

**§3489. Requirements applicable to a mutual holding company**

**1. Definitions.** As used in section 3488, this section and section 3490, unless the context otherwise indicates, the following terms have the following meanings.

A. "Mutual holding company" means a mutual holding company formed pursuant to section 3488. [PL 1999, c. 656, §5 (NEW).]

B. "Outside director" means a person who is not an officer, employee or consultant of the mutual holding company, a related stock holding company, the reorganized insurer or other subsidiary of the mutual holding company or a related stock holding company. [PL 1999, c. 656, §5 (NEW).]

C. "Public offering" means an offer that includes an offer to individuals that is made by means of public advertising or general solicitation. "Public offering" does not include:

- (1) Issuance of stock to the mutual holding company or any related stock holding company; or
- (2) An offer or sale that is exempt from registration by virtue of Title 32, section 16202, subsections 13, 15, 16, 19 or 26. [PL 2005, c. 65, Pt. C, §11 (AMD).]

D. "Reorganized insurer" means a mutual insurer reorganized as a stock insurer pursuant to section 3488. [PL 1999, c. 656, §5 (NEW).]

E. "Stock holding company" and "related stock holding company" mean an incorporated entity that holds, directly or indirectly, at least 51% of the voting stock of a reorganized insurer. [PL 1999, c. 656, §5 (NEW).]

F. "Voting stock" means common stock with general voting rights in the election of directors. [PL 1999, c. 656, §5 (NEW).]  
[PL 2005, c. 65, Pt. C, §11 (AMD).]

**2. Mutual holding company formed through reorganization.** The following provisions apply to a mutual holding company.

A. The provisions of Title 13-C that are applicable to a mutual insurer apply to a mutual holding company as though it were a mutual insurer. [RR 2001, c. 2, Pt. B, §44 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

B. A mutual holding company may not dissolve, liquidate or wind up except through proceedings under this Title for the liquidation or dissolution of the reorganized insurer or as the superintendent may otherwise approve. In the event proceedings are instituted for the complete liquidation of the reorganized insurer:

- (1) The mutual holding company automatically becomes a party to the proceedings;
- (2) All of the mutual holding company's assets, including its holdings of shares in the reorganized insurer or any stock holding company, are deemed assets of the estate of the reorganized domestic stock insurer to the extent necessary to satisfy claims of persons who have class 1, class 2, class 3 or class 4 claims under section 4379; and
- (3) Members of the mutual holding company are deemed to hold class 8 claims with respect to the mutual holding company under section 4379. [PL 1999, c. 656, §5 (NEW).]

C. The name of a mutual holding company must contain the word "mutual" and may not contain the words "insurance," "assurance" or "annuity." The mutual holding company's powers may not include doing insurance business. The articles of incorporation of a mutual holding company must contain provisions stating that:

- (1) It is "a mutual holding company organized under the Maine Revised Statutes, Title 24-A, section 3488";

- (2) A purpose of the mutual holding company is to hold, directly or through one or more stock holding companies, not less than 51% of the voting stock of a reorganized insurer;
- (3) It is not authorized to issue voting stock;
- (4) It is not authorized to conduct any business other than that of a holding company, except for the acquisition, ownership, management and disposition of its assets and all reasonably related actions; and
- (5) Its members have the rights specified in, and are subject to, sections 3360, 3361, 3362, 3363, 3488, this section, the mutual holding company's articles of incorporation and its bylaws. [PL 1999, c. 656, §5 (NEW).]
- D. At least a majority of the directors of the mutual holding company and any related stock holding company and any committee of the board of directors of the mutual holding company and of any related stock holding company must be outside directors. [PL 1999, c. 656, §5 (NEW).]
- E. Each time voting stock of the reorganized insurer or any related stock holding company is offered in a public offering for a price payable in cash, each policyholder of the reorganized insurer must receive, without payment, nontransferable subscription rights to purchase that voting stock at the same price and in accordance with procedures approved by the superintendent as fair and equitable. [PL 1999, c. 656, §5 (NEW).]
- F. At least 30 days before the issuance of any voting stock or securities convertible into voting stock of the reorganized insurer or any related stock holding company, other than in an underwritten public offering or a bona fide sale to an unrelated 3rd party, the reorganized insurer or related stock holding company shall provide to the superintendent written notice of the proposed price of those securities or the procedure whereby the price will be determined and the terms and conditions of the offering. The superintendent may disapprove the issuance of the stock or securities if the superintendent finds that the price is unfair. The superintendent's failure to make a finding on a transaction subject to this paragraph within 30 days after it has been filed with the superintendent has the effect of an approval unless the superintendent has requested supplemental information or issued a notice of hearing. [PL 1999, c. 656, §5 (NEW).]
- G. The stock holding company or the reorganized insurer may not award any stock options or stock grants to officers or directors of the mutual holding company, the stock holding company or the reorganized insurer until 6 months after the completion of either a public offering or private placement of voting stock or securities convertible into voting stock of the reorganized insurer or a related stock holding company to any person other than the mutual holding company or the stock holding company. [PL 1999, c. 656, §5 (NEW).]
- H. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or controlled by outside directors may not exceed 18%, unless the reorganized insurer or the related stock holding company has provided at least 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. [PL 1999, c. 656, §5 (NEW).]
- I. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or controlled by directors and officers of the mutual holding company, a related stock holding company or the reorganized insurer who are also employed by any of the foregoing may not exceed 18% of the voting stock of the reorganized insurer or any related stock holding company, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. [PL 1999, c. 656, §5 (NEW).]
- J. A trust established in connection with an employee stock ownership plan or other employee benefit plan established for the benefit of employees of the reorganized insurer, a related stock

holding company or the mutual holding company may not directly or indirectly own or control, in the aggregate, more than 10% of the voting stock of the stock holding company or the reorganized insurer, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. The holdings of any such employee stock ownership plan or other employee benefit plan that are allocated to directors and officers who are employees must be included in determining compliance with paragraph I. [PL 1999, c. 656, §5 (NEW).]

K. A person may not own or control, directly or indirectly, more than 15% of any class of voting stock of the reorganized insurer or any related stock holding company without the prior approval of the superintendent. [PL 1999, c. 656, §5 (NEW).]

L. All voting stock of the reorganized insurer or any related stock holding company acquired by any person in excess of the maximum amount permitted to be acquired by that person pursuant to this subsection is deemed to be nonvoting stock for so long as it is held by any person in excess of those limitations. In addition to any other enforcement powers of the superintendent under this Title, a violation of the limitations of ownership may be enforced or enjoined, as the case may be, by appropriate proceedings commenced by the reorganized insurer or any related stock holding company, the superintendent, the attorney general, any member of the mutual holding company or any stockholder of the reorganized insurer or of any related stock holding company. The action must be commenced in the Kennebec County Superior Court or the superior court in the jurisdiction of which the reorganized insurer has its home office, and the court may issue any order, injunctive or otherwise, that it finds necessary to cure the violation or to prevent the action. [PL 1999, c. 656, §5 (NEW).]

M. A mutual holding company and a related stock holding company are each deemed to be a holding company of the reorganized insurer within the meaning of section 222, and all provisions of that section apply to transactions occurring between the mutual holding company, the stock holding company and the reorganized insurer. Approval of the plan of reorganization by the superintendent pursuant to section 3488 is considered approval of the acquisition of control by a mutual holding company and any related stock holding company under sections 222 and 3476. [PL 1999, c. 656, §5 (NEW).]

N. For purposes of the limitations on ownership or control of voting stock contained in this subsection, any issued and outstanding securities that represent the right to acquire or that are convertible into voting stock, including warrants, options and rights to purchase voting stock, are deemed to represent the number of shares of voting stock issuable upon conversion or exercise of such securities or rights for the purposes of both the number of shares owned or controlled by a person and the total number of shares of voting stock outstanding.

For purposes of determining ownership or control of voting stock, the indirect ownership of stock in the reorganized insurer by virtue of having an ownership interest in the mutual holding company may not be considered. [PL 1999, c. 656, §5 (NEW).]

[RR 2001, c. 2, Pt. B, §44 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

**3. Merger or consolidation by mutual holding company or stock holding company.** With the written approval of the superintendent, a mutual holding company or stock holding company may:

A. Merge or consolidate with or acquire the assets of a mutual holding company organized pursuant to this chapter or pursuant to the mutual holding company laws of another state; [PL 1999, c. 656, §5 (NEW).]

B. Either alone or together with one or more of the reorganized insurers or stock holding companies or subsidiaries of any of them, merge or consolidate with or acquire the assets of a mutual insurer; or [PL 1999, c. 656, §5 (NEW).]

C. Merge or consolidate with any other person. [PL 1999, c. 656, §5 (NEW).]  
[PL 1999, c. 656, §5 (NEW).]

**4. Merger with another mutual holding company.** If a mutual holding company merges with a mutual holding company organized under the laws of another state or acquires the membership interests in a foreign mutual insurer, that merger or acquisition must comply with the requirements of Maine law and rules and of any other state's law, rule or regulation that is applicable to the foreign mutual holding company or mutual insurer. In the event of a conflict of state laws, rules or regulations, Maine laws and rules apply. A foreign mutual insurer that is merged or acquired pursuant to this section may at the same time redomesticate to this State by complying with the applicable requirements of this State and of the foreign mutual insurer's state of domicile.  
[PL 1999, c. 656, §5 (NEW).]

**5. Acquisition of stock or assets of other persons.** A mutual holding company may acquire the capital stock or assets of other persons.  
[PL 1999, c. 656, §5 (NEW).]

**6. Membership interest.** A membership interest in a mutual holding company does not constitute a security under Title 32, section 16102, subsection 28 or any other law of this State and is not transferable.  
[PL 2005, c. 65, Pt. C, §12 (AMD).]

**7. Election of directors.** Directors of the mutual holding company must be elected by plurality vote of all members voting in that election in person or by proxy. If the mutual holding company takes any action, other than election of its directors, that would require a vote of policyholders if the mutual holding company were a mutual insurer, then that action requires a vote of members of the mutual holding company.  
[PL 1999, c. 656, §5 (NEW).]

#### SECTION HISTORY

PL 1999, c. 656, §5 (NEW). RR 2001, c. 2, §B44 (COR). RR 2001, c. 2, §B58 (AFF). PL 2005, c. 65, §§C11,12 (AMD).

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