

304.24-605 Application for approval of plan of conversion -- Actuarial opinion.

- (1) The converting mutual shall file with the commissioner an application for approval of the plan of conversion.
- (2) The application shall consist of the following:
 - (a) The plan of conversion;
 - (b) A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;
 - (c) A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;
 - (d) A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;
 - (e) Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;
 - (f) Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;
 - (g) Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;
 - (h) A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;
 - (i) Copies of the current articles of incorporation and bylaws of the converting mutual;
 - (j) Copies of any proposed articles of incorporation and bylaws of the former mutual;
 - (k) A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:
 1. The individual's principal occupation;
 2. All offices and positions the individual has held in the preceding five (5) years;
 3. Any criminal convictions of the individual;

4. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;
 5. Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;
 6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;
 7. Information concerning the revocation of any state or federal license issued to the individual; and
 8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.
- (l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;
- (m) An actuarial opinion and supporting memorandum;
- (n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:
1. Appointing a registrar and transfer agent for the stock or other securities;
 2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;
 3. Listing the stock or other securities on a national or other securities exchange;
 4. Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;
 5. Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and
 6. Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with

- discounted brokerage commissions or fees;
- (o) Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and
 - (p) Any other additional information, documents, or materials that the commissioner may request in writing.
- (3) (a) The actuarial opinion shall address whether:
- 1. The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;
 - 2. The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;
 - 3. The financial condition of the former mutual will not be adversely diminished; and
 - 4. If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.
- (b) The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.
- (c) The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1352, effective July 15, 2010. -- Created 2000 Ky. Acts ch. 42, sec. 4, effective July 14, 2000.