

§3477. Conversion of mutual to stock insurer

1. A mutual insurer may amend its charter pursuant to this section to become a stock insurer, or a combination stock and mutual insurer, under such reasonable plan and procedure as may be approved by the superintendent after a hearing thereon of which notice was given to the insurer, its directors or trustees, its officers, employees and its policyholders, all of whom shall have the right to appear and be heard at the hearing.

[PL 1985, c. 399, §3 (AMD).]

2. The superintendent shall not approve any such plan or procedure unless:

A. Its terms and conditions are fair and equitable; [PL 1969, c. 132, §1 (NEW).]

B. It is subject to approval by vote of not less than 2/3 of the insurer's policyholders voting thereon in person, by proxy, or by mail at a meeting of policyholders called for the purpose pursuant to such reasonable notice and procedure as may be approved by the superintendent and each such policyholder shall be entitled to one vote, provided that only persons who were policyholders both at least one year prior to the submission of the insurer's plan to the superintendent and on a subsequent date, found reasonable by the superintendent, prior to the vote shall be entitled to vote; provided that as to life insurers chartered by special Act prior to January 1, 1970, the persons entitled to vote shall be further limited to owners of life insurance policies and contracts, and those persons shall be entitled to one vote and to an additional vote for each \$1,000 of insurance above 1,000, except that in the case of any policy or contract of group life insurance or any group annuity contract providing life insurance, the employer or other person, firm, corporation or association, to whom or in whose name the master policy or contract shall have been issued or held, shall be deemed to be the owner within the meaning of this paragraph and shall be entitled to one vote for each such policy or contract of group life insurance or each such group annuity contract irrespective of the number of lives insured under that policy or contract; [PL 1985, c. 399, §4 (RPR).]

C. The equity of each member in the insurer is determinable under a fair and reasonable formula approved by the superintendent, which such equity shall be based upon the insurer's entire surplus as shown by the insurer's financial statement filed with the superintendent, including all voluntary reserves but excluding contingently repayable funds and outstanding guaranty capital shares at the redemption value thereof, and without taking into account the value of nonadmitted assets or of insurance business in force; [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

D. The plan gives to each member of the insurer as specified in paragraph E, a preemptive right to acquire the member's proportionate part of all of the proposed capital stock of the insurer, or all of the stock of a proposed parent corporation of the insurer, within a designated reasonable period, as such part is determinable under the plan of conversion, and to apply upon the purchase thereof the amount of the member's equity in the insurer as determined under paragraph C, except that the plan may provide, subject to the approval of the superintendent, that such preemptive right will not apply to members who reside in jurisdictions in which the issuance of stock is impossible, would involve unreasonable delay or would require the insurer to bear unreasonable costs, as long as any such member receives 100% of the member's equity share in the insurer in the form of a cash payment; [RR 2021, c. 1, Pt. B, §286 (COR).]

E. The members entitled to participate in the purchase of stock or distribution of assets shall include not less than all policyholders of the insurer as of the date the plan was submitted to the superintendent and each existing person who had been a policyholder of the insurer within 3 years prior to such date; [PL 1985, c. 399, §6 (AMD).]

F. Shares are to be offered to members at a price not greater than to be thereafter offered under the plan to others; [PL 1969, c. 132, §1 (NEW).]

G. The plan provides for payment to each member of the member's entire equity share in the insurer, with that payment to be made in cash or to be applied for or upon the purchase of stock to which the member is preemptively entitled, or both, except that with respect to each member who is not given the option of receiving the member's entire equity share in cash, the plan must provide that that member has the option to receive a reasonable portion of the member's equity share, as provided in the plan, but not in excess of 50% of the member's entire equity, in the form of a cash payment, which payment together with the amount applied to the purchase of stock constitutes full payment and discharge of the member's equity or property interest in that mutual insurer; and except that the superintendent may permit an insurer to forego the option of making a cash payment to members if the superintendent determines that it would be reasonable not to provide for the cash election, after taking into account all the facts and circumstances, including whether there is expected to be an active market for the stock to be received in the conversion; [RR 2021, c. 1, Pt. B, §287 (COR).]

H. The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in amount not less than 1/2 of such required capital stock; and [PL 1969, c. 132, §1 (NEW).]

I. The superintendent finds that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means sought to reduce, limit, or affect the number or identity of the insurer's members to be entitled to participate in such plan, or to secure for the individuals comprising management any unfair advantage through such plan. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]
[RR 2021, c. 1, Pt. B, §§286, 287 (COR).]

3. Any such combination stock and mutual insurer referred to in subsection 1 must have and maintain separate paid-in capital stock and basic surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.
[PL 1969, c. 132, §1 (NEW).]

4. Subsection 2 shall not be deemed to prohibit the inclusion in the conversion plan of provisions under which the individuals comprising the insurer's management and employee group shall be entitled to purchase for cash at the same price as offered to the insurer's members, shares of stock not taken by members on the preemptive offering to members, in accordance with such reasonable classification of such individuals as may be included in the plan and approved by the superintendent.
[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

5. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their usual regular salaries and compensation, for in any manner aiding, promoting or assisting in such conversion except as set forth in the plan approved by the superintendent. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants and actuaries for services performed in the independent practice of their professions, even though also directors of the insurer.
[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

6. Costs. For the purpose of determining whether a conversion plan meets the requirements of this section and any other relevant provisions of this Title, the superintendent may employ staff personnel and outside consultants. All reasonable costs related to the review of a plan of conversion, including those costs attributable to the use of staff personnel, shall be borne by the insurer or insurers making the filing.
[PL 1985, c. 399, §8 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1985, c. 399, §§3-8 (AMD). RR 2021, c. 1, Pt. B, §§286, 287 (COR).

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