§ 7312. Reorganization of a domestic mutual life insurer into a domestic stock life insurer. (a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Mutual life insurer" means a domestic mutual life insurer.

(2) "Policyholder" means a person, as determined by the records of a mutual life insurer, who is deemed to be the "policyholder" of a policy or annuity contract which is of a type described in paragraphs 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.

(3) "Policyholders' membership interest" means and includes all policyholders' rights as members arising under the charter of the mutual life insurer or this chapter or otherwise by law including, but not limited to, the rights to vote and to participate in any distribution of surplus whether or not incident to a liquidation of the mutual life insurer. The term "policyholders' membership interest" does not include rights, including without limitation the right to participate in the distribution of surplus, expressly conferred upon the policyholders by their policies or contracts other than any right to vote.

(4) "Plan of reorganization" means a plan of conversion or conversion and merger in accordance with this section.

(5) "Reorganized insurer" means the domestic stock life insurer into which a mutual life insurer has been reorganized in accordance with this section.

(6) "Statement date" means the December thirty-first immediately prior to the date the plan of reorganization was adopted.

(7) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(b) Demutualization. Any other provision of this chapter to the contrary notwithstanding, upon compliance with the requirements of and completion of the proceedings prescribed by this section and with the written approval of the superintendent, a mutual life insurer may either (1) reorganize into a domestic stock life insurer or (2) reorganize as part of a plan of reorganization in which a majority or all of the common shares of the domestic stock life insurer is acquired by another institution which may be an institution organized for such purpose. As

part of the reorganization, the mutual life insurer may merge with a domestic stock insurer, provided that the merging insurers shall comply with the provisions of this chapter applicable to their participation in such a merger.

(c) Plan of reorganization. A plan of reorganization must: (1) demonstrate a purpose and specify reasons for the proposed reorganization; (2) be in the best interest of the mutual life insurer and its policyholders; (3) be fair and equitable to policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; and (5) not substantially lessen competition in any line of insurance business.

(d) Reorganization. The proposed reorganization shall be accomplished by a plan which must be fair and equitable to the policyholders and must comply with the terms and conditions set forth in paragraph one, two or four of this subsection provided however, that a mutual life insurer which has surplus to policyholders, excluding contingently repayable obligations of the mutual life insurer under section one thousand three hundred seven of this chapter, of less than fifty million dollars and which has industrial insurance in force must comply with the terms and conditions set forth in paragraph one, two, three or four of this subsection. Nothing herein contained shall be deemed to give any class of policyholders priority with respect to the assets of any such reorganized insurer in liquidation, other than as expressly stated in paragraph two of this subsection.

(1) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer, some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) subject to the provisions of subparagraph (D) of this paragraph, the plan of reorganization provides that the policyholders' membership interest will be exchanged for all of the common shares of the reorganized insurer or its parent company, if any, or for either, or a

combination of (i) the common shares of the reorganized insurer or its parent company, if any, and (ii) consideration equal to the proceeds of the public sale in the market of such common shares by the issuer thereof or by a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration to be distributed to policyholders during a process of reorganization specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of a policyholder or the death of the insured, whichever occurs first; (C) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (D) unless such issuance within a shorter or longer period is disclosed in the plan of reorganization, the issuer of such common shares has not issued and does not issue within two years of the effective date of the reorganization (i) any of its common shares, (ii) any securities convertible, with or without consideration, into such common shares or carrying any warrant or right to subscribe to or to purchase common shares, or (iii) any warrants or rights to subscribe to or purchase such common shares or other securities described in item (ii) of this subparagraph, except for the issue of common shares to or for the benefit of the policyholders pursuant to the reorganization and the issue of stock in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized insurer or its holding company, if any, pursuant to this chapter and a plan approved by the superintendent; (E) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization (or such longer period as may be disclosed in the plan of reorganization); (F) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent, which he finds not to be harmful to the

reorganized insurer, shall offer to make available to policyholders who received and retained shares of stock with minimal values on reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; and (G) the costs and expenses of the reorganization shall be borne by the insurer but no costs and expenses incurred in any manner in connection with the reorganization shall be charged to the closed block.

(2) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) the reorganized insurer or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the public market of the mutual life insurer; (C) the policyholders' equity is equal to the excess of (i) the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization, over the sum of (ii) the amount of assets allocated to the closed block of participating business and (iii) an amount equal to the statutory reserves and other statutory liabilities attributable to any group participating policies and contracts in force on the effective date of reorganization and not included in the closed block of participating business, provided however, that the policyholders' equity cannot be less than the amount of the policyholders' preference account. The amount of the policyholders' equity shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total assets, as reported in its statutory statements, between the statement date and the effective date of the reorganization. Any determination of policyholders' equity shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' equity and occurred within seven years prior to the statement date; (D) the plan of reorganization

provides that the policyholders' membership interest will be exchanged for consideration equal to (i) the policyholders' equity, (ii) nontransferable preemptive subscription rights to purchase all of the shares of such issuer, (iii) ten percent of the proceeds net of underwriting commissions and fees raised by the insurer upon the sale of its initial offering of shares, and (iv) the establishment of a policyholders' preference account for the benefit of policyholders existing on the effective date of reorganization, and for the benefit of the future policyholders of the reorganized insurer, in the event of a subsequent complete liquidation of the reorganized insurer, such policyholders' preference account having the terms described below in this paragraph; (E) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (F) at the option of the mutual life insurer, any common shares of the reorganized insurer or its parent company, if any, included in the policyholders' consideration, other than those acquired as a result of a policyholder exercising any preemptive subscription rights, may be placed in a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration or the proceeds of the sale of such consideration to be distributed to policyholders during a process specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of the policyholder or the death of the insured, whichever occurs first; (G) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization; (H) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent which he finds not to be harmful to the reorganized insurer, shall offer to make available to policyholders who received and retained shares of stock with minimal values on

reorganization, including but not limited to shares acquired by policyholders exercising their preemptive subscription rights, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; (I) the costs and expenses of the reorganization shall be borne by the insurer, however if the reorganization is effected, no costs and expenses incurred in any manner in connection with the reorganization shall be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (J) notwithstanding subparagraph (I) of this paragraph, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of the voting securities of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected and in no event shall any of the costs and expenses incurred in any manner in connection with the reorganization be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (K) the policyholders' preference account referred to above shall be equal to the excess of the amount of the mutual insurer's total admitted assets over the sum of (i) the total amount of assets allocated to the closed block of participating business and (ii) the policyholders' equity and (iii) statutory reserves and liabilities attributed to policies and contracts not included in the closed block of participating business. The policyholders' preference account shall be calculated as of the statement date and adjusted appropriately to reflect any changes in the components used in determining the amount of the policyholders'

preference account between the statement date and the effective date of reorganization; (L) a mutual life insurer whose policyholders' equity is paid in the form of stock may show, as a write-in item labeled "Reorganization surplus" immediately following "Capital paid up" on the annual statement of the reorganized insurer, a negative amount equal to the excess of the policyholders' equity which was paid in the form of stock over its unassigned surplus on the date of reorganization; and (M) the policyholders' preference account shall be so designated and shown as a footnote to the surplus of the reorganized insurer in all of its published and filed statements. In the event of a subsequent complete liquidation of the reorganized insurer, and only in such event, the policyholders' preference account shall be allocated among the then policyholders in a manner found by the superintendent to be fair and equitable to policyholders, first to policyholders having participating policies and contracts in force on the effective date of the reorganization and then to all other policyholders of the reorganized insurer. The function of the policyholders' preference account shall be solely to establish a priority on liquidation and its existence shall not operate to restrict the use or application of the surplus of the reorganized insurer except that the reorganized insurer, after complying with all other requirements of this chapter, cannot declare or pay a cash dividend on, or repurchase any of, its shares if, after such declaration or payment, the amount of net preference assets of the reorganized insurer is less than the amount of the policyholders' preference account. For this purpose, the net preference assets shall be equal to the insurer's total admitted assets less the sum of (i) the assets in the closed block of participating business (ii) the statutory reserves and liabilities with respect to business not in such closed block and (iii) the reorganized insurer's capital and paid in surplus.

(3) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business, for policyholder dividend purposes only, to which shall be allocated admitted assets of the mutual life insurer in an amount equal to the statutory reserves and statutory liabilities of the mutual life insurer; (B) the consideration to be given in exchange for the policyholders' membership interest shall be

equal to the statutory surplus of the mutual life insurer; (C) the amount of statutory reserves and statutory liabilities and statutory surplus shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total admitted assets between the statement date and the effective date of reorganization. Any determination of statutory surplus shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' consideration and occurred within seven years prior to the statement date; (D) the consideration shall be allocated among the policyholders in a manner which is fair and equitable to the policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (E) the reorganized insurer or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the market of the mutual life insurer; (F) the costs and expenses of the reorganization shall be borne by the insurer; however, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (G) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (A) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

(4) (A) Any method approved by the superintendent under which the

policyholders' membership interest is converted into or exchanged for consideration determined by the superintendent to be fair and equitable to policyholders and meeting the requirements of this section; (B) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable; (C) unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer does not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (D) in determining whether any reorganization is fair and equitable, the superintendent shall be guided by the legitimate economic interests of participating policyholders as delineated in this section.

(5) (A) When the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraphs one and two of this subsection, then it shall be so operated for the exclusive benefit of such policies and contracts included therein, for policyholder dividend purposes only; (B) to such closed block shall be allocated assets of the mutual life insurer in an amount which together with anticipated revenue from such business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for payment of claims, expenses and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience changes; (C) the amount of such assets shall be determined as of the statement date and brought forward to the effective date of the reorganization using methods which would have been used had the closed block been established on the statement date with appropriate recognition of new issues; and (D) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (B) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

(6) If any amount of the policyholders' consideration for certain classes of policies or contracts is to be paid in the form of increased

annual dividends to the policyholders in those classes, that amount is to be added to the assets previously allocated in accordance with paragraph three or five of this subsection and is to be paid out to those classes in a fair and equitable manner.

(e) Adoption of plan of reorganization. (1) A mutual life insurer seeking to reorganize under this section shall, by action of three-fourths of its entire board of directors, adopt a plan consistent with the provisions of this section and that it finds is fair and equitable to the policyholders. The board of directors of the mutual life insurer, in selecting one of the methods described in subsection (d) of this section, shall set forth the basis for their selection. The plan of reorganization shall set forth (A) a demonstration of the purpose for the proposed reorganization; (B) the form of the reorganization; (C) the proposed charter of the reorganized insurer set out in accordance with section one thousand two hundred one of this chapter and its proposed by-laws which shall provide for the removal of the word "mutual" from the name of the company; (D) the manner and basis by which the reorganization shall take place; (E) the consideration to be given to the policyholders in exchange for their policyholders' membership interest or the manner of converting the policyholders' membership interest into securities or other consideration; (F) the method of allocating the consideration among policyholders; (G) the method of operation of the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization; and (H) a plan of operation for the reorganized insurer including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the plan of reorganization shall so specify. In such event, upon the superintendent's approval of the plan of reorganization pursuant to this section, the superintendent shall, in accordance with section four thousand two hundred thirty-one of this chapter, 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 conditions and provisions which the board of directors of the mutual life insurer may deem necessary or

advisable in connection with the proposed reorganization.

(2) The consideration to be given in exchange for the policyholders' membership interest or into which such membership interest is to be converted may consist of cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration. The consideration, if any, 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. The certificate of contribution referred to above shall be repayable in five years and bear annual interest at the published monthly average, as defined in section three thousand two hundred six of this chapter, for the calendar month ending two months before the effective date of reorganization.

(3) The policyholders who shall be entitled to notice of and to vote upon the proposal to approve the plan of reorganization and to notice of the public hearing required by this section shall be the policyholders whose policies or contracts are in force on the date of adoption of the plan of reorganization. Each such policyholder whose policy has been in force on such date shall be entitled to the consideration, if any, provided for such policyholder in the plan based on such policyholder's membership interest determined pursuant to this section but only to the extent that such policyholder's membership interest arose from policies or contracts that shall be in force on the date of adoption of the plan.

(4) 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 mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such plan and finding that it is fair and equitable to the policyholders, 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 mutual life insurer.

(f) Amendment or withdrawal of plan. The mutual life insurer may, by action of a majority of the entire board of directors, at any time before the plan of reorganization becomes effective as provided by this section (1) amend the plan of reorganization; or (2) withdraw the plan

of reorganization. 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 mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such amendments subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the mutual life 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 policyholders as provided in this section shall change the plan in a manner which the superintendent determines is materially disadvantageous to 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 policyholders if the amendment is made after the plan has been approved by the policyholders, under the conditions and procedures determined by the superintendent in accordance with this section.

(g) Additional information. Upon submission to him of the plan of reorganization, the superintendent may request any additional documents or information and may examine the mutual life 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. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the superintendent may also request such information or agreements relative thereto as he may require pursuant to section four thousand two hundred thirty-one of this chapter.

(h) Consultants and certifications. (1) The superintendent may appoint one or more qualified disinterested persons or institutions as consultants to advise him on any matters related to the reorganization. The appointment of a consultant shall be in writing and shall set forth the duties and responsibilities of the consultant. Copies of such appointment shall be given to the consultant and concurrently to the mutual life insurer.

(2) If the plan of reorganization satisfies the conditions set forth

in paragraph one or two of subsection (d) of this section, the superintendent shall appoint one or more qualified and disinterested actuaries for the purpose specified in paragraph three of this subsection. Such actuary shall be a member of the American Academy of Actuaries, and shall be knowledgeable and experienced as to the matters to be certified.

(3) Such actuary shall certify in writing as to (A) in the case of a plan of reorganization pursuant to paragraph two of subsection (d) of this section, the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization and (B) in the case of a plan of reorganization pursuant to paragraphs one or two of subsection (d) of this section, the reasonableness and sufficiency of the asset allocation referred to in subparagraph (B) of paragraph five of subsection (d) of this section. Such certification shall be in form satisfactory to the superintendent and shall be made in accordance with professional standards and practices generally accepted by the actuarial profession and such other factors as such actuary in his professional judgment believes are reasonable and appropriate at the time such certification is made. Any such certification shall be accompanied by a memorandum of the actuary, in form satisfactory to the superintendent, describing the calculations made in support of such certification and the assumptions used in such calculations.

(4) The consultant and the actuary may request of the mutual life insurer access to its books and records and the furnishing by it of any other information in its possession, to the extent it may reasonably be deemed necessary to make the valuations and certifications contemplated by this subsection, or to advise the superintendent on any matters related to the reorganization. The consultant and the actuary shall report to the superintendent any instance in which the mutual life insurer fails to provide any information requested by them. The consultant and the actuary shall not, under judicial process or otherwise, be obligated or permitted to divulge to any one except the superintendent any information not otherwise publicly available which is so obtained by them. The consultant and the actuary shall receive reasonable compensation and shall be reimbursed for reasonable expenses incurred in performing their duties.

(5) The report of the consultant and the certification of the actuary shall be made to the superintendent. In making the determinations contemplated by this section, the superintendent shall not be bound by any findings, conclusions, certifications or recommendations made by the consultant or the actuary. All information obtained by the superintendent pursuant to this section, including without limitation information obtained through examinations by him, the report of the consultant, the certification of the actuary, the memorandum of the actuary and other information secured by the consultant or the actuary 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 of such law. 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 of the public officers law, nor prohibit any disclosure which in the opinion of the superintendent, and after an opportunity for the insurer to be heard, the superintendent deems should be made public for the benefit of the insurer, its policyholders or the public. If the department intends to make any report or certification public, then such report or certification shall be made available to the company at least fifteen days prior to such public disclosure.

(6) Nothing contained in this section shall be construed to exclude any person or employee or member of an institution from the category of "disinterested person" solely because such individual is a policyholder of the insurer or that such person or institution is to be one of the underwriters of any shares to be sold pursuant to the plan of reorganization.

(i) Public hearing. The superintendent shall hold a public hearing upon the fairness of the terms and conditions of the plan of reorganization, the reasons and purposes for the mutual life insurer to demutualize, and whether the reorganization is in the interest of the mutual life insurer and its policyholders, and not detrimental to the public. Notice stating the time, place and purpose of the hearing shall be mailed by the mutual life insurer to each policyholder entitled to notice of the hearing in accordance with paragraph three of subsection

(e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed 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 by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require. In addition, the mutual life insurer shall give notice of the time, place and purpose of the hearing by publication in three newspapers of general circulation, one in the county in which the insurer has its principal office and two 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 a form approved by the superintendent.

(j) Approval of plan by superintendent. The superintendent shall after the public hearing required by subsection (i) of this section approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate this chapter, is fair and equitable to the policyholders and is not detrimental to the public and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the superintendent deems to be reasonably necessary for its future solvency. If approval is denied, the denial shall be in writing setting forth a statement of the reasons therefor and the mutual life insurer shall have the right to a hearing before the superintendent within thirty days of the date of such denial. The superintendent shall not disapprove of a plan of reorganization for the reason that the mutual life insurer selected one of the methods provided for in subsection (d) of this section rather than another. The superintendent shall approve or disapprove the plan in writing on or before sixty days after the conclusion of the public hearing required by subsection (i) of this section.

(k) Approval by policyholders. (1) A proposal to approve the plan of reorganization shall be submitted to policyholders. Notice stating the date, time and place for voting on such proposal shall be mailed by the mutual life insurer to each policyholder entitled to notice of and to vote on the proposal in accordance with paragraph three of subsection (e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed at least thirty

days before the date of the action. 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 by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require.

(2) Each policyholder entitled to vote on the proposal shall be entitled to cast one vote, unless otherwise provided in the charter or by-laws of the mutual life insurer, on the proposal, either in person or by mail or by proxy, irrespective of the number or amount of the policies or contracts 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. All votes shall be by written ballot cast in person or by mail by policyholders entitled to vote or by proxy agents duly appointed by policyholders entitled to vote. The voting on the proposal shall be held at the home office of the mutual life insurer. The polls shall be opened at ten o'clock in the forenoon and remain open until four o'clock in the afternoon of the day fixed for such voting, at which time they shall be closed. The proposal to approve the plan of reorganization may be adopted by the affirmative vote of two-thirds of all votes cast by policyholders entitled to vote.

(3) The superintendent shall have power to supervise and direct and prescribe rules governing the procedure for the conduct of the voting on the proposal 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 (A) the determination of policyholders entitled to notice of and to vote on the proposal; (B) the giving of notice of the proposal; (C) the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots; and (D) 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 voting on the proposal 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 policyholders, including representatives of policyholders favoring or opposing the approval of the plan, shall be entitled to be present during the 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 and expenses incurred in providing such representation shall not be a charge upon or paid from the funds of the mutual life insurer or the person responsible for the costs and expenses of the reorganization.

(6) Neither the mutual life insurer nor any officer, agent or employee thereof shall knowingly omit, from any list of policyholders entitled to notice of and to vote on the proposal, the name of any policyholder required to be included therein, or shall, in connection with any such list, knowingly omit to give the name and address, as last shown on the records of the mutual life insurer, of any policyholder. 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 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 or reorganization if such 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 inspectors for a period of four years, subject to the order of any court having jurisdiction of any proceedings relating thereto, and then shall be turned over to the mutual life insurer, or the reorganized insurer if the reorganization has become effective.

(8) The conduct of the voting on the proposal 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 mutual life insurer has its home office.

(9) The inclusion by the mutual life 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 the action by policyholders pursuant to this section.

(11) Upon the conclusion of the vote, the mutual life insurer shall submit to the superintendent (A) 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 mutual life insurer; (B) 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 mutual life insurer, or subscribed by the person or persons, if any, designated by the superintendent to supervise the giving of notice of the date for action on the proposal, to the effect that such notice was given in accordance with this section to all policyholders entitled to such notice; and (C) a certificate subscribed by the inspectors of the results of the vote, as evidenced by valid ballots received before the polls were closed. 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 mutual life insurer, shall be affirmed under the corporate seal of the mutual life insurer.

(l) Effective date of reorganization. When the superintendent has given his approval of the plan of reorganization as provided in subsection (j) of this section and certification of approval of the plan has been made to the superintendent as provided in subsection (k) 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. A copy of such plan certified by the

superintendent shall also be filed by the mutual life insurer in the office of the clerk of the county where the principal office of the mutual life 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 or determined in accordance with said plan or pursuant thereto. The superintendent shall issue an amended certificate of authority to the reorganized insurer and such license, if any, as may be required under section one thousand two hundred four of this chapter for the sale of its securities as specified in its plan of reorganization.

(m) Corporate existence. Upon the reorganization of the mutual life insurer in the manner herein provided, the reorganized insurer shall be deemed a continuation of the corporate existence of the mutual life insurer or, in the case of a merger, of the company specified in the plan of reorganization as the continuing company, which may be either the mutual life insurer or the domestic stock life insurer with which it is merged. All the rights, franchises and interests of the mutual life insurer and, in the case of a merger, of the domestic stock 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 continuing company, without any other deed or transfer; and simultaneously therewith such continuing company shall be deemed to have assumed all of the obligations and liabilities of the mutual life insurer and, in the case of a merger, of the domestic stock insurer, other than obligations and liabilities with respect to the policyholders' membership interest eliminated by the plan of reorganization.

(n) Actions and proceedings. No action or proceeding pending at the time of the reorganization to which the mutual life insurer may be a party shall be abated or discontinued by reason of such reorganization, but the same may be prosecuted to final judgment in the same manner as if the reorganization had not taken place, or the reorganized insurer may be substituted in place of such mutual life insurer by order of the court in which the action or proceeding may be pending.

(o) Directors and officers. The directors and officers of the mutual life insurer, unless otherwise specified in the plan of reorganization,

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.

(p) Costs and expenses. (1) The mutual life 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 mutual life 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 in connection with the plan of reorganization, other than normal operating expenses of the department.

(2) Such undertaking, other than a reorganization pursuant to paragraph one of subsection (d) of this section, shall also provide that no payment of costs and expenses by the mutual life 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, other than the policyholders' preference account referred to in paragraph two of subsection (d) of this section, to be paid to the policyholders pursuant to the plan of reorganization. The requirements of this paragraph may be waived in a reorganization pursuant to paragraphs three and four of subsection (d) of this section if the superintendent determines that it is in the policyholders' interest to do so.

(3) The said undertaking shall apply to costs and 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 given to policyholders pursuant to the plan shall not be deemed a cost or expense of the reorganization subject to this subsection nor to such undertaking.

(q) Notice of proposed reorganization. Notice of the pendency of the proposed reorganization and of the effect thereof shall be given by the mutual life insurer in a manner satisfactory to the superintendent to all persons to whom the mutual life insurer delivers policies or

contracts which are issued after the date on which the plan of reorganization is adopted by the mutual life insurer and before the plan takes effect or is withdrawn. Such persons shall have the right, unless the laws of their domiciliary state gives other rights, to rescind such policies or contracts, and to be refunded 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.

(r) Effect of reorganization. If the plan of reorganization takes effect, the rights of all policyholders thereafter shall be as specified in their policies or contracts, in the charter of the reorganized insurer and in the plan of reorganization, except for the elimination of the right to vote, if any, and they shall have no rights under the charter of the mutual life 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.

(s) Failure to give notice. If the mutual life insurer complies substantially and in good faith with the requirements of this section with respect to the giving of any required notice to 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.

(t) Limitation of actions; security. (1) Any action challenging the validity of or arising out of acts taken or proposed to be taken under this section must be commenced within one year after a copy of the plan of reorganization, with the superintendent's approval endorsed thereon, shall be filed in the office of the superintendent or six months from the effective date of the reorganization, whichever is later, or if the plan of reorganization is withdrawn, within six months of such withdrawal.

(2) In any action arising out of acts taken or proposed to be taken under this section, the mutual life insurer of the reorganized insurer shall be entitled at any stage of the proceedings before final judgment

to petition the court to require plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys' fees, which may be incurred by it in connection with such action and by any other parties defendant in connection therewith or for which the mutual life insurer or the reorganized insurer may become liable under this chapter, under any contract or otherwise by law, to which security the mutual life insurer or the reorganized insurer shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

(u) Modification or exchange of existing policies. Nothing in this section shall preclude either the mutual life insurer or the reorganized insurer, on compliance with all applicable requirements of this chapter, from offering at any time or from time to time to any class or category of policyholders to modify their policies or contracts or to exchange their policies or contracts for other policies or contracts in the manner set forth in the offer.

(v) Prohibitions on certain offers to acquire and acquisitions of shares. Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no person, other than the reorganized insurer or an institution referred to in subsection (b) of this section that is a part of the plan of reorganization as provided by said subsection (b) or an institution that is formed, with the approval of the superintendent, subsequent to the effective date of the reorganization in order to acquire all of the common shares of the reorganized insurer in a transaction where holders of common shares of the reorganized insurer receive all of the common shares of such institution on a basis that is proportionate to the number of common shares of the reorganized insurer held by each such holder, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, without the prior approval of the

superintendent. In the event of any violation of this subsection, or of any action which, if consummated, might constitute such a violation, (1) all voting securities of the reorganized insurer or of such institution acquired by any person in excess of the maximum amount permitted to be acquired by such person pursuant to this subsection shall be deemed to be non-voting securities of the reorganized insurer or of such institution, as the case may be, and (2) such violation or action may be enforced or enjoined, as the case may be, by appropriate proceeding commenced by the reorganized insurer, such institution or the superintendent, the attorney general or any policyholder or stockholder of the reorganized insurer or such institution on behalf of the reorganized insurer or such institution in the supreme court in the judicial district in which the reorganized insurer has its home office or in any other court having jurisdiction, and such court may issue any order, injunctive or otherwise, it finds necessary to cure such violation or to prevent such action. For the purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sole or shared power to vote, or direct the voting of, such security and/or the sole or shared power to dispose, or direct the disposition, of such security; the term "voting security" includes voting securities as defined in paragraph forty-five of subsection (a) of section one hundred seven of this chapter, any preorganization 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; the term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value; and the term "person" means an individual, group, firm, corporation, partnership, association, joint stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(w) Prohibited transactions by officers, directors or employees. (1) Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no officer, director or employee of the mutual insurer

or of the reorganized insurer, including family members and their spouses, shall directly or indirectly offer to acquire or shall acquire in any manner the beneficial ownership of any securities of the reorganized insurer or of the institution referred to in subsection (b) of this section unless the acquisition is (A) made pursuant to a stock option plan approved by the superintendent; (B) made pursuant to the plan of reorganization; (C) made by employees, including their family members and their spouses, from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase; or (D) made by officers or directors, including their family members and their spouses, at least two years after the initial public offering from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase.

(2) For purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sole or shared power to vote, or direct the voting of, such security and/or the sole or shared power to dispose, or direct the disposition, of such security.

(3) For purposes of this subsection, the term "securities", includes voting securities as defined in section one hundred seven of this chapter, any preorganization 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.

(4) For purposes of this subsection, the term "family member", includes a brother, sister, spouse, ancestor or descendant of the officer, director or employee of the mutual insurer or of the reorganized insurer.

(5) No officer, director or employee shall receive any fee or other consideration, other than regular salary, director fees, or consideration as a policyholder in connection with any proposed reorganization. This paragraph, however, shall not prohibit the mutual life insurer from compensating in cash any firm with which one of its directors is associated for services rendered in connection with any proposed reorganization.

(x) Effect on department personnel. Notwithstanding subsection (a) of

section five hundred one of the financial services law, the superintendent, any deputy or other employee of the department shall be permitted to receive and exercise any rights received as a policyholder in connection with a reorganization.