MUTUAL LIFE INSURER OR THE REORGANIZED INSURER, AS THE

1 CASE MAY BE, IN FORCE ON THE EFFECTIVE DATE AND FOR WHICH THE INSURER
2 HAD AN EXPERIENCE-BASED DIVIDEND SCALE PAYABLE IN THE YEAR OF THE IMPE-
3 MENTATION DATE, TO WHICH CLOSED BLOCK, ON OR BEFORE THE IMPLEMENTATION
4 DATE, SHALL BE ALLOCATED ASSETS OF THE INSURER IN AN AMOUNT THAT PRODUC-
5 ES CASH FLOWS, TOGETHER WITH ANTICIPATED REVENUES FROM THE CLOSED BLOCK
6 BUSINESS, EXPECTED TO BE SUFFICIENT TO SUPPORT THE CLOSED BLOCK BUSINESS
7 INCLUDING PROVISION FOR PAYMENT OF CLAIMS AND THOSE EXPENSES AND TAXES
8 SPECIFIED IN THE TERMS FOR THE ESTABLISHMENT OF THE CLOSED BLOCK AND TO
9 PROVIDE FOR CONTINUATION OF THE DIVIDEND PRACTICES IN EFFECT ON THE
10 EFFECTIVE DATE IF THE CLOSED BLOCK IS ESTABLISHED ON OR BEFORE THE ONE
11 HUNDRED EIGHTIETH DAY AFTER THE EFFECTIVE DATE, OR OTHERWISE THE DIVI-
12 DEND PRACTICES IN EFFECT ON THE IMPLEMENTATION DATE, PROVIDED, HOWEVER,
13 THAT NO POLICIES OR CONTRACTS ENTERING INTO FORCE AFTER THE IMPLEMENTA-
14 TION DATE WILL BE INCLUDED IN THE CLOSED BLOCK, AND PROVIDED, FURTHER,
15 THAT, IN DETERMINING DIVIDEND PRACTICES OF THE REORGANIZING INSURER, THE
16 SUPERINTENDENT SHALL REVIEW DIVIDEND SCALES IN EFFECT FOR AT LEAST TWO
17 YEARS PRIOR TO THE FILING OF THE REORGANIZATION PLAN; AND

18 (B) THE TERMS FOR THE ESTABLISHMENT OF THE CLOSED BLOCK MAY PROVIDE
19 FOR CONDITIONS UNDER WHICH, WITH THE APPROVAL OF THE SUPERINTENDENT, THE
20 REORGANIZED INSURER MAY CEASE TO MAINTAIN THE CLOSED BLOCK AND ALLO-
21 CATION OF ASSETS THERETO, BUT REGARDLESS OF SUCH A CESSATION THE POLI-
22 CIES AND CONTRACTS CONSTITUTING CLOSED BLOCK BUSINESS SHALL REMAIN OBLI-
23 GATIONS OF THE REORGANIZED INSURER AND ANY DIVIDENDS ON SUCH POLICIES
24 AND CONTRACTS SHALL BE DETERMINED AND APPORTIONED BY THE BOARD OF DIREC-
25 TORS OF THE REORGANIZED INSURER IN ACCORDANCE WITH THE TERMS OF SUCH
26 POLICIES AND CONTRACTS AND APPLICABLE PROVISIONS OF THIS CHAPTER; OR

27 (2) PROVIDE AS TO PARTICIPATING INDIVIDUAL POLICIES AND CONTRACTS OF
28 THE REORGANIZING OR REORGANIZED INSURER IN SUCH MANNER AS THE SUPER-
29 INTENDENT MAY APPROVE.

30 (C) THE GENERAL TERMS FOR THE ESTABLISHMENT OF THE CLOSED BLOCK OR
31 SUCH ALTERNATIVE PROVISION UNDER SUBSECTION (B) OF THIS SECTION AND THE
32 PROPOSED DIVIDEND POLICY SHALL BE INCLUDED IN THE PLAN UNDER SECTION
33 EIGHT THOUSAND TWO OF THIS ARTICLE.

34 (D) THE SUPERINTENDENT MAY APPOINT ONE OR MORE CONSULTANTS AS THE
35 SUPERINTENDENT SHALL REASONABLY DEEM NECESSARY TO ADVISE THE SUPERINTEN-
36 DENT REGARDING THE PROPOSED TERMS FOR THE ESTABLISHMENT OF THE CLOSED
37 BLOCK OR THE ALTERNATIVE PROVISION UNDER SUBSECTION (A) OR (B) OF THIS
38 SECTION; AND THE REORGANIZING INSURER SHALL BE RESPONSIBLE FOR THE
39 REASONABLE FEES AND EXPENSES OF ANY SUCH CONSULTANTS.

40 (E) FOR PURPOSES OF THIS SECTION, "IMPLEMENTATION DATE" MEANS THE DATE
41 AS OF WHICH THE CLOSED BLOCK IS ESTABLISHED, AS SPECIFIED IN THE TERMS
42 FOR THE ESTABLISHMENT OF THE CLOSED BLOCK.

43 S 8004. ADOPTION OF PLAN; SUBMISSION OF PLAN TO THE SUPERINTENDENT.

44 (A) A MUTUAL LIFE INSURER SEEKING TO REORGANIZE UNDER THIS ARTICLE
45 SHALL, BY ACTION OF THREE-FOURTHS OF ITS ENTIRE BOARD OF DIRECTORS,
46 ADOPT A PLAN CONSISTENT WITH THE PROVISIONS OF SECTIONS EIGHT THOUSAND
47 TWO AND EIGHT THOUSAND THREE OF THIS ARTICLE WHICH IS FAIR AND EQUITABLE
48 TO THE POLICYHOLDERS. THE RESOLUTION SHALL SPECIFY THE REASONS FOR AND
49 THE PURPOSES OF THE PROPOSED REORGANIZATION.

50 (B) THE PLAN SHALL BE SUBMITTED TO THE SUPERINTENDENT, TOGETHER WITH
51 THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE REORGANIZING INSURER,
52 CERTIFIED BY THE SECRETARY THEREOF, ADOPTING THE PLAN PURSUANT TO THIS
53 ARTICLE.

54 S 8005. AMENDMENT OR WITHDRAWAL OF PLAN. AT ANY TIME BEFORE THE PLAN
55 OF REORGANIZATION BECOMES EFFECTIVE AS PROVIDED IN SECTION EIGHT THOU-
56 SAND NINE OF THIS ARTICLE, THE REORGANIZING INSURER MAY, BY RESOLUTION

1 OF A THREE-FOURTHS MAJORITY OF ITS ENTIRE BOARD OF DIRECTORS, AMEND THE
2 PLAN OF REORGANIZATION OR WITHDRAW THE PLAN OF REORGANIZATION. IN THE
3 CASE OF A PLAN AMENDMENT, ALL REFERENCES IN THIS ARTICLE TO THE PLAN OF
4 REORGANIZATION SHALL BE DEEMED TO REFER TO THE PLAN AS AMENDED, BUT NO
5 AMENDMENT SHALL BE DEEMED TO CHANGE THE ADOPTION DATE OF THE PLAN OF
6 REORGANIZATION. A FURTHER PUBLIC HEARING IS NOT NECESSARY UNLESS THE
7 SUPERINTENDENT DETERMINES THAT AMENDMENTS SUBMITTED AFTER THE ORIGINAL
8 HEARING REQUIRED UNDER SECTION EIGHT THOUSAND SEVEN OF THIS ARTICLE WILL
9 SUBSTANTIALLY ALTER THE PLAN. IN THE EVENT THAT THE SUPERINTENDENT
10 DETERMINES THAT THE AMENDMENT SUBSTANTIALLY ALTERS THE PLAN, THE PLAN AS
11 AMENDED MUST BE SUBMITTED FOR RECONSIDERATION BY THE POLICYHOLDERS ENTI-
12 TLED TO VOTE ON THE PLAN AS PROVIDED IN SECTION EIGHT THOUSAND EIGHT OF
13 THIS ARTICLE.

14 S 8006. CONSULTANTS. THE SUPERINTENDENT MAY APPOINT ONE OR MORE
15 CONSULTANTS AS THE SUPERINTENDENT SHALL REASONABLY DEEM NECESSARY TO
16 ADVISE THE SUPERINTENDENT IN MAKING THE DETERMINATION WHETHER THE
17 PROPOSED PLAN OF REORGANIZATION MEETS THE APPLICABLE REQUIREMENTS OF
18 THIS ARTICLE. THE REORGANIZING INSURER SHALL BE RESPONSIBLE FOR THE
19 REASONABLE FEES AND EXPENSES OF ANY SUCH CONSULTANTS. THIS EXPENDITURE
20 SHALL NOT CONSTITUTE AN EXPENDITURE OF PUBLIC FUNDS PURSUANT TO THE
21 STATE FINANCE LAW.

22 S 8007. APPROVAL OF PLAN BY SUPERINTENDENT; HEARING. THE SUPERINTEN-
23 DENT SHALL ORDER A PUBLIC HEARING ON THE PLAN TO BE HELD PRIOR TO THE
24 PLAN BEING SUBMITTED TO THE POLICYHOLDERS FOR THEIR APPROVAL. THE REOR-
25 GANIZING INSURER SHALL GIVE WRITTEN NOTICE OF THE HEARING TO POLICYHOLD-
26 ERS WHOSE POLICIES OR CONTRACTS ARE IN FORCE ON THE ADOPTION DATE, SENT
27 BY MAIL OR ELECTRONIC TRANSMISSION TO THE LAST KNOWN MAILING OR ELEC-
28 TRONIC ADDRESSES OF SUCH POLICYHOLDERS AS SHOWN ON THE RECORDS OF THE
29 REORGANIZING INSURER. SUCH SUMMARY NOTICE SHALL BE SUBJECT TO THE
30 APPROVAL OF THE SUPERINTENDENT, SHALL INCLUDE THE DATE, TIME AND PLACE
31 OF THE HEARING, AND SHALL INCLUDE BOTH A WEBSITE ADDRESS AND A TOLL-FREE
32 TELEPHONE NUMBER THROUGH WHICH MEMBERS MAY OBTAIN, IF NOT INCLUDED IN
33 THE SUMMARY NOTICE, A FULL NOTICE OF THE HEARING AND EITHER A TRUE AND
34 CORRECT COPY OF THE PLAN, OR A SUMMARY THEREOF APPROVED BY THE SUPER-
35 INTENDENT, AND SUCH OTHER EXPLANATORY INFORMATION AS THE SUPERINTENDENT
36 SHALL APPROVE OR REQUIRE. THE REORGANIZING INSURER SHALL ALSO POST A
37 COPY OF SUCH NOTICE ON ITS WEBSITE. SUCH NOTICE SHALL BE SENT AT LEAST
38 THIRTY DAYS BEFORE THE DATE SPECIFIED FOR THE HEARING. THE HEARING
39 SHALL BE HELD AT A TIME AND LOCATION IN THIS STATE DEEMED BY THE SUPER-
40 INTENDENT TO BE MOST CONVENIENT TO THE GREATEST NUMBER OF PERSONS
41 AFFECTED BY SUCH PLAN. AT SUCH HEARING ANY PERSON MAY BE HEARD IN FAVOR
42 OF, OR AGAINST, THE TERMS OF THE PLAN. THE PLAN OF REORGANIZATION SHALL
43 BE MADE AVAILABLE FOR PUBLIC INSPECTION AT ONE OFFICE OF THE DEPARTMENT
44 IN EACH CITY IN THIS STATE WHERE THE DEPARTMENT MAINTAINS AN OFFICE AND
45 AT THE PRINCIPAL OFFICE OF THE REORGANIZING INSURER. THE SUPERINTENDENT
46 SHALL APPROVE THE PLAN IF THE SUPERINTENDENT FINDS THAT:

47 (A) THE PLAN IS FAIR AND EQUITABLE TO POLICYHOLDERS;

48 (B) THE PLAN DOES NOT VIOLATE THIS ARTICLE; AND

49 (C) AFTER GIVING EFFECT TO THE REORGANIZATION, THE REORGANIZED INSURER
50 WILL HAVE AN AMOUNT OF CAPITAL AND SURPLUS THE SUPERINTENDENT DEEMS TO
51 BE REASONABLY NECESSARY FOR ITS FUTURE SOLVENCY.

52 S 8008. APPROVAL OF PLAN BY POLICYHOLDERS. (A) A PROPOSAL TO APPROVE
53 THE PLAN OF REORGANIZATION SHALL BE SUBMITTED TO POLICYHOLDERS FOR
54 APPROVAL. THE POLICYHOLDERS ENTITLED TO NOTICE OF AND TO VOTE UPON THE
55 PROPOSAL SHALL BE THE HOLDERS OF POLICIES OR CONTRACTS WHICH ARE IN
56 FORCE ON THE ADOPTION DATE. THE REORGANIZING INSURER SHALL GIVE WRITTEN

1 NOTICE STATING THE DATE, TIME AND PLACE FOR VOTING ON SUCH PROPOSAL TO
2 POLICYHOLDERS ENTITLED TO NOTICE OF AND TO VOTE ON THE PROPOSAL IN
3 ACCORDANCE WITH THIS SECTION, SENT BY MAIL OR ELECTRONIC TRANSMISSION TO
4 THE LAST KNOWN MAILING OR ELECTRONIC ADDRESSES OF SUCH POLICYHOLDERS AS
5 SHOWN ON THE RECORDS OF THE REORGANIZING INSURER. SUCH NOTICE SHALL BE
6 SENT AT LEAST THIRTY DAYS BEFORE THE DATE OF THE PROPOSED VOTE TO
7 APPROVE THE PLAN OF REORGANIZATION. SUCH NOTICE MAY BE COMBINED WITH THE
8 SUMMARY NOTICE OF THE HEARING REQUIRED BY SECTION EIGHT THOUSAND SEVEN
9 OF THIS ARTICLE. SUCH NOTICE SHALL BE SUBJECT TO THE APPROVAL OF THE
10 SUPERINTENDENT AND SHALL INCLUDE BOTH A WEBSITE ADDRESS AND A TOLL-FREE
11 TELEPHONE NUMBER THROUGH WHICH MEMBERS MAY OBTAIN EITHER A TRUE AND
12 CORRECT COPY OF THE PLAN, OR A SUMMARY THEREOF APPROVED BY THE SUPER-
13 INTENDENT, AND SUCH OTHER EXPLANATORY INFORMATION AS THE SUPERINTENDENT
14 SHALL APPROVE OR REQUIRE.

15 (B) EACH POLICYHOLDER ENTITLED TO VOTE ON THE PROPOSAL SHALL BE ENTI-
16 TLED TO CAST ONE VOTE, UNLESS OTHERWISE PROVIDED IN THE CHARTER OR
17 BY-LAWS OF THE REORGANIZING INSURER, ON THE PROPOSAL, EITHER IN PERSON
18 OR BY MAIL OR BY PROXY, IRRESPECTIVE OF THE NUMBER OR AMOUNT OF THE
19 POLICIES OR CONTRACTS HE OR SHE HOLDS. EACH PROXY SHALL BE REVOCABLE AT
20 ANY TIME, EXCEPT TO THE EXTENT THAT, AT THE TIME OF ATTEMPTED REVOC-
21 TION, THE POWER CONFERRED THEREBY HAS ALREADY BEEN PROPERLY EXERCISED.
22 ALL VOTES SHALL BE BY WRITTEN BALLOT CAST IN PERSON OR BY MAIL OR BY
23 ELECTRONIC MEANS BY POLICYHOLDERS ENTITLED TO VOTE OR BY PROXY AGENTS
24 DULY APPOINTED BY POLICYHOLDERS ENTITLED TO VOTE. THE VOTING ON THE
25 PROPOSAL SHALL BE HELD AT THE HOME OFFICE OF THE REORGANIZING INSURER.
26 THE POLLS SHALL BE OPENED AT TEN O'CLOCK IN THE FORENOON AND REMAIN OPEN
27 UNTIL FOUR O'CLOCK IN THE AFTERNOON OF THE DAY FIXED FOR SUCH VOTING, AT
28 WHICH TIME THEY SHALL BE CLOSED.

29 (C) THE PROPOSAL TO APPROVE THE PLAN OF REORGANIZATION SHALL BE
30 ADOPTED BY THE AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF ALL VOTES CAST
31 BY POLICYHOLDERS ENTITLED TO VOTE.

32 (D) THE SUPERINTENDENT SHALL HAVE POWER TO PRESCRIBE RULES GOVERNING
33 THE PROCEDURES FOR CONDUCT OF THE VOTING ON THE PROPOSAL.

34 (E) THE PROVISIONS OF SECTION FOUR THOUSAND TWO HUNDRED TEN OF THIS
35 CHAPTER SHALL NOT APPLY TO THE ACTION BY POLICYHOLDERS PURSUANT TO THIS
36 SECTION.

37 (F) UPON THE CONCLUSION OF THE VOTE, THE REORGANIZING INSURER SHALL
38 SUBMIT TO THE SUPERINTENDENT:

39 (1) A CERTIFIED COPY OF THE PLAN OF REORGANIZATION, SUBSCRIBED BY THE
40 CHAIRMAN OF THE BOARD, THE PRESIDENT OR ANY VICE PRESIDENT AND ATTESTED
41 BY THE SECRETARY OR AN ASSISTANT SECRETARY OF THE REORGANIZING INSURER;

42 (2) A CERTIFICATE, SUBSCRIBED BY THE CHAIRMAN OF THE BOARD, THE PRESI-
43 DENT OR ANY VICE PRESIDENT AND ATTESTED BY THE SECRETARY OR ASSISTANT
44 SECRETARY OF THE REORGANIZING INSURER, OR SUBSCRIBED BY THE PERSON OR
45 PERSONS, IF ANY, DESIGNATED BY THE SUPERINTENDENT TO SUPERVISE THE
46 GIVING OF NOTICE OF THE DATE FOR ACTION ON THE PROPOSAL, TO THE EFFECT
47 THAT SUCH NOTICE WAS GIVEN IN ACCORDANCE WITH THIS SECTION TO ALL POLI-
48 CYHOLDERS ENTITLED TO SUCH NOTICE; AND

49 (3) A CERTIFICATE SUBSCRIBED BY AN OFFICER OF THE REORGANIZING INSURER
50 OF THE RESULTS OF THE VOTE, AS EVIDENCED BY VALID BALLOTS RECEIVED
51 BEFORE THE POLLS WERE CLOSED.

52 EACH SUCH CERTIFICATE SHALL BE AFFIRMED AS TRUE UNDER THE PENALTIES OF
53 PERJURY BY THE PERSON OR PERSONS SUBSCRIBING THE SAME AND, IN THE CASE
54 OF A CERTIFICATE SIGNED BY OFFICERS OF THE REORGANIZING INSURER, SHALL
55 BE AFFIRMED UNDER THE CORPORATE SEAL OF THE REORGANIZING INSURER.

1 S 8009. FILING OF PLAN; EFFECTIVE DATE OF REORGANIZATION. (A) WHEN THE
2 SUPERINTENDENT HAS GIVEN HIS OR HER APPROVAL OF THE PLAN OF REORGANIZA-
3 TION AS PROVIDED IN SECTION EIGHT THOUSAND SEVEN OF THIS ARTICLE, AND
4 CERTIFICATION OF APPROVAL OF THE PLAN BY POLICYHOLDERS ENTITLED TO VOTE
5 ON THE PLAN HAS BEEN MADE TO THE SUPERINTENDENT AS PROVIDED IN SECTION
6 EIGHT THOUSAND EIGHT OF THIS ARTICLE, A COPY OF THE PLAN OF REORGANIZA-
7 TION, WITH THE SUPERINTENDENT'S APPROVAL ENDORSED THEREON, SHALL BE
8 FILED IN THE OFFICE OF THE SUPERINTENDENT. A COPY OF SUCH PLAN CERTIFIED
9 BY THE SUPERINTENDENT SHALL ALSO BE FILED BY THE REORGANIZING INSURER IN
10 THE OFFICE OF THE CLERK OF THE COUNTY WHERE THE PRINCIPAL OFFICE OF THE
11 REORGANIZING INSURER IS LOCATED WITHIN THIRTY DAYS AFTER THE SUPERINTEN-
12 DENT'S APPROVAL.

13 (B) THE PLAN OF REORGANIZATION SHALL TAKE EFFECT IN ACCORDANCE WITH
14 ITS TERMS ON THE DATE AND AT THE TIME WHEN THE FILING IN THE OFFICE OF
15 THE SUPERINTENDENT REQUIRED BY THIS SECTION HAS BEEN MADE OR ON SUCH
16 LATER DATE OR AT SUCH LATER TIME, IF ANY, AS MAY HAVE BEEN SPECIFIED IN
17 OR DETERMINED IN ACCORDANCE WITH THE PLAN OR PURSUANT THERETO.

18 (C) AS OF THE EFFECTIVE DATE, THE SUPERINTENDENT SHALL ISSUE AN
19 AMENDED CERTIFICATE OF AUTHORITY TO THE REORGANIZED INSURER, AND, IF THE
20 PLAN OF REORGANIZATION SPECIFIES THAT THE REORGANIZED INSURER PROPOSES
21 TO CONTINUE TO ISSUE FOR DELIVERY IN THIS STATE PARTICIPATING POLICIES
22 OR CONTRACTS, THE SUPERINTENDENT SHALL, IN ACCORDANCE WITH SUBSECTION
23 (F) OF SECTION FOUR THOUSAND TWO HUNDRED THIRTY-ONE OF THIS CHAPTER,
24 ISSUE A PERMIT AUTHORIZING IT TO DO SO.

25 S 8010. EFFECT OF REORGANIZATION. UPON THE EFFECTIVE DATE OF A PLAN OF
26 REORGANIZATION IN ACCORDANCE WITH SECTION EIGHT THOUSAND NINE OF THIS
27 ARTICLE:

28 (A) THE REORGANIZING INSURER SHALL IMMEDIATELY BECOME A DOMESTIC STOCK
29 LIFE INSURER;

30 (B) THE MEMBERS OF THE REORGANIZING INSURER ON THE EFFECTIVE DATE
31 SHALL IMMEDIATELY BECOME MEMBERS OF THE MUTUAL HOLDING COMPANY WITH
32 MEMBERSHIP INTERESTS THEREIN, AND ALL MEMBERSHIP INTERESTS IN THE REOR-
33 GANIZING INSURER SHALL BE EXTINGUISHED;

34 (C) PERSONS BECOMING POLICYHOLDERS OF THE REORGANIZED INSURER AFTER
35 THE EFFECTIVE DATE OF THE PLAN SHALL BECOME MEMBERS OF THE MUTUAL HOLD-
36 ING COMPANY IMMEDIATELY UPON ISSUANCE OF THE POLICY OR CONTRACT;

37 (D) ONE HUNDRED PERCENT OF THE VOTING STOCK ISSUED BY THE REORGANIZED
38 INSURER SHALL BE OWNED, DIRECTLY OR THROUGH ONE OR MORE STOCK HOLDING
39 COMPANIES, BY THE MUTUAL HOLDING COMPANY, AND AT NO TIME SUBSEQUENT
40 SHALL SUCH MUTUAL HOLDING COMPANY OWN LESS THAN FIFTY-ONE PERCENT OF
41 SUCH VOTING STOCK; AND

42 (E) ANY OTHER REORGANIZATION OF THE REORGANIZING INSURER AND ITS
43 SUBSIDIARIES SPECIFIED IN THE PLAN SHALL BECOME EFFECTIVE IN ACCORDANCE
44 WITH THE TERMS OF THE PLAN. EXCEPT FOR THE RIGHT TO VOTE, THE RIGHTS OF
45 ALL POLICYHOLDERS WITH RESPECT TO THE REORGANIZED INSURER THEREAFTER
46 SHALL BE AS SPECIFIED IN THEIR POLICIES OR CONTRACTS, IN THE CHARTER OF
47 THE REORGANIZED INSURER AND IN THE PLAN OF REORGANIZATION.

48 S 8011. CORPORATE EXISTENCE. (A) THE REORGANIZED INSURER SHALL BE A
49 CONTINUATION OF THE REORGANIZING INSURER, AND THE REORGANIZATION SHALL
50 IN NO WAY ANNUL, MODIFY OR CHANGE ANY OF SUCH INSURER'S EXISTING SUITS,
51 RIGHTS, CONTRACTS OR LIABILITIES EXCEPT AS PROVIDED IN THE APPROVED PLAN
52 OF REORGANIZATION. ALL RIGHTS, FRANCHISES AND INTERESTS OF THE REORGAN-
53 IZING INSURER IN AND TO EVERY SPECIES OF PROPERTY, REAL, PERSONAL AND
54 MIXED, AND THINGS IN ACTION THEREUNTO BELONGING, SHALL BE VESTED IN THE
55 CONTINUING COMPANY, WITHOUT ANY DEED OR TRANSFER, AND SIMULTANEOUSLY
56 THEREWITH SUCH CONTINUING COMPANY SHALL BE SUBJECT TO ALL OF THE OBLI-

1 GATIONS AND LIABILITIES OF THE REORGANIZING INSURER, OTHER THAN OBLI-
2 GATIONS AND LIABILITIES WITH RESPECT TO THE POLICYHOLDERS' MEMBERSHIP
3 INTERESTS EXTINGUISHED BY THE PLAN OF REORGANIZATION.

4 (B) NO ACTION OR PROCEEDING PENDING AT THE TIME OF THE REORGANIZATION
5 TO WHICH THE REORGANIZING INSURER MAY BE A PARTY SHALL BE ABATED OR
6 DISCONTINUED BY REASON OF SUCH REORGANIZATION, BUT THE SAME MAY BE PROS-
7 ECUTED TO FINAL JUDGMENT IN THE SAME MANNER AS IF THE REORGANIZATION HAD
8 NOT TAKEN PLACE, OR THE REORGANIZED INSURER MAY BE SUBSTITUTED IN PLACE
9 OF SUCH REORGANIZING INSURER BY ORDER OF THE COURT IN WHICH THE ACTION
10 OR PROCEEDING MAY BE PENDING.

11 S 8012. DIRECTORS AND OFFICERS. EXCEPT AS OTHERWISE PROVIDED IN THE
12 PLAN OF REORGANIZATION AND SUBJECT TO SUBSECTION (D) OF SECTION EIGHT
13 THOUSAND SEVENTEEN OF THIS ARTICLE, THE DIRECTORS AND OFFICERS OF THE
14 REORGANIZING INSURER SHALL SERVE AS DIRECTORS AND OFFICERS OF THE REOR-
15 GANIZED INSURER, ANY STOCK HOLDING COMPANY AND THE MUTUAL HOLDING COMPA-
16 NY UNTIL NEW DIRECTORS AND OFFICERS HAVE BEEN DULY ELECTED AND QUALIFIED
17 PURSUANT TO THE CHARTER OR CERTIFICATE OF INCORPORATION AND THE BY-LAWS
18 OF THE RESPECTIVE COMPANIES.

19 S 8013. NOTICE OF PROPOSED REORGANIZATION. (A) IN ADDITION TO THE
20 NOTICES GIVEN PURSUANT TO SECTION EIGHT THOUSAND EIGHT OF THIS ARTICLE,
21 THE REORGANIZING INSURER SHALL GIVE WRITTEN NOTICE OF THE PENDENCY OF
22 THE PROPOSED REORGANIZATION AND OF THE EFFECT THEREOF TO ALL PERSONS TO
23 WHOM THE REORGANIZING INSURER DELIVERS POLICIES OR CONTRACTS WHICH ARE
24 ISSUED AFTER THE ADOPTION DATE AND BEFORE THE PLAN TAKES EFFECT OR IS
25 WITHDRAWN, SENT BY MAIL OR ELECTRONIC TRANSMISSION TO THE LAST KNOWN
26 MAILING OR ELECTRONIC ADDRESSES OF SUCH POLICYHOLDERS AS SHOWN ON THE
27 RECORDS OF THE REORGANIZING INSURER. EXCEPT AS OTHERWISE PROVIDED IN
28 THIS SECTION, SUCH PERSONS SHALL HAVE THE RIGHT, UNLESS THE LAWS OF
29 THEIR DOMICILIARY STATE PROVIDE OTHERWISE, TO RESCIND SUCH POLICIES OR
30 CONTRACTS, AND TO BE REFUNDED ANY AMOUNTS PAID WITH RESPECT THERETO, BY
31 WRITTEN NOTICE TO SUCH INSURER OR ITS AGENT GIVEN WITHIN TEN DAYS OF
32 THEIR RECEIPT OF THE AFORESAID NOTICE GIVEN BY SUCH INSURER.

33 (B) NEITHER THE RECEIPT OF SUCH POLICY OR CONTRACT NOR THE RIGHT TO
34 RECEIVE SUCH NOTICE SHALL ENTITLE SUCH PERSONS TO VOTE ON THE PROPOSED
35 PLAN OF REORGANIZATION PURSUANT TO SECTION EIGHT THOUSAND EIGHT OF THIS
36 ARTICLE OR VEST SUCH PERSONS WITH ANY OTHER RIGHTS OR ENTITLEMENTS
37 EXCEPT AS PROVIDED FOR IN THIS ARTICLE.

38 (C) WHERE, PRIOR TO THE ISSUANCE OF A POLICY OR CONTRACT, THE REORGAN-
39 IZING INSURER PROVIDES THE PROSPECTIVE POLICYHOLDERS WITH NOTICE OF THE
40 PENDENCY OF THE PROPOSED REORGANIZATION AND OF THE EFFECT THEREOF, WHICH
41 NOTICE HAS BEEN APPROVED FOR SUCH PURPOSE BY THE SUPERINTENDENT, THEN,
42 UNLESS THE LAWS OF THE POLICYHOLDER'S DOMICILIARY STATE OTHERWISE
43 REQUIRE, SUCH POLICYHOLDERS SHALL NOT HAVE THE FOREGOING RIGHTS OF
44 RESCISSION AND REFUND.

45 S 8014. FAILURE TO GIVE NOTICE. IF THE REORGANIZING INSURER COMPLIES
46 SUBSTANTIALLY AND IN GOOD FAITH WITH THE REQUIREMENTS OF THIS ARTICLE
47 WITH RESPECT TO THE GIVING OF ANY REQUIRED NOTICE TO POLICYHOLDERS, ITS
48 FAILURE IN ANY CASE TO GIVE SUCH NOTICE TO ANY PERSON OR PERSONS ENTI-
49 TLED THERETO SHALL NOT IMPAIR THE VALIDITY OF THE ACTIONS AND
50 PROCEEDINGS TAKEN UNDER THIS ARTICLE OR ENTITLE SUCH PERSON TO ANY
51 INJUNCTIVE OR OTHER EQUITABLE RELIEF WITH RESPECT THERETO, BUT THIS
52 SECTION SHALL NOT IMPAIR ANY CLAIM FOR DAMAGES SUCH PERSON OR PERSONS
53 WOULD OTHERWISE HAVE DUE TO SUCH FAILURE.

54 S 8015. LIMITATIONS OF ACTIONS; SECURITY. (A) NOTWITHSTANDING ANY
55 OTHER PROVISION OF LAW TO THE CONTRARY AND EXCEPT AS OTHERWISE PROVIDED
56 IN SUBSECTION (C) OR (D) OF THIS SECTION, ACTIONS CONCERNING OR ARISING

1 OUT OF ANY PLAN OF REORGANIZATION, PROPOSED PLAN OF REORGANIZATION, PLAN
2 AMENDMENT OR PROPOSED PLAN AMENDMENT UNDER THIS ARTICLE OR ANY ACTS
3 TAKEN OR PROPOSED TO BE TAKEN UNDER THIS ARTICLE MUST BE COMMENCED WITH-
4 IN EIGHTEEN MONTHS AFTER THE PLAN OF REORGANIZATION OR PLAN AMENDMENT IS
5 FILED PURSUANT TO SUBSECTION (A) OF SECTION EIGHT THOUSAND NINE OF THIS
6 ARTICLE OR THE CHARTER IS FILED PURSUANT TO SUBSECTION (C) OF SECTION
7 EIGHT THOUSAND SEVENTEEN OF THIS ARTICLE, AS THE CASE MAY BE, IN THE
8 OFFICE OF THE SUPERINTENDENT OR ONE YEAR FROM THE EFFECTIVE DATE OF THE
9 PLAN OF REORGANIZATION, WHICHEVER IS LATER, OR IF THE PLAN OF REORGAN-
10 IZATION OR PLAN AMENDMENT IS WITHDRAWN, WITHIN ONE YEAR FROM THE DATE
11 THE BOARD OF DIRECTORS APPROVES A RESOLUTION TO WITHDRAW THE PLAN. WHERE
12 AN ACTION CONCERNS OR ARISES OUT OF A PLAN AMENDMENT OR PROPOSED PLAN
13 AMENDMENT MADE UNDER SECTION EIGHT THOUSAND FIVE OF THIS ARTICLE, THE
14 APPLICABLE TIME PERIOD IS MEASURED FROM THE FILING, EFFECTIVE DATE OR
15 APPROVAL OF WITHDRAWAL OF THE PLAN AMENDMENT, AS THE CASE MAY BE. WHERE
16 THE ACTION ARISES OUT OF EITHER A TRANSFER OF SUBSIDIARIES PURSUANT TO
17 SECTION EIGHT THOUSAND TWENTY OF THIS ARTICLE OR A SALE OF SECURITIES OF
18 THE REORGANIZED INSURER OR ANY STOCK HOLDING COMPANY PURSUANT TO SECTION
19 EIGHT THOUSAND EIGHTEEN OF THIS ARTICLE, WHICH TRANSFER OR SALE IS NOT
20 CONTEMPLATED BY THE PLAN, THEN THE APPLICABLE TIME PERIOD SHALL BE MEAS-
21 URED FROM THE EFFECTIVE DATE OF SUCH TRANSFER OR SALE, AS THE CASE MAY
22 BE. WHERE THE ACTION ARISES OUT OF THE TERMS OR PROPOSED TERMS FOR THE
23 ESTABLISHMENT OF THE CLOSED BLOCK OR SUCH ALTERNATIVE PROVISION PURSUANT
24 TO SUBSECTION (B) OF SECTION EIGHT THOUSAND THREE OF THIS ARTICLE, THEN
25 THE APPLICABLE TIME PERIOD SHALL BE MEASURED FROM THE IMPLEMENTATION
26 DATE AS DEFINED IN SUBSECTION (E) OF SECTION EIGHT THOUSAND THREE OF
27 THIS ARTICLE. WHERE THE ACTION CONCERNS OR ARISES OUT OF A PLAN OF REOR-
28 GANIZATION ADOPTED PURSUANT TO SECTION EIGHT THOUSAND NINETEEN OF THIS
29 ARTICLE, THEN THE APPLICABLE TIME PERIOD SHALL BE MEASURED FROM THE
30 EFFECTIVE DATE OF THE PLAN OF REORGANIZATION.

31 (B) IN ANY ACTION REFERRED TO IN SUBSECTION (A) OF THIS SECTION, THE
32 PLAINTIFF OR PLAINTIFFS SHALL BE REQUIRED, UPON A MOTION OF THE MUTUAL
33 HOLDING COMPANY, REORGANIZING INSURER OR REORGANIZED INSURER OR ANY
34 STOCK HOLDING COMPANY WHICH ESTABLISHES TO THE SATISFACTION OF THE
35 COURT, THAT A SUBSTANTIAL LIKELIHOOD EXISTS THAT SUCH ACTION IS BROUGHT
36 WITHOUT MERIT AND WITH AN INTENTION TO DELAY OR HARASS, TO GIVE ADEQUATE
37 SECURITY FOR THE DAMAGES AND REASONABLE EXPENSES, INCLUDING ATTORNEYS'
38 FEES, WHICH MAY BE INCURRED AS A RESULT OF, OR IN CONNECTION WITH, SUCH
39 ACTION BY SUCH COMPANY AND BY ANY OTHER DEFENDANTS IN SUCH ACTION OR FOR
40 WHICH SUCH COMPANY MAY BECOME LIABLE, TO WHICH SECURITY THE MUTUAL HOLD-
41 ING COMPANY, REORGANIZING INSURER OR REORGANIZED INSURER OR ANY STOCK
42 HOLDING COMPANY SHALL HAVE RECOURSE IN SUCH AMOUNT AS THE COURT DETER-
43 MINES UPON THE TERMINATION OF SUCH ACTION. THE AMOUNT OF SECURITY MAY
44 FROM TIME TO TIME BE INCREASED OR DECREASED IN THE DISCRETION OF THE
45 COURT UPON A SHOWING THAT THE SECURITY PROVIDED HAS OR MAY BECOME INADE-
46 QUATE OR EXCESSIVE.

47 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY
48 ACTION SEEKING A STAY, RESTRAINING ORDER, INJUNCTION OR SIMILAR REMEDY
49 TO PREVENT OR DELAY THE CLOSING OF ANY TRANSACTION PURSUANT TO THIS
50 ARTICLE OR OF ANY TRANSACTION DESCRIBED IN THE PLAN OF REORGANIZATION
51 MUST BE COMMENCED WITHIN ONE HUNDRED TWENTY DAYS AFTER, AS APPLICABLE:
52 (1) THE APPROVAL OF A PLAN OF REORGANIZATION BY THE SUPERINTENDENT
53 PURSUANT TO SECTION EIGHT THOUSAND SEVEN OR EIGHT THOUSAND NINETEEN OF
54 THIS ARTICLE, AS THE CASE MAY BE; OR (2) THE APPROVAL OF THE SUPERINTEN-
55 DENT PURSUANT TO SECTION EIGHT THOUSAND TWENTY OF THIS ARTICLE.

(D) ANY ACTION OR PROCEEDING AGAINST THE SUPERINTENDENT OR ANY OTHER GOVERNMENTAL BODY OR OFFICER IN CONNECTION WITH ANY ACT TAKEN OR ORDER, REGULATION OR RULE ISSUED PURSUANT TO THIS ARTICLE MUST BE COMMENCED WITHIN ONE HUNDRED TWENTY DAYS FROM THE DATE OF SUCH ACT OR SIGNING OF SUCH ORDER, REGULATION OR RULE.

(E) ANY PERSON AGGRIEVED BY ANY ACT TAKEN OR ORDER, REGULATION OR RULE ISSUED PURSUANT TO THIS ARTICLE MAY PETITION FOR JUDICIAL REVIEW IN THE MANNER PROVIDED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PURSUANT TO THE LIMITATIONS PERIOD PRESCRIBED IN SUBSECTION (D) OF THIS SECTION. THE PETITION SHALL BE BROUGHT IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE ACT WAS TAKEN OR THE ORDER, REGULATION OR RULE WAS ISSUED. ALL SUCH PROCEEDINGS SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. ACTS TAKEN OR ORDERS, REGULATIONS OR RULES ISSUED PURSUANT TO THIS ARTICLE SHALL NOT BE STAYED OR ENJOINED EXCEPT UPON APPLICATION AFTER NOTICE TO THE SUPERINTENDENT AND TO THE ATTORNEY GENERAL AND UPON A SHOWING THAT THE PETITIONER HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS AND WILL SUFFER IRREPARABLE HARM IF THE STAY OR INJUNCTION IS NOT GRANTED.

S 8016. PROHIBITED TRANSACTIONS BY OFFICERS, DIRECTORS AND EMPLOYEES. NO DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF THE REORGANIZING INSURER SHALL RECEIVE ANY FEE, COMMISSION OR OTHER VALUABLE CONSIDERATION WHATSOEVER, OTHER THAN REGULAR SALARY AND COMPENSATION, FOR IN ANY MANNER AIDING, PROMOTING OR ASSISTING IN THE REORGANIZATION EXCEPT AS SET FORTH IN THE PLAN APPROVED BY THE SUPERINTENDENT.

S 8017. REQUIREMENTS APPLICABLE TO A MUTUAL HOLDING COMPANY. (A) THE FOLLOWING PROVISIONS OF THIS ARTICLE ARE APPLICABLE TO A MUTUAL HOLDING COMPANY:

(1) THE FOLLOWING PROVISIONS OF ARTICLE TWELVE OF THIS CHAPTER SHALL APPLY TO A MUTUAL HOLDING COMPANY AS THOUGH IT WERE A DOMESTIC MUTUAL INSURER: SECTION ONE THOUSAND TWO HUNDRED ONE OF THIS CHAPTER TO THE EXTENT PROVIDED IN SUBSECTION (C) OF THIS SECTION AND SECTIONS ONE THOUSAND TWO HUNDRED TWO, ONE THOUSAND TWO HUNDRED SIX, ONE THOUSAND TWO HUNDRED EIGHT, ONE THOUSAND TWO HUNDRED NINE, ONE THOUSAND TWO HUNDRED TWELVE AND ONE THOUSAND TWO HUNDRED FIFTEEN THROUGH ONE THOUSAND TWO HUNDRED NINETEEN OF THIS CHAPTER;

(2) THE PROVISIONS OF THE BUSINESS CORPORATION LAW THAT ARE APPLICABLE TO A DOMESTIC MUTUAL LIFE INSURER SHALL APPLY TO A MUTUAL HOLDING COMPANY AS THOUGH IT WERE A DOMESTIC MUTUAL INSURER; AND

(3) THE PROVISIONS OF SECTION FOUR THOUSAND TWO HUNDRED TEN OF THIS CHAPTER APPLICABLE TO A DOMESTIC MUTUAL LIFE INSURER SHALL BE APPLIED TO A MUTUAL HOLDING COMPANY AS THOUGH ITS MEMBERS WERE VOTING POLICYHOLDERS OF A MUTUAL LIFE INSURER.

(B) A MUTUAL HOLDING COMPANY SHALL NOT DISSOLVE, LIQUIDATE OR WIND UP AND DISSOLVE EXCEPT THROUGH PROCEEDINGS UNDER SECTION EIGHT THOUSAND NINETEEN OF THIS ARTICLE, ARTICLE SEVENTY-FOUR OF THIS CHAPTER FOR THE LIQUIDATION OR DISSOLUTION OF THE REORGANIZED INSURER OR AS THE SUPERINTENDENT MAY OTHERWISE APPROVE. IN THE EVENT ANY PROCEEDINGS ARE INSTITUTED UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER FOR THE COMPLETE LIQUIDATION OF REORGANIZED INSURER PURSUANT TO THIS ARTICLE:

(1) THE MUTUAL HOLDING COMPANY FORMED AS PART OF SUCH REORGANIZATION SHALL AUTOMATICALLY BECOME A PARTY TO SUCH PROCEEDINGS;

(2) ALL OF THE MUTUAL HOLDING COMPANY'S ASSETS (INCLUDING ITS HOLDINGS OF SHARES IN THE REORGANIZED INSURER OR ANY STOCK HOLDING COMPANY) SHALL BE DEEMED ASSETS OF THE ESTATE OF THE DOMESTIC STOCK LIFE INSURER TO THE EXTENT NECESSARY TO SATISFY CLAIMS OF PERSONS WHO HAVE CLASS ONE, CLASS

1 TWO, CLASS THREE OR CLASS FOUR CLAIMS UNDER SUBSECTION (A) OF SECTION
2 SEVEN THOUSAND FOUR HUNDRED THIRTY-FIVE OF THIS CHAPTER WITH RESPECT TO
3 SUCH DOMESTIC STOCK LIFE INSURER; AND

4 (3) MEMBERS OF THE MUTUAL HOLDING COMPANY SHALL BE DEEMED TO HOLD
5 CLASS EIGHT CLAIMS WITH RESPECT TO THE MUTUAL HOLDING COMPANY UNDER
6 SUBSECTION (A) OF SECTION SEVEN THOUSAND FOUR HUNDRED THIRTY-FIVE OF
7 THIS CHAPTER.

8 (C) THE CHARTER OF THE MUTUAL HOLDING COMPANY SHALL BE FILED WITH THE
9 SUPERINTENDENT AND SHALL CONTAIN THE MATTERS REQUIRED TO BE CONTAINED IN
10 THE CHARTER OF A DOMESTIC MUTUAL LIFE INSURER BY SECTION ONE THOUSAND
11 TWO HUNDRED ONE OF THIS CHAPTER, EXCEPT THAT THE NAME OF THE MUTUAL
12 HOLDING COMPANY SHALL CONTAIN THE WORD "MUTUAL" AND SHALL NOT CONTAIN
13 THE WORD "INSURANCE," "ASSURANCE" OR "ANNUITY" AND THE COMPANY'S POWERS
14 SHALL NOT INCLUDE DOING AN INSURANCE BUSINESS. THE CHARTER SHALL CONTAIN
15 PROVISIONS STATING THAT:

16 (1) IT IS A MUTUAL HOLDING COMPANY ORGANIZED UNDER THIS ARTICLE;

17 (2) A PURPOSE SHALL BE TO HOLD, DIRECTLY OR THROUGH ONE OR MORE STOCK
18 HOLDING COMPANIES, NOT LESS THAN FIFTY-ONE PERCENT OF THE VOTING STOCK
19 OF A REORGANIZED INSURER;

20 (3) IT SHALL NOT BE AUTHORIZED TO ISSUE VOTING STOCK;

21 (4) IT SHALL NOT BE AUTHORIZED TO CONDUCT ANY BUSINESS OTHER THAN THAT
22 OF A HOLDING COMPANY, EXCEPT FOR THE ACQUISITION, OWNERSHIP, MANAGEMENT
23 AND DISPOSITION OF ITS ASSETS AND ALL ACTIONS REASONABLY INCIDENT THERE-
24 TO; AND

25 (5) IT SHALL HAVE MEMBERS HAVING THE RIGHTS SPECIFIED IN THIS SECTION
26 AND SECTION EIGHT THOUSAND TEN OF THIS ARTICLE AND IN ITS CHARTER AND
27 BY-LAWS. THE CHARTER SHALL ALSO CONTAIN PROVISIONS SETTING FORTH ANY
28 RIGHTS OF MEMBERS OF THE MUTUAL HOLDING COMPANY IN THE SURPLUS OF THE
29 MUTUAL HOLDING COMPANY.

30 (D) AT LEAST TWO-THIRDS OF THE DIRECTORS OF THE MUTUAL HOLDING COMPANY
31 AND OF ANY STOCK HOLDING COMPANY, ALL OF THE MEMBERS OF THE COMPENSATION
32 COMMITTEE OF THE BOARD OF DIRECTORS OF THE MUTUAL HOLDING COMPANY AND OF
33 ANY STOCK HOLDING COMPANY, AT LEAST TWO-THIRDS OF THE MEMBERS OF ANY
34 COMMITTEE RESPONSIBLE FOR MAKING DECISIONS AFFECTING THE CAPITAL STRUC-
35 TURE OR MERGERS AND ACQUISITIONS, AND A MAJORITY OF THE DIRECTORS ON
36 EACH OTHER COMMITTEE OF THE BOARD OF DIRECTORS OF THE MUTUAL HOLDING
37 COMPANY AND ANY STOCK HOLDING COMPANY SHALL BE OUTSIDE DIRECTORS. THE
38 AGGREGATE PERCENTAGE OF VOTING SECURITIES OF THE REORGANIZED INSURER
39 DIRECTLY OR INDIRECTLY OWNED, CONTROLLED OR HELD WITH THE POWER TO VOTE,
40 EITHER PERSONALLY OR BY PERSONS (OTHER THAN THE MUTUAL HOLDING COMPANY
41 AND ANY STOCK HOLDING COMPANY) OF WHICH THEY ARE DIRECTORS, OFFICERS OR
42 EMPLOYEES, BY OUTSIDE DIRECTORS, SHALL NOT EXCEED THREE PERCENT OR SUCH
43 LESSER PERCENTAGE AS MAY BE DETERMINED BY THE SUPERINTENDENT IN HIS OR
44 HER APPROVAL OF THE MUTUAL HOLDING COMPANY'S PLAN OF REORGANIZATION
45 PURSUANT TO THIS ARTICLE. THE BY-LAWS OF THE MUTUAL HOLDING COMPANY AND
46 ANY STOCK HOLDING COMPANY SHALL PROVIDE THAT THE AFFIRMATIVE VOTE OF AT
47 LEAST TWO-THIRDS OF THE BOARD OF DIRECTORS OF SUCH COMPANY SHALL BE
48 REQUIRED FOR ANY ACTION BY SUCH COMPANY TO ADOPT A PLAN OF CONVERSION
49 PURSUANT TO SECTION EIGHT THOUSAND NINETEEN OF THIS ARTICLE, ENTER INTO
50 A MERGER, CONDUCT A PUBLIC OFFERING OR AUTHORIZE THE ISSUANCE OF ANY
51 VOTING STOCK OR SECURITY CONVERTIBLE INTO VOTING STOCK OF THE REORGAN-
52 IZED INSURER OR THE STOCK HOLDING COMPANY TO ANY PERSON OTHER THAN THE
53 MUTUAL HOLDING COMPANY OR THE STOCK HOLDING COMPANY.

54 (E) THE SUPERINTENDENT MAY, BY REGULATION, REQUIRE A MUTUAL HOLDING
55 COMPANY TO FILE ANNUAL STATEMENTS WITH THE SUPERINTENDENT IN SUCH FORM
56 AS THE SUPERINTENDENT SHALL PRESCRIBE.

1 (F) WITH THE WRITTEN APPROVAL OF THE SUPERINTENDENT, AND SUBJECT TO
2 THE CONDITIONS THAT THE SUPERINTENDENT MAY IMPOSE, A MUTUAL HOLDING
3 COMPANY OR STOCK COMPANY MAY:

4 (1) MERGE OR CONSOLIDATE WITH, OR ACQUIRE THE ASSETS OF, A MUTUAL
5 HOLDING COMPANY ORGANIZED PURSUANT TO THIS ARTICLE OR PURSUANT TO THE
6 LAWS OF ANOTHER STATE;

7 (2) EITHER ALONE OR TOGETHER WITH ONE OR MORE OF THE REORGANIZED
8 INSURER, ANY STOCK HOLDING COMPANIES OR ANY SUBSIDIARIES OF ANY OF THEM,
9 MERGE OR CONSOLIDATE WITH OR ACQUIRE THE ASSETS OF A MUTUAL LIFE INSUR-
10 ER;

11 (3) MERGE OR CONSOLIDATE WITH ANY OTHER PERSON.

12 (G) A MUTUAL HOLDING COMPANY MAY ALSO ACQUIRE THE CAPITAL STOCK OR
13 ASSETS OF OTHER PERSONS.

14 (H) A MEMBER OF A MUTUAL HOLDING COMPANY IS NOT, AS A MEMBER,
15 PERSONALLY LIABLE FOR THE ACTS, DEBTS, LIABILITIES OR OBLIGATIONS OF THE
16 COMPANY. NO ASSESSMENT OF ANY KIND MAY BE IMPOSED UPON THE MEMBERS OF A
17 MUTUAL HOLDING COMPANY BY THE BOARD OF DIRECTORS, MEMBERS OR CREDITORS
18 OF THE MUTUAL HOLDING COMPANY OR BECAUSE OF ANY LIABILITY OF ANY COMPANY
19 OWNED OR CONTROLLED, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE
20 MUTUAL HOLDING COMPANY OR BECAUSE OF ANY ACT, DEBT OR LIABILITY OF THE
21 MUTUAL HOLDING COMPANY.

22 (I) A MEMBERSHIP INTEREST IN A MUTUAL HOLDING COMPANY SHALL NOT
23 CONSTITUTE A SECURITY UNDER THE LAWS OF THIS STATE.

24 (J) THE SUPERINTENDENT SHALL RETAIN JURISDICTION OVER ANY MUTUAL HOLD-
25 ING COMPANY ORGANIZED PURSUANT TO THIS ARTICLE.

26 (K) DIRECTORS OF THE MUTUAL HOLDING COMPANY SHALL BE ELECTED BY A
27 MAJORITY VOTE OF ALL MEMBERS WHO VOTE IN SUCH ELECTION IN PERSON OR BY
28 PROXY. IF THE REORGANIZED INSURER TAKES ANY ACTION (OTHER THAN ELECTION
29 OF ITS DIRECTORS) THAT WOULD REQUIRE A VOTE OF POLICYHOLDERS IF THE
30 REORGANIZED INSURER WERE A MUTUAL LIFE INSURER, THEN SUCH ACTION SHALL
31 REQUIRE A VOTE OF MEMBERS OF THE MUTUAL HOLDING COMPANY.

32 S 8018. OTHER REQUIREMENTS APPLICABLE TO A STOCK HOLDING COMPANY AND A
33 MUTUAL HOLDING COMPANY. (A) FROM AND AFTER THE EFFECTIVE DATE OF THE
34 PLAN, THE MUTUAL HOLDING COMPANY SHALL HOLD, DIRECTLY OR THROUGH ONE OR
35 MORE STOCK HOLDING COMPANIES, AT LEAST FIFTY-ONE PERCENT OF THE ISSUED
36 AND OUTSTANDING VOTING STOCK OF THE REORGANIZED INSURER. THE REORGANIZED
37 INSURER AND ANY STOCK HOLDING COMPANY MAY ISSUE TO THE MUTUAL HOLDING
38 COMPANY AND TO OTHER PERSONS SECURITIES, INCLUDING VOTING STOCK,
39 NON-VOTING STOCK AND SECURITIES CONVERTIBLE INTO VOTING OR NON-VOTING
40 STOCK, PROVIDED THAT, SUCH ISSUANCE AND THE TERMS OF SUCH ISSUANCE SHALL
41 HAVE RECEIVED THE PRIOR APPROVAL OF THE SUPERINTENDENT, WHO SHALL
42 CONSIDER THE INTERESTS OF THE MUTUAL HOLDING COMPANY AND ITS MEMBERS AND
43 WHO MAY REQUIRE THAT, AT THE TIME OF SUCH ISSUANCE, CONSIDERATION BE
44 DISTRIBUTED TO MEMBERS. FOR PURPOSES OF THE FIFTY-ONE PERCENT LIMITA-
45 TION, ANY ISSUED AND OUTSTANDING SECURITIES OF THE REORGANIZED INSURER
46 OR ANY STOCK HOLDING COMPANY THAT ARE CONVERTIBLE INTO VOTING STOCK
47 SHALL BE CONSIDERED ISSUED AND OUTSTANDING VOTING STOCK.

48 (B) A MUTUAL HOLDING COMPANY AND ANY STOCK HOLDING COMPANY SHALL EACH
49 BE DEEMED TO BE A "HOLDING COMPANY" OF THE REORGANIZED INSURER WITHIN
50 THE MEANING OF ARTICLE FIFTEEN OF THIS CHAPTER, AND ALL PROVISIONS OF
51 ARTICLE FIFTEEN OF THIS CHAPTER SHALL APPLY TO TRANSACTIONS OCCURRING
52 BETWEEN THE MUTUAL HOLDING COMPANY, THE STOCK HOLDING COMPANY AND THE
53 REORGANIZED INSURER. APPROVAL OF THE PLAN OF REORGANIZATION BY THE
54 SUPERINTENDENT PURSUANT TO THIS ARTICLE SHALL CONSTITUTE APPROVAL OF THE
55 ACQUISITION OF CONTROL BY A MUTUAL HOLDING COMPANY AND ANY STOCK HOLDING
56 COMPANY UNDER SECTION ONE THOUSAND FIVE HUNDRED SIX OF THIS CHAPTER, THE

1 REGISTRATION BY THE REORGANIZED INSURER AS A CONTROLLED INSURER UNDER
2 SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER AND NOTICE OF
3 THE ACQUISITION OF SHARES OF THE REORGANIZED INSURER UNDER SECTION FOUR
4 THOUSAND TWO HUNDRED THREE OF THIS CHAPTER.

5 (C) OUTSIDE DIRECTORS OF THE MUTUAL HOLDING COMPANY, A STOCK HOLDING
6 COMPANY OR THE REORGANIZED INSURER SHALL NOT OWN BENEFICIALLY, IN THE
7 AGGREGATE, MORE THAN THREE PERCENT OF THE VOTING STOCK OF THE STOCK
8 HOLDING COMPANY OR THE REORGANIZED INSURER.

9 (D) IN NO EVENT SHALL ANY PERSON, DIRECTLY OR INDIRECTLY, OFFER TO
10 ACQUIRE OR ACQUIRE IN ANY MANNER BENEFICIAL OWNERSHIP OF MORE THAN
11 FIFTEEN PERCENT OF ANY CLASS OF VOTING SECURITIES OF THE REORGANIZED
12 INSURER, ANY STOCK HOLDING COMPANY OR ANY OTHER INSTITUTION WHICH OWNS
13 DIRECTLY OR INDIRECTLY A MAJORITY OR ALL OF THE VOTING SECURITIES OF THE
14 REORGANIZED INSURER WITHOUT THE PRIOR APPROVAL OF THE SUPERINTENDENT.

15 (E) ANY ISSUANCE OF VOTING STOCK OR SECURITIES CONVERTIBLE INTO VOTING
16 STOCK OR OPTIONS FOR THE PURCHASE OF VOTING STOCK OF THE REORGANIZED
17 INSURER OR THE STOCK HOLDING COMPANY PRIOR TO AN INITIAL PUBLIC OFFER-
18 ING, PRIVATE EQUITY PLACEMENT, OR THE ISSUANCE OF PUBLIC OR PRIVATE
19 VOTING STOCK OR SECURITIES CONVERTIBLE INTO VOTING STOCK OF THE REORGAN-
20 IZED INSURER OR STOCK HOLDING COMPANY OR ANY OTHER TYPE OF CAPITAL
21 RAISED SHALL BE SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT AS TO THE
22 PROPOSED VALUATION OF SUCH STOCK OR SECURITIES, THE SUPERINTENDENT MAY
23 IMPOSE CONDITIONS UPON SUCH APPROVAL, AND ALL EXPENSES OF THE SUPER-
24 INTENDENT'S REVIEW, INCLUDING WITHOUT LIMITATION THOSE OF OUTSIDE
25 CONSULTANTS IN REVIEWING SUCH PROPOSED VALUATION, SHALL BE BORNE BY THE
26 ISSUING COMPANY.

27 (F) IN THE EVENT OF AN INITIAL PUBLIC OFFERING, A STOCK HOLDING COMPA-
28 NY OR REORGANIZED INSURER MAY NOT REPURCHASE CAPITAL STOCK WITHIN ONE
29 YEAR FOLLOWING THE DATE OF SUCH INITIAL PUBLIC OFFERING, EXCEPT THAT
30 REPURCHASES OF NO GREATER THAN FIVE PERCENT OF THE OUTSTANDING STOCK MAY
31 BE REPURCHASED DURING THIS ONE YEAR PERIOD WITHOUT THE APPROVAL OF THE
32 SUPERINTENDENT.

33 (G) IN THE EVENT OF ANY VIOLATION OF THIS SECTION, OR OF ANY ACTION
34 WHICH, IF CONSUMMATED, MIGHT CONSTITUTE SUCH A VIOLATION:

35 (L) ALL VOTING STOCK OF THE REORGANIZED INSURER, ANY STOCK HOLDING
36 COMPANY, OR THE REORGANIZED MUTUAL HOLDING COMPANY, ACQUIRED BY ANY
37 PERSON IN EXCESS OF THE MAXIMUM AMOUNT PERMITTED TO BE ACQUIRED BY SUCH
38 PERSON PURSUANT TO THIS SUBSECTION SHALL BE DEEMED TO BE NON-VOTING
39 STOCK; AND

40 (2) IN ADDITION TO ANY OTHER ENFORCEMENT POWERS OF THE SUPERINTENDENT,
41 UNDER THIS CHAPTER, SUCH VIOLATION OR ACTION MAY BE ENFORCED OR
42 ENJOINED, AS THE CASE MAY BE, BY APPROPRIATE PROCEEDING COMMENCED ON
43 BEHALF OF THE REORGANIZED INSURER, ANY STOCK HOLDING COMPANY OR, IF
44 APPLICABLE, A REORGANIZED MUTUAL HOLDING COMPANY, BY THE REORGANIZED
45 INSURER, THE STOCK HOLDING COMPANY, THE MUTUAL HOLDING COMPANY OR THE
46 SUPERINTENDENT, THE ATTORNEY GENERAL, ANY MEMBER OF THE MUTUAL HOLDING
47 COMPANY OR, IF APPLICABLE, A REORGANIZED MUTUAL HOLDING COMPANY, OR ANY
48 STOCKHOLDER OF THE REORGANIZED INSURER, ANY STOCK HOLDING COMPANY OR THE
49 REORGANIZED MUTUAL HOLDING COMPANY IN THE SUPREME COURT IN THE JUDICIAL
50 DISTRICT IN WHICH THE REORGANIZED INSURER HAS ITS HOME OFFICE OR IN ANY
51 OTHER COURT HAVING JURISDICTION, AND SUCH COURT MAY ISSUE ANY ORDER,
52 INJUNCTIVE OR OTHERWISE, IT FINDS NECESSARY TO CURE SUCH VIOLATION OR TO
53 PREVENT SUCH ACTION.

54 S 8019. CONVERSION OF MUTUAL HOLDING COMPANY. (A) A MUTUAL HOLDING
55 COMPANY MAY REORGANIZE IN ACCORDANCE WITH A PLAN OF REORGANIZATION WHICH
56 IS FAIR AND EQUITABLE TO THE COMPANY'S MEMBERS AND IS:

1 (1) ADOPTED BY ACTION OF THREE-FOURTHS OF ITS ENTIRE BOARD OF DIREC-
2 TORS;

3 (2) APPROVED BY THE SUPERINTENDENT IF FOUND BY THE SUPERINTENDENT TO
4 BE FAIR AND EQUITABLE TO THE COMPANY'S MEMBERS AFTER A HEARING HELD UPON
5 NOTICE TO THE COMPANY'S MEMBERS; AND, THEREAFTER,

6 (3) ADOPTED BY THE AFFIRMATIVE VOTE OF TWO-THIRDS OF ALL VOTES CAST BY
7 MEMBERS OF THE COMPANY ENTITLED TO VOTE, AFTER NOTICE BEING GIVEN TO ALL
8 MEMBERS ENTITLED TO VOTE. THE MUTUAL HOLDING COMPANY SHALL GIVE WRITTEN
9 NOTICE STATING THE DATE, TIME AND PLACE FOR VOTING ON SUCH PROPOSAL TO
10 MEMBERS ENTITLED TO NOTICE OF AND TO VOTE ON THE PROPOSAL IN ACCORDANCE
11 WITH THIS SECTION, SENT BY MAIL OR ELECTRONIC TRANSMISSION TO THE LAST
12 KNOWN MAILING OR ELECTRONIC ADDRESSES OF SUCH POLICYHOLDERS AS SHOWN ON
13 THE RECORDS OF THE MUTUAL HOLDING COMPANY. SUCH NOTICE SHALL BE SENT AT
14 LEAST THIRTY DAYS BEFORE THE DATE OF THE PROPOSED VOTE TO APPROVE THE
15 PLAN OF REORGANIZATION. SUCH NOTICE MAY BE COMBINED WITH NOTICE OF THE
16 HEARING REQUIRED BY PARAGRAPH TWO OF THIS SUBSECTION. SUCH NOTICE SHALL
17 BE PRECEDED OR ACCOMPANIED BY A TRUE AND CORRECT COPY OF THE PLAN, OR BY
18 A SUMMARY THEREOF APPROVED BY THE SUPERINTENDENT, AND SUCH OTHER EXPLAN-
19 ATORY INFORMATION AS THE SUPERINTENDENT SHALL APPROVE OR REQUIRE.

20 (B) A PLAN OF REORGANIZATION PURSUANT TO SUBSECTION (A) OF THIS
21 SECTION SHALL PROVIDE FOR THE MEMBERSHIP INTERESTS IN THE MUTUAL HOLDING
22 COMPANY BEING EXTINGUISHED AND MAY PROVIDE EITHER FOR:

23 (1) THE CONVERSION OF THE MUTUAL HOLDING COMPANY INTO A STOCK CORPO-
24 RATION, IN WHICH EVENT CONSIDERATION DISTRIBUTED SHALL BE EQUAL TO THAT
25 REQUIRED UNDER SECTION SEVEN THOUSAND THREE HUNDRED TWELVE OF THIS CHAP-
26 TER OR SUCH OTHER LAW GOVERNING THE DEMUTUALIZATION OF MUTUAL LIFE
27 INSURERS AS MAY THEN BE IN EFFECT; OR

28 (2) THE DISTRIBUTION TO ELIGIBLE MEMBERS OF THE MUTUAL HOLDING COMPANY
29 OF CONSIDERATION CONSISTING OF ALL ASSETS OF THE MUTUAL HOLDING COMPANY
30 INCLUDING ALL STOCK OF THE REORGANIZED INSURER OR ANY STOCK HOLDING
31 COMPANY OWNED BY THE MUTUAL HOLDING COMPANY, OR OTHER CONSIDERATION
32 HAVING EQUIVALENT AGGREGATE VALUE, WHICH MAY BE IN THE FORM OF CASH,
33 SECURITIES OF ANY INSTITUTION, ADDITIONAL INSURANCE OR ANNUITY BENEFITS
34 OR POLICY CREDITS, INCREASED DIVIDENDS OR OTHER CONSIDERATION, ALL SUCH
35 CONSIDERATION BEING ALLOCATED AMONG ELIGIBLE MEMBERS OF THE MUTUAL HOLD-
36 ING COMPANY IN A MANNER THAT IS FAIR AND EQUITABLE TO THE COMPANY'S
37 MEMBERS.

38 (C) IF NO CLOSED BLOCK OF PARTICIPATING POLICIES AND CONTRACTS WAS
39 ESTABLISHED OR ALTERNATIVE PROVISION WAS APPROVED PURSUANT TO SECTION
40 EIGHT THOUSAND THREE OF THIS ARTICLE WHEN THE MUTUAL HOLDING COMPANY WAS
41 ESTABLISHED OR THEREAFTER, THEN THE PLAN OF REORGANIZATION OF THE MUTUAL
42 HOLDING COMPANY PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL PROVIDE
43 FOR THE ESTABLISHMENT OF SUCH A CLOSED BLOCK OR ALTERNATIVE PROVISION
44 UPON A REORGANIZATION OF THE MUTUAL HOLDING COMPANY UNDER THIS SECTION.
45 ANY SUCH CLOSED BLOCK OR ALTERNATIVE PROVISIONS SHALL BE SUBJECT TO
46 SUBSECTION (B) OF SECTION EIGHT THOUSAND THREE OF THIS ARTICLE. HOWEVER,
47 IF A CLOSED BLOCK OF PARTICIPATING POLICIES AND CONTRACTS WAS ESTAB-
48 LISHED OR ALTERNATIVE PROVISION WAS APPROVED PURSUANT TO SUBSECTION (B)
49 OF SECTION EIGHT THOUSAND THREE OF THIS ARTICLE WHEN THE MUTUAL HOLDING
50 COMPANY WAS ESTABLISHED OR THEREAFTER, THEN NO SUCH CLOSED BLOCK OR
51 ALTERNATIVE PROVISION SHALL BE REQUIRED UPON A REORGANIZATION OF THE
52 MUTUAL HOLDING COMPANY UNDER THIS SECTION.

53 S 8020. TRANSFERS OF SUBSIDIARIES. A REORGANIZING OR REORGANIZED
54 INSURER MAY TRANSFER ANY ONE OR MORE OF ITS SUBSIDIARIES TO THE MUTUAL
55 HOLDING COMPANY OR TO ONE OR MORE PERSONS OWNED OR CONTROLLED BY THE
56 MUTUAL HOLDING COMPANY, PROVIDED THE REORGANIZING OR REORGANIZED INSURER

1 OBTAINS THE PRIOR APPROVAL OF THE SUPERINTENDENT. ANY SUCH TRANSFER MAY
2 BE MADE WITHOUT CONSIDERATION AS A DIVIDEND OR FOR CONSIDERATION THAT
3 MAY INCLUDE OBLIGATIONS OF THE MUTUAL HOLDING COMPANY OR OBLIGATIONS OR
4 PREFERRED SHARES OF A PERSON OWNED OR CONTROLLED BY THE MUTUAL HOLDING
5 COMPANY. THE SUPERINTENDENT SHALL APPROVE EACH SUCH PROPOSED TRANSFER IF
6 THE SUPERINTENDENT FINDS IT IS FAIR AND EQUITABLE. FOR A REORGANIZING
7 INSURER, THE PLAN MAY PROVIDE FOR SUCH TRANSFER, IN WHICH CASE APPROVAL
8 OF THE PLAN SHALL CONSTITUTE APPROVAL BY THE SUPERINTENDENT PURSUANT TO
9 THIS SECTION. THE PROVISIONS OF SECTIONS ONE THOUSAND FIVE HUNDRED FIVE
10 AND FOUR THOUSAND TWO HUNDRED SEVEN OF THIS CHAPTER SHALL NOT APPLY TO
11 ANY TRANSFER OF SUBSIDIARIES EFFECTED PURSUANT TO THIS SECTION BUT SHALL
12 OTHERWISE APPLY TO THE REORGANIZED INSURER AND ITS AFFILIATES IN ACCORD-
13 ANCE WITH THEIR TERMS. THE PROVISION OF SUBPARAGRAPH (II) OF PARAGRAPH
14 TWO OF SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FIVE OF THIS
15 CHAPTER LIMITING THE AGGREGATE AMOUNT OF INVESTMENTS IN PREFERRED SHARES
16 OF AMERICAN INSTITUTIONS SHALL NOT APPLY TO AN INVESTMENT BY A REORGAN-
17 IZING OR REORGANIZED INSURER IN SUCH PREFERRED SHARES RECEIVED BY IT IN
18 CONSIDERATION FOR A TRANSFER PURSUANT TO THIS SECTION. FOR A REORGANIZED
19 INSURER, THE OTHER PROVISIONS OF THIS ARTICLE, INCLUDING, WITHOUT LIMIT-
20 TATION, THE REQUIREMENT OF FILING A PLAN OF REORGANIZATION, SHALL NOT
21 APPLY TO THE TRANSFER OF SUBSIDIARIES PURSUANT TO THIS SECTION.

22 S 8021. LIMITATIONS ON ACCUMULATION OF SURPLUS OF MUTUAL HOLDING
23 COMPANIES. (A) A MUTUAL HOLDING COMPANY MAY MAINTAIN (1) A NON-INSURANCE
24 SURPLUS NOT EXCEEDING THE AGGREGATE CAPITAL AND SURPLUS OF ITS INSURANCE
25 SUBSIDIARIES AND (2) AGGREGATE CAPITAL AND SURPLUS OF ITS INSURANCE
26 SUBSIDIARIES NOT EXCEEDING THE SURPLUS LIMIT OF ITS INSURANCE SUBSID-
27 IARIES, UNLESS OTHERWISE APPROVED BY THE SUPERINTENDENT.

28 (B) AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
29 FOLLOWING MEANINGS:

30 (1) "NON-INSURANCE SURPLUS" MEANS THE MUTUAL HOLDING COMPANY'S NET
31 WORTH, DETERMINED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRIN-
32 CIPLES ON A CONSOLIDATED BASIS, EXCLUDING THE PORTION THEREOF DERIVED
33 FROM ITS INTEREST IN ITS INSURANCE SUBSIDIARIES.

34 (2) "INSURANCE SUBSIDIARY" MEANS A SUBSIDIARY OF THE MUTUAL HOLDING
35 COMPANY THAT IS A DOMESTIC INSURER, A FOREIGN INSURER, AN ALIEN INSURER
36 OR (NOTWITHSTANDING ITS EXEMPTION FROM THIS CHAPTER) A HEALTH MAINTEN-
37 NANCE ORGANIZATION.

38 (3) "AGGREGATE CAPITAL AND SURPLUS" OF A MUTUAL HOLDING COMPANY'S
39 INSURANCE SUBSIDIARIES MEANS THE SUM OF:

40 (A) FOR EACH SUBSIDIARY THAT IS A LIFE INSURANCE COMPANY AND IS NOT A
41 SUBSIDIARY OF ANOTHER LIFE INSURANCE COMPANY, ITS STATUTORY CAPITAL AND
42 SURPLUS;

43 (B) FOR EACH SUBSIDIARY THAT IS AN INSURANCE COMPANY OTHER THAN A LIFE
44 INSURANCE COMPANY, A HEALTH MAINTENANCE ORGANIZATION OR A SUBSIDIARY OF
45 ANOTHER INSURANCE SUBSIDIARY, ITS STATUTORY CAPITAL AND SURPLUS; AND

46 (C) FOR EACH SUBSIDIARY THAT IS A HEALTH MAINTENANCE ORGANIZATION AND
47 IS NOT A SUBSIDIARY OF AN INSURANCE SUBSIDIARY, THIRTY-FIVE PERCENT OF
48 ITS NET PREMIUM WRITTEN IN THE PRECEDING CALENDAR YEAR.

49 (4) "SURPLUS LIMIT" OF A MUTUAL HOLDING COMPANY'S INSURANCE SUBSID-
50 IARIES MEANS THE AGGREGATE OF:

51 (A) FOR EACH SUBSIDIARY THAT IS A LIFE INSURANCE COMPANY AND IS NOT A
52 SUBSIDIARY OF ANOTHER LIFE INSURANCE COMPANY, THE GREATER OF (I) EIGHT
53 HUNDRED FIFTY THOUSAND DOLLARS, OR (II) TEN PERCENT OF ITS POLICY
54 RESERVES AND POLICY LIABILITIES, OR (III) TEN PERCENT OF THE POLICY
55 RESERVES AND POLICY LIABILITIES OF SUCH LIFE INSURANCE COMPANY AND OF
56 ALL SUBSIDIARIES OF SUCH COMPANY THAT ARE INSURANCE COMPANIES, PLUS (X)

1 THE PRODUCT OF THREE AND THE AUTHORIZED CONTROL LEVEL RBC OF SUCH LIFE
2 INSURANCE COMPANY AS DETERMINED IN ACCORDANCE WITH SECTION ONE THOUSAND
3 THREE HUNDRED TWENTY-TWO OF THIS CHAPTER OR CORRESPONDING PROVISIONS OF
4 THE LAW OF ITS STATE OF DOMICILE, PLUS (Y) FOR EACH SUBSIDIARY OF SUCH
5 DOMESTIC LIFE INSURANCE COMPANY THAT IS A HEALTH MAINTENANCE ORGANIZA-
6 TION, THIRTY-FIVE PERCENT OF ITS NET PREMIUM WRITTEN IN THE PRECEDING
7 CALENDAR YEAR, MINUS (Z) THE ASSET VALUATION RESERVES OF SUCH LIFE
8 INSURANCE COMPANY AND OF ALL SUBSIDIARIES OF SUCH COMPANY THAT ARE LIFE
9 INSURANCE COMPANIES, OR (IV) THE MINIMUM AMOUNT OF CAPITAL AND SURPLUS
10 REQUIRED BY THE LAW OF ANOTHER STATE IN WHICH SUCH LIFE INSURANCE COMPA-
11 NY IS AUTHORIZED TO DO BUSINESS, ALL AS DETERMINED IN ACCORDANCE WITH
12 ACCOUNTING PRACTICES PRESCRIBED OR PERMITTED BY THE SUPERINTENDENT, IN
13 THE CASE OF DOMESTIC INSURERS, OR THE PRINCIPAL REGULATOR OF ANY INSUR-
14 ANCE SUBSIDIARY THAT IS NOT A DOMESTIC INSURER;

15 (B) FOR EACH SUBSIDIARY THAT IS AN INSURANCE COMPANY OTHER THAN A LIFE
16 INSURANCE COMPANY, A HEALTH MAINTENANCE ORGANIZATION OR A SUBSIDIARY OF
17 ANOTHER INSURANCE SUBSIDIARY, ITS STATUTORY CAPITAL AND SURPLUS; AND

18 (C) FOR EACH SUBSIDIARY THAT IS A HEALTH MAINTENANCE ORGANIZATION AND
19 IS NOT A SUBSIDIARY OF AN INSURANCE SUBSIDIARY, THIRTY-FIVE PERCENT OF
20 ITS NET PREMIUM WRITTEN IN THE PRECEDING CALENDAR YEAR;

21 (D) THE SUPERINTENDENT MAY, FOR GOOD CAUSE SHOWN, BY ORDER, PERMIT
22 SUCH MUTUAL HOLDING COMPANY TO MAINTAIN A SURPLUS IN EXCESS OF THE MAXI-
23 MUM PRESCRIBED BY SUBSECTION (A) OF THIS SECTION, FOR A SPECIFIED PERI-
24 OD, NOT EXCEEDING ONE YEAR UNDER ANY ONE ORDER. THE SUPERINTENDENT SHALL
25 STATE IN SUCH ORDER THE REASONS THEREFOR AND SHALL CAUSE A STATEMENT OF
26 SUCH ORDER AND SUCH REASONS TO BE PUBLISHED IN THE NEXT ANNUAL REPORT OF
27 THE SUPERINTENDENT TO THE LEGISLATURE.

28 S 2. This act shall take effect immediately.