§ 7310. Reorganization of domestic guarantee capital life insurance companies into domestic stock life insurance companies. (a) As used in this section, the following terms shall have the following meanings:

(1) "Guarantee capital insurer" means a domestic life insurer with a guarantee capital represented by shares.

(2) "Shareholder" means a record holder of shares of guarantee capital of a guarantee capital insurer.

(3) "Policyholder" means a holder, as determined by the records of a guarantee capital insurer, of an insurance contract issued by such insurer 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 and which entitles the holder thereof, under the charter of the guarantee capital insurer, to the policyholder equity interest defined in this section. A person who, for purposes of subsection (a) of section four thousand two hundred ten of this chapter would be deemed the "policyholder" of any insurance contract is deemed to be the holder of such contract for purposes of this section.

(4) "Policyholders' equity interest" means and includes all rights of the policyholders as provided in or arising under the charter of the guarantee capital insurer. The term "policyholders' equity interest" includes the policyholders' right under the charter to vote and to participate in distributions of profits and any right arising under the charter to participate in any distribution of surplus whether such distribution is made incident to a liquidation of the guarantee capital insurer or otherwise. Anything in the foregoing sentence to the contrary notwithstanding, the term "policyholders' equity interest" does not include any right expressly conferred upon the policyholders by their insurance contracts which is in addition to those rights provided in or arising under the charter of the guarantee capital insurer.

(5) "Plan of reorganization" means a plan of conversion, a plan of merger or a plan for amendment of charter adopted in accordance with this section.

(6) "Reorganized insurer" means either (i) the domestic stock life insurer into which a guarantee capital insurer has been converted in accordance with this section, or (ii) the corporation surviving a merger between a guarantee capital life insurer and a domestic stock life insurer in accordance with this section, or (iii) the former guarantee

capital insurer as constituted after an amendment to its charter in accordance with this section.

(b) Any other provision of this chapter to the contrary notwithstanding, upon compliance with the requirements and completion of the proceedings prescribed by this section, a guarantee capital insurer may either (i) convert into a domestic stock life insurer, or (ii) merge with a domestic stock life insurer, or (iii) amend its charter so as to eliminate its policyholders' equity interest. The provisions of paragraph four of subsection (a) of section one thousand two hundred six of this chapter shall not apply to an amendment to the charter of a guarantee capital insurer eliminating its policyholders' equity interest made under and in accordance with the provisions of this section. In case of a merger with a domestic stock insurer, the domestic stock insurer shall comply with the provisions of this chapter applicable to its participation in a merger.

(c) (1) The guarantee capital insurer shall adopt a plan of reorganization by the vote of a majority of its entire board of directors. The plan of reorganization shall set forth (i) the reasons for and purposes of the proposed reorganization, (ii) the form of the reorganization which shall be one of the forms of reorganization set forth in subsection (b) of this section, (iii) the manner and basis by which the reorganization shall take place, and (iv) the consideration to be given to the shareholders in exchange for their shares of guarantee capital and to the policyholders in exchange for their policyholders' equity interest or the manner of converting the guarantee capital or the policyholders' equity interests into other securities or other consideration. If the reorganized insurer proposes to issue for delivery in this state participating insurance policies or contracts, the plan of reorganization shall so specify and shall be accompanied by such information or agreements relative thereto as the superintendent may require pursuant to section four thousand two hundred thirty-one of this chapter and, in such event, upon the superintendent's approval of the plan of reorganization pursuant to this section, the superintendent shall, in accordance with said section four thousand two hundred thirty-one, issue a revocable permit to the reorganized insurer authorizing it to issue participating policies and contracts in this state. The plan of reorganization may contain any other provisions which

the board of directors of the guarantee capital insurer may deem necessary or advisable in connection with the proposed reorganization.

(2) The consideration to be given in exchange for the shares of guarantee capital and the policyholders' equity interest or into which such shares and equity interest are to be converted may consist of securities of the reorganized insurer or securities of another corporation or corporations or other consideration or any combination of such forms of consideration. The consideration to be given in exchange for shares of guarantee capital or into which such shares are to be converted need not be the same as the consideration given in exchange for the policyholders' equity interests or into which the policyholders' equity interests are to be converted. The consideration given to any class or category of policyholder need not be the same as the consideration given to any other class or category of policyholder. In the case of a charter amendment in which the shares of guarantee capital remain outstanding and unchanged, the plan need not provide any consideration to the holders of such shares.

(3) The plan of reorganization shall include the proposed charter of the reorganized insurer set out in accordance with subsection (a) of section one thousand two hundred one of this chapter and its proposed by-laws, giving effect to any amendments to the charter or by-laws to be effected by the plan of reorganization.

(4) The plan of reorganization shall specify one or more record dates to be used for purposes of determining (i) the shareholders and policyholders who shall be entitled to notice of and to vote at the meeting called pursuant to this section to act upon a proposal to approve the plan of reorganization, (ii) the shareholders and policyholders who shall be entitled to receive notice of the public hearing required by this section, and (iii) the shareholders and policyholders who shall be entitled to receive the consideration provided for by the plan. Each shareholder of record on the record date specified pursuant to item (iii) of the immediately preceding sentence shall be entitled to the consideration provided in the plan on the basis of the number of shares held of record by him as of said record date. Each policyholder of record as of such record date shall be entitled to the consideration provided for him in the plan based on his policyholder's equity interest as of the effective date of conversion,

merger or charter amendment pursuant to this section but only to the extent that such policyholder's equity interest arose from insurance contracts of which he was the holder as of such record date.

(5) Upon adoption of the plan of reorganization, it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the guarantee capital insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such plan accompanied by a certificate of adoption of such resolutions subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the guarantee capital insurer.

(d) The guarantee capital insurer may, by action of a majority of the entire board of directors, amend the plan of reorganization at any time before the plan becomes effective as provided by this section. On adoption of an amendment it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the guarantee capital insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such amendment subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the guarantee capital insurer. In case of an amendment, all references in this section to the plan of reorganization shall be deemed to refer to the plan as amended. No amendment made after any public hearing required by this section or after approval by the shareholders or policyholders as provided in this section shall change the plan in a manner which the superintendent determines is materially disadvantageous to the shareholders or any of the policyholders unless a further public hearing is held on the plan as amended if the amendment is made after the public hearing, or the plan as amended is submitted for reconsideration by the shareholders or policyholders, whichever is disadvantaged by the amendment, if the amendment is made after the plan has been approved by the shareholders or policyholders under the conditions and procedures determined by the superintendent in accordance with this section.

(e) Upon submission to him of the plan of reorganization, the superintendent may request any additional documents or information and may examine the guarantee capital insurer or any of its affiliates, to

the extent he may determine to be necessary to enable him to make the findings required by this section for the approval by him of the plan of reorganization.

(f) The superintendent shall appoint one or more qualified disinterested persons to appraise in writing the value of the policyholders' equity interest and the value of the consideration to be given to the policyholders in exchange for their equity interest or into which such equity interest shall be converted. Such valuation shall be made on a fair and equitable basis taking into account the latest filed annual or quarterly statement of the guarantee capital insurer, and any significant developments occurring subsequent to the date of such statement. The appraisers may request of the guarantee capital insurer access to its books and records and the furnishing by it of any other information in its possession, to the extent they may reasonably deem necessary to make the valuations contemplated by this subsection. They shall report to the superintendent any instance in which the guarantee capital insurer fails to provide any information requested by them. The appraisers shall not, under judicial process or otherwise, be obligated or permitted to divulge to anyone except the superintendent any information not otherwise publicly available which is so obtained by them. The appraisers shall receive reasonable compensation and shall be reimbursed for reasonable expenses incurred in performing their duties. They may, as necessary, employ consultants to advise them on technical matters associated with the appraisal. The appraisal report shall be made to the superintendent. In making the determinations contemplated by this section, the superintendent shall not be bound by any findings, conclusions or recommendations made by the appraisers. All information obtained by the superintendent pursuant to this section, including without limitation information obtained through examinations by him, reports of appraisers and other information secured by appraisers and turned over to the superintendent, are hereby specifically exempted, as contemplated by paragraph (a) of subdivision two of section eighty-seven of the public officers law, from disclosure by the superintendent under said section eighty-seven. Such exemption shall not preclude or exempt the superintendent from disclosure of such information pursuant to judicial process under provisions of law other than said section eighty-seven.

(g) The superintendent shall hold a public hearing upon the fairness of the terms and conditions of the exchange of the policyholders' equity interest for the securities or other consideration provided for by the plan of reorganization and upon whether the reorganization is in the public interest. Notice stating the time, place and purpose of the hearing shall be mailed to each holder of guarantee capital and each policyholder entitled under the plan to receive such consideration at his address as shown on the records of the guarantee capital insurer at least thirty days before the date of the hearing. Such notice shall be preceded or accompanied by a true and complete copy of the plan or a summary thereof approved by the superintendent and by such other explanatory information as the superintendent shall approve or require. In addition, the guarantee capital insurer shall give notice of the time, place and purpose of the hearing by publication in a newspaper of general circulation in the city in which the insurer has its principal office and in two other newspapers of general circulation in other cities within or without this state approved by the superintendent. Such newspaper publications shall be made not less than fifteen days nor more than sixty days before the hearing and shall be in form approved by the superintendent.

(h) (1) A proposal to approve the plan of reorganization shall be submitted to a meeting of shareholders and policyholders. Notice stating the time, place and purpose of such meeting shall be mailed to each such shareholder and policyholder of record as of the record date for the meeting, at his address as shown on the records of the guarantee capital insurer, at least thirty days before the date of the meeting. Such notice may be combined with notice of the public hearing required by this section. Such notice shall be preceded or accompanied by a true and complete copy of the plan or a summary thereof approved by the superintendent and by such other explanatory information as the superintendent shall approve or require.

(2) Each shareholder of record as of the record date for the meeting shall be entitled to cast one vote at such meeting, in person or by proxy, for each share held of record by him on such record date. Each policyholder of record as of the record date for the meeting shall be entitled to cast one vote at such meeting, in person or by proxy, irrespective of the number or amount of the policies he holds. Any proxy

shall be revocable at any time except to the extent that, at the time of exercise, the power conferred thereby has been exercised. The presence in person or by proxy of (i) the holders of record of two-thirds of the outstanding shares of guarantee capital, and (ii) such number of policyholders as attend in person or proxy shall constitute a quorum for the meeting. All votes shall be by written ballot cast in person by shareholders or policyholders entitled to vote or by proxy agents duly appointed by shareholders or policyholders entitled to vote. The proposal to approve the plan of reorganization may be adopted by the affirmative vote of two-thirds of all guarantee capital shares issued and outstanding as of the record date and the affirmative vote of two-thirds of all votes cast by policyholders or record as of the record date.

(3) The superintendent shall have power to supervise and direct and prescribe rules governing the procedure for the conduct of the meeting to such extent, consistent with the provisions of this section, as he deems necessary to insure a fair and accurate vote. Such powers shall include but not be limited to power to supervise and regulate (i) the determination of the shareholders and policyholders entitled to notice of and to vote at the meeting, (ii) the giving of notice, (iii) the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots, and (iv) the resolution of disputes.

(4) The superintendent shall appoint as inspectors an adequate number of personnel of the department of financial services or other competent and disinterested persons and may appoint if necessary, expert accountants and other assistants and may authorize the procurement of stationery and supplies necessary for conducting the election and canvassing the votes. The inspectors shall have power to determine all questions concerning the verification of the ballots and proxies, the ascertainment of the validity thereof, the qualifications of the voters and the canvass of the vote, and with respect thereto shall act under such rules as shall be prescribed by the superintendent. Any disagreement among the inspectors shall be reported to and shall be resolved by the superintendent. Any determinations by the inspectors or the superintendent shall be subject to judicial review.

(5) Representatives of the shareholders and of the policyholders, including representatives of shareholders and policyholders favoring or

opposing the approval of the plan, shall be entitled to be present during the filing, casting, verification and canvassing of the proxies and ballots and shall be entitled to examine and object to any such proxy or ballot. The superintendent or the inspectors may limit the number of persons representing any interested person or group and may specify fair and reasonable procedures for the examination of and presentation of objections to the proxies and ballots. Costs incurred in providing such representation shall not be a charge upon or paid from the funds of the guarantee capital insurer.

(6) Neither the guarantee capital insurer nor any officer, agent or employee thereof shall knowingly omit, from any list of policyholders entitled to notice of the meeting, the name of any policyholders required to be included therein, or shall knowingly omit to give the correct name and address of any policyholder, or shall knowingly give a wrong address. No person shall conceal or withhold or aid or abet any other person in concealing or withholding any proxy or ballot from the authorized custodians thereof or from the inspectors. No policyholder or shareholder shall sell or offer to sell any vote or proxy for any sum of money or anything of value other than the consideration provided for in the plan of reorganization if said plan becomes effective.

(7) All ballots and proxies received by the inspectors shall immediately upon the completion of the canvass be placed in sealed packages and shall be preserved by the said inspectors for a period of one year, subject to the order of any court having jurisdiction of any proceedings relating thereto, and then shall be turned over to the guarantee capital insurer, or the reorganized insurer, if the reorganization has become effective.

(8) The meeting and the conduct thereof shall at all times, on petition of the superintendent or of any person or persons whose rights may be affected, be subject to the supervision and control of the supreme court in the judicial district in which the guarantee capital insurer has its home office.

(9) The inclusion by the guarantee capital insurer of the name of any person in any list of policyholders required by this section shall not be construed as an admission by such insurer of the validity of any policy or contract and no such list shall be competent evidence against such insurer in any action or proceeding in which the question of the

validity of any policy or contract or of any claim under it is involved.

(10) The provisions of section four thousand two hundred ten of this chapter shall not apply to a meeting of shareholders and policyholders held pursuant to this section.

(11) Upon the conclusion of the vote, the guarantee capital insurer shall submit to the superintendent (i) a certified copy of the plan of reorganization, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or an assistant secretary of the guarantee capital insurer, (ii) a certificate, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or assistant secretary of the guarantee capital insurer, or subscribed by the person or persons, if any, designated by the superintendent to supervise the giving of notice of the meeting, to the effect that notice of the meeting was given in accordance with this section to all persons entitled to such notice, and (iii) a certificate subscribed by the inspectors of the attendance at the meeting and of the results of the vote thereat, as evidenced by the valid proxies and ballots filed thereat. Each such certificate shall be affirmed as true under the penalties of perjury by the person or persons subscribing the same and, in the case of a certificate signed by officers of the guarantee capital insurer, shall be affirmed under the corporate seal of the guarantee capital insurer.

(i) The superintendent shall approve the plan of reorganization in writing if he finds that the proposed reorganization does not violate this chapter and is fair and equitable to the shareholders and the policyholders and the public, and that after giving effect to the reorganization, the reorganized insurer would have capital and surplus at least equal to the minimum capital and surplus required by the superintendent for a newly organized stock insurer doing the same kind or kinds of insurance business, or an amount of capital and surplus the superintendent deems to be reasonably necessary for the solvency of the reorganized insurer, whichever is the greater. If approval is denied, the denial shall be in writing setting forth a statement of the reasons therefor and the guarantee capital insurer shall have the right to a hearing before the superintendent within thirty days of the date of such denial. Unless otherwise agreed by the guarantee capital insurer, the superintendent shall approve or disapprove the plan in writing on or

before a date which is the later of: (i) sixty days after submission to him of the report of the appraiser or appraisers appointed pursuant to subsection (f) of this section, (ii) sixty days after the conclusion of the public hearing required by subsection (g) of this section, or (iii) ten days after certification to him of the results of the vote at the meeting held pursuant to subsection (h) of this section.

(j) When the superintendent has given his approval of the plan of reorganization as provided in subsection (i) of this section and certification of approval of the plan has been made to the superintendent as provided in subsection (h) of this section, a copy of the plan of reorganization with the superintendent's approval endorsed thereon shall be filed in the office of the superintendent. In the case of a merger, a copy of such plan shall also be filed in the office of the clerk of the county where the principal office of the guarantee capital insurer and the domestic stock insurer is located. The plan of reorganization shall take effect in accordance with its terms on the date when the filings required by this subsection have been made or on such later date, if any, as may have been specified in such plan or pursuant thereto.

(k) Upon the conversion of the guarantee capital insurer or merger in the manner herein provided, all the rights, franchises and interests of the former guarantee capital insurer, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed transferred to and vested in the reorganized insurer, without any other deed or transfer; and simultaneously therewith such company shall be deemed to have assumed all of the obligations and liabilities of the former guarantee capital insurer, other than obligations and liabilities with respect to the policyholders' equity interest eliminated by the plan of reorganization.

(l) No action or proceeding pending at the time of the conversion or merger to which the guarantee capital insurer may be a party shall be abated or discontinued by reason of such conversion or merger, but the same may be prosecuted to final judgment in the same manner as if the conversion or merger had not taken place, or the reorganized insurer may be substituted in place of such guarantee capital insurer by order of the court in which the action or proceeding may be pending.

(m) The directors and officers of the guarantee capital insurer shall

serve as directors and officers of the reorganized insurer until new directors and officers have been duly elected and qualified pursuant to the charter and by-laws of the reorganized insurer.

(n) The guarantee capital insurer shall deliver to the superintendent at the time of submission of the plan of reorganization a written undertaking in form and substance satisfactory to the superintendent and signed by the guarantee capital insurer and by such other persons as the superintendent may require, specifying the manner in which all costs and expenses incurred in any manner in connection with the plan of reorganization shall be paid or reimbursed. Such undertaking shall provide for the payment or reimbursement of all expenses incurred by the superintendent or the department of financial services in connection with the plan of reorganization, other than normal operating expenses of the department of financial services. Such undertaking shall provide to the effect that no payment of expenses by the guarantee capital insurer or the reorganized insurer shall, after giving effect to any reimbursement or contribution received by such insurer with respect thereto, have the effect of reducing the consideration to be paid to the policyholders pursuant to the plan of reorganization or of reducing the portion of the surplus of the reorganized insurer which is attributable to policyholders. The said undertaking shall apply to expenses incurred prior to the submission of the plan of reorganization as well as those incurred thereafter and shall be binding whether or not the plan of reorganization takes effect. The consideration to be paid to policyholders pursuant to the plan shall not be subject to this subsection nor to said undertaking.

(o) Notice of the pendency of the proposed reorganization and of the effect thereof shall be given by the guarantee capital insurer or the reorganized insurer in a manner satisfactory to the superintendent to all persons to whom the guarantee capital insurer or the reorganized insurer delivers insurance contracts which are issued after the record date specified for policyholders entitled to receive any of the consideration provided for in the plan of reorganization but are issued on or before the date sixty days after such record date. Such persons shall have the right to rescind such contracts, and to receive refund of any amounts paid with respect thereto by written notice to such insurer or its agent given within ten days of their receipt of the aforesaid

notice given by such insurer.

(p) If the plan of reorganization takes effect, the rights of all policyholders thereafter shall be as specified in the charter of the reorganized insurer and in their insurance contracts and they shall have no rights under the charter of the guarantee capital insurer. The reorganized insurer shall thereafter be subject to all laws, rules and regulations applicable to domestic stock life insurers and shall not be subject to any laws, rules or regulations of this state applicable to domestic mutual insurers and not to domestic stock life insurers. If the reorganized insurer has outstanding shares of guarantee capital after the reorganization takes effect, the reorganization shall not affect the rights of such shares as provided in the charter of the reorganized insurer but for all other purposes of this chapter such shares shall be deemed to constitute shares of stock.

(q) If the guarantee capital insurer complies substantially and in good faith with the requirements of this section with respect to the giving of any required notice to shareholders or policyholders, its failure in any case to give such notice to any person or persons entitled thereto shall not impair the validity of the actions and proceedings taken under this section or entitle such person to any injunctive or other equitable relief with respect thereto but this subsection shall not impair any claim for damage such person or persons would otherwise have due to such failure.

(r) A shareholder or policyholder whose shares or policyholder's equity interest would be exchanged for or converted into other consideration pursuant to a plan of reorganization adopted pursuant to this section shall, by complying with section six hundred twenty-three of the business corporation law, except as otherwise provided in this subsection, have the right to receive payment for the fair value of his shares or policyholder's equity interest. In the case of a policyholder, no act pursuant to such section six hundred twenty-three, and no receipt by him of any payment pursuant to such section with respect to his policyholder's equity interest, shall impair or otherwise affect his rights expressly conferred by his insurance contract which are in addition to those rights conferred by or arising under the charter of the guarantee capital insurer. The provisions of section seven thousand one hundred nineteen of this chapter shall not apply in case of a

reorganization under this section. For purposes of this subsection, the provisions of section six hundred twenty-three of the business corporation law, other than paragraphs (i) and (m) thereof are applicable except that:

(1) The references to "this chapter" in paragraph (a) of section six hundred twenty-three of the business corporation law are deemed to refer to this section.

(2) The references used in section six hundred twenty-three of the business corporation law to "shareholder" and "shareholders" are deemed to include a policyholder or policyholders and the references therein to "shares" are, in the case of a policyholder, deemed to refer to his policyholder's equity interest.

(3) The term "shareholders authorization date" used in section six hundred twenty-three of the business corporation law is deemed to refer to the date of the meeting required by subsection (h) of this section.

(4) In the case of a policyholder, the information with respect to shareholdings required by paragraphs (a) and (c) of section six hundred twenty-three of the business corporation law to be contained in the notice of election to dissent is deemed to refer to the policy number of the policyholder's insurance contract entitling him to a policyholder's equity interest.

(5) Notwithstanding paragraph (e) of section six hundred twenty-three of the business corporation law, upon filing by a policyholder of election to dissent the policyholder shall cease to have any rights with respect to his policyholder's equity interest, but his rights expressly conferred by his insurance contract and not conferred by or arising under the charter of the guarantee capital insurer shall be unaffected. In the case of a policyholder, the provisions of paragraph (e) thereof providing for the reinstatement of a shareholder's rights in certain events are deemed to provide for reinstatement of his policyholder's equity interest.

(6) In the case of a policyholder, the provision of paragraph (f) of section six hundred twenty-three of the business corporation law, referring to share certificates shall be deemed to refer to insurance contracts.

(7) Any provision of paragraph (g) of section six hundred twenty-three of the business corporation law to the contrary notwithstanding, the

written offer made pursuant to said paragraph to the policyholders who have filed notices of election to dissent shall be made at prices such that the total price offered to all such policyholders shall be apportioned among the different classes and categories of said dissenting policyholders in the same manner as the plan of reorganization provides for the total consideration to be paid pursuant thereto to be apportioned among all of the classes and categories of policyholders.