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> Mutual Property and Casualty Insurance Company with Non-mutual Policyholders Conversion Regulations

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INSURANCE COMPANIES ACT

## Mutual Property and Casualty Insurance Company with Non-mutual Policyholders Conversion Regulations

P.C. 2015-860 June 18, 2015

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsections 237(2) to (3) (see footnote a) and section 1021 (see footnote b) of the *Insurance Companies Act* (see footnote c), makes the annexed *Mutual Property and Casualty Insurance Company with Non-mutual Policyholders Conversion Regulations*.

### MUTUAL PROPERTY AND CASUALTY INSURANCE COMPANY WITH NON-MUTUAL POLICYHOLDERS CONVERSION REGULATIONS

#### INTERPRETATION

##### Definitions

1. The following definitions apply in these Regulations.

“Act”

« Loi »

“Act” means the *Insurance Companies Act*.

“conversion”

« transformation »

“conversion” means the conversion of a mutual property and casualty insurance company into a company with common shares.

“converted company”

« société transformée »

“converted company” means a property and casualty insurance company that was a mutual company and has been converted into a company with common shares and, except for the purpose of paragraphs 13(1)(g), 14(2)(n) and 16(2)(i), includes a holding corporation of that company.

“converting company”

« société en transformation »

“converting company” means a mutual property and casualty insurance company whose directors have passed a resolution under section 3 recommending conversion of the company.

“eligibility date”

« *date d’admissibilité* »

“eligibility date” means the date on which the directors of a mutual property and casualty insurance company pass a resolution under section 3 recommending conversion of the company.

“eligible mutual policyholder”

« *souscripteur admissible d’une police mutuelle* »

“eligible mutual policyholder” means a person who holds a mutual policy if

(a) they held it on the eligibility date;

(b) they applied for it before the date specified in the resolution passed under section 3 and it was issued after the eligibility date but before the day on which the special resolution referred to in section 5 is passed; or

(c) they held it before the eligibility date but it lapsed before that date and was reinstated after that date but before the day on which the special resolution referred to in section 5 is passed.

“eligible non-mutual policyholder”

« *souscripteur admissible d’une police non mutuelle* »

“eligible non-mutual policyholder” means a person who

(a) holds a non-mutual policy and has done so for the 12-month period ending on the eligibility date; or

(b) belongs to any other group of policyholders specified in the resolution passed under section 3.

“eligible policyholder”

« *souscripteur admissible* »

“eligible policyholder” means

(a) an eligible mutual policyholder; or

(b) an eligible non-mutual policyholder.

“holding corporation”

« *société mère* »

“holding corporation” means a body corporate that is incorporated as a company under the Act and that holds all of the voting shares of a converted company.

“independent”

« *indépendant* »

“independent” means, in respect of an actuary, financial market expert or valuation expert, that the actuary, financial market expert or valuation expert

(a) does not have a conflict of interest with a converting company, any of its eligible policyholders or any persons or classes of persons who are to be provided with benefits as a result of a conversion;

(b) is not a related party of the converting company; and

(c) is appointed on mutual agreement of the converting company and the two policyholder committees.

“mutual policy”  
« *police mutuelle* »

“mutual policy” means a policy the holding of which entitles its holder to vote at all policyholder meetings of a converting company, but does not include a policy issued or assumed by a company with common shares that amalgamated with a mutual company after the eligibility date.

“mutual property and casualty insurance company”  
« *société mutuelle d’assurances multirisques* »

“mutual property and casualty insurance company” means a mutual company that is also a property and casualty company.

“non-mutual policy”  
« *police non mutuelle* »

“non-mutual policy” means a policy, other than a mutual policy, that is issued by a mutual property and casualty insurance company.

“related party”  
« *personne apparentée* »

“related party” has the meaning assigned by section 518 of the Act.

“value of the converting company”  
« *valeur de la société en transformation* »

“value of the converting company” means the estimated market value or range of market values of a converting company, excluding

- (a) the value of capital contributions made at the time of incorporation as a mutual property and casualty insurance company;
- (b) amounts recorded in any account maintained under section 70 or 83.04 of the Act; and
- (c) any expenses expected to be incurred to effect the conversion.

## APPLICATION

### Companies with non-mutual policyholders

**2.** These Regulations apply to mutual property and casualty insurance companies in which some of the policyholders hold non-mutual policies.

## INITIATION OF CONVERSION PROCESS

### Resolution of directors

**3.** If the directors of a mutual property and casualty insurance company wish to pursue its conversion, they must pass a resolution recommending conversion and setting out

- (a) a date before the eligibility date by which any mutual policy that will be issued after the eligibility date and before the day on which the special resolution referred to in section 5 is passed must have been applied for so that its holder qualifies as an eligible mutual policyholder; and
- (b) any group of policyholders who hold non-mutual policies — other than those who have held their policies for the 12-month period ending on the eligibility date — who are to qualify as eligible non-mutual policyholders.

## Before special meeting of eligible policyholders

**4.** Before seeking authorization from the Superintendent to send a notice referred to in paragraph 237(1.2) (a) of the Act, a converting company must ensure that a conversion proposal has been developed in accordance with sections 5 to 13 and that the right to vote on that conversion proposal and on the authorization referred to in paragraph 237(1.1)(c) of the Act has been extended to all eligible non-mutual policyholders at a special meeting referred to in section 14.

## NEGOTIATIONS BETWEEN CLASSES OF POLICYHOLDERS

### Vote to negotiate

**5.** Not less than 30 days after the eligibility date, the eligible mutual policyholders must vote by special resolution on whether to negotiate, with the eligible non-mutual policyholders, the elements referred to in section 12.

### Authorization to send notice of intent to negotiate

**6. (1)** Within 30 days of an affirmative vote under section 5, a converting company must, for the purpose of obtaining the Superintendent's authorization to send to its eligible policyholders a notice of intent to negotiate, submit to the Superintendent the notice, which must

(a) indicate that the eligible mutual policyholders have passed a special resolution authorizing the negotiations referred to in section 12 with the eligible non-mutual policyholders and set out the criteria for determining who qualifies as an eligible mutual policyholder or eligible non-mutual policyholder;

(b) indicate when and how all necessary information relevant to the conversion process will be published on the converting company's website and how the policyholders may request to receive that information by mail; and

(c) contain a summary of the conversion process.

### Sending and publication of notice

(2) On receipt of the Superintendent's authorization, the converting company must send the notice to all of its eligible policyholders and publish it on its website.

### Application for initial court order

**7. (1)** Not less than 30 days and not more than 45 days after the day on which a notice is sent under subsection 6(2), the converting company must file with the court an application for an initial order.

### Content of initial order

(2) Within 60 days after the filing of the application, the court must make an initial order setting out

(a) any information and documents that the converting company must publish on its website in addition to those required by these Regulations;

(b) the procedures for making applications or filing submissions for the purpose of subsections 8(1) and (5) and 9(1), (3) and (5);

(c) the manner of effecting service for the purpose of subsections 8(3) and 9(3);

(d) the date, time and location of the hearings referred to in subsections 8(6) and 9(6); and

(e) the procedures for submitting costs and expenses to the court for the purpose of section 11.

### Subsequent orders

(3) The court may make any subsequent order that it considers necessary to ensure the efficiency, transparency and fairness of the negotiations referred to in section 12.

#### Publication on website

(4) A converting company must publish on its website all orders made by the court for the purpose of these Regulations.

#### Application by counsel

**8.** (1) A member in good standing of the bar — or of the Chambre des notaires du Québec — of the province in which the application for the initial order is made may apply to the court, in the time and manner set out in the initial order, to be appointed as counsel for either the eligible mutual policyholders or the eligible non-mutual policyholders of a converting company in respect of the negotiations referred to in section 12.

#### Restrictions

(2) Counsel must not have any interest that is in conflict with that of the class of policyholders they seek to represent and must not be an officer, employee or related party of the converting company.

#### Service

(3) Counsel who submit an application under subsection (1) must serve a copy of it on the converting company.

#### Publication

(4) The converting company must publish on its website the names of all counsel who have submitted applications under subsection (1) for each class of policyholders, as well as the content of their applications or a summary of their experience.

#### Objections

(5) Eligible policyholders may file, in the time and manner set out by the court in the initial order, an objection to the candidacy of any counsel who has submitted an application.

#### Appointment

(6) The court must appoint counsel for each of the two classes of policyholders and must notify the converting company of its decision following a hearing at which the court assesses the ability of each applicant to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account their experience in financial law, corporate law, securities law or mediation and arbitration and by having regard to any objections filed under subsection (5).

#### Publication

(7) The converting company must publish on its website the name and contact information of the selected counsel for each class of policyholders.

#### Communication

(8) All communication with the policyholder committees is to be made through counsel for the class of policyholders that the committee represents.

#### Duration of appointment

(9) Counsel's appointment ends on the day on which the notice referred to in subsection 14(1) is sent or the day on which the conversion process is terminated, whichever is earlier.

#### Committee membership

9. (1) Any eligible policyholder may submit to counsel for the class of policyholders to which they belong, in the time and manner set out in the initial order, an application for membership on the policyholder committee for that class.

#### Restrictions

(2) Applicants must not have any interest that is in conflict with that of the eligible policyholders they seek to represent and must not be an officer, employee or related party of the converting company.

#### Filing and service

(3) Counsel must file with the court all applications received under subsection (1) and must serve on counsel for the other class of policyholders and on the converting company the names of the applicants from the class of policyholders they represent.

#### Publication

(4) The converting company must publish on its website the names of all applicants for membership on each policyholder committee.

#### Objections

(5) Any eligible policyholder or counsel for a class of policyholders may file, in the time and manner set out by the court in the initial order, an objection to the candidacy of a policyholder who has submitted an application for membership on a policyholder committee.

#### Appointment

(6) The court must appoint at least three and not more than nine eligible policyholders to be members of each policyholder committee and must notify the converting company and counsel for the class of policyholders represented by that committee of its decision following a hearing at which the court assesses the ability of each applicant to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account their experience in negotiations and business and financial affairs and by having regard to any objections filed under subsection (5).

#### Publication

(7) The converting company must publish on its website the names of the members of each policyholder committee.

#### Obligations of company in respect of policyholder committee members

(8) In any legal proceeding, the converting company is bound to take up the interest for and assume the defence of any member of the policyholder committees for anything done or omitted to be done in good faith in the performance of their functions and, if applicable, indemnify that member.

#### Duration of representation

(9) The policyholder committees are disbanded on the day on which the notice referred to in subsection 14(1) is sent or the day on which the conversion process is terminated, whichever is earlier.

#### Provision of information

**10. (1)** A converting company must, subject to the *Supervisory Information (Insurance Companies) Regulations* and the *Supervisory Information (Insurance Holding Companies) Regulations*, provide to counsel for each class of policyholders whatever information or documents they reasonably require to facilitate the negotiations referred to in section 12.

#### Access to information and documents

(2) Any information or document that the converting company provides to counsel for one class of policyholders must be provided to counsel for the other class.

#### Confidentiality

(3) The court may make orders respecting the confidentiality of information provided by the converting company and determine under what circumstances the information can be used or disclosed.

#### Costs payable by converting company

**11. (1)** The court must determine, having regard to their reasonableness, the amounts payable by a converting company in relation to the negotiations referred to in section 12, including the costs of counsel and any experts consulted by the policyholder committees, remuneration for policyholder committee members and reimbursement of their expenses for travel, accommodation and meals in respect of attendance at policyholder committee meetings.

#### Payment

(2) All amounts determined by the court must be paid by the converting company no later than the day on which it seeks the Superintendent's authorization to send the notice referred to in paragraph 237(1.2)(a) of the Act or the day on which the conversion process is terminated under section 21, whichever comes first, or on any other day that the court may set.

## METHOD AND BENEFITS

#### Purpose of negotiations

**12. (1)** The policyholder committees, with the assistance of the counsel appointed by the court, must enter into negotiations to establish the method of allocating the value of the converting company and to determine whether any benefits will be provided to any persons or classes of persons — other than eligible policyholders — as a result of the conversion.

#### Method of allocating value of converting company

(2) The method of allocating the value of the converting company among eligible policyholders and, as the case may be, any persons or classes of persons — other than eligible policyholders — must be described in detail and set out

- (a) the basis on which any variable amount of benefits will be calculated;
- (b) any fixed, minimum or maximum amount of benefits to be provided to each of them;
- (c) the rationale for choosing the method of determining and allocating the benefits; and
- (d) the aggregate value of the benefits.

#### Calculation of variable amount

(3) The variable amount of benefits referred to in paragraph (2)(a) must, in respect of each eligible policyholder, be calculated having regard to at least the following factors:

- (a) their obligations, rights and benefits;

- (b) the premiums paid by them;
- (c) the length of time they have held a policy with the company; and
- (d) the historical growth of the company's surplus account.

#### Persons or classes of persons other than eligible policyholders

(4) If benefits will be provided to any persons or classes of persons — other than eligible policyholders — as a result of the conversion, the policyholder committees must establish a list of those persons or classes of persons to whom benefits will be provided including, any persons or classes of persons suggested by the converting company and approved by the policyholder committees.

#### Approval by policyholder committees

(5) The method of allocating the value of the converting company and, if any, the list of persons or classes of persons — other than eligible policyholders — are considered approved by the two policyholder committees once at least two thirds of the members of each committee approve them.

## CONVERSION PROPOSAL

#### Contents of conversion proposal

**13. (1)** A converting company must develop a conversion proposal that includes

- (a) a report setting out the value of the converting company as estimated by the company and a description of the method used and any assumptions made in estimating that value;
- (b) the eligibility date;
- (c) the list of persons or classes of persons — other than eligible policyholders — approved under subsection 12(5), if any;
- (d) a detailed description of the benefits to be provided to eligible policyholders and the persons or classes of persons referred to in paragraph (c);
- (e) the detailed description of the method approved under subsection 12(5);
- (f) a description of the mechanisms proposed to effect an initial issuance of common shares or any other class of shares, including a copy of the proposed by-law authorizing the issuance of those shares;
- (g) if shares in the converted company are to be issued to a holding corporation, a description of the proposed activities of the holding corporation;
- (h) if shares have been issued and remain outstanding immediately prior to the effective date of the conversion, a statement describing how those shares will be converted into common shares following conversion;
- (i) if the benefits referred to in paragraph (d) include shares, a description of the measures to be taken by the converted company, in the two years following the effective date of the conversion, to assist the eligible policyholders and the persons or classes of persons referred to in paragraph (c) who receive the shares to sell those shares on a public market and to address any potential imbalances that may arise between the volume of shares offered for sale by them and the volume of shares sought for purchase by public market participants;
- (j) a description of how the measures referred to in paragraph (i) would be affected if the converted company were to issue additional shares in the two years following the effective date of the conversion; and
- (k) a statement that the directors of the converting company may terminate the conversion process at any time before letters patent of conversion are issued.

#### Valuation day



(2) The Superintendent is authorized to specify the day at which the value of a converting company must be estimated by the converting company.

## SPECIAL MEETING OF ELIGIBLE MUTUAL POLICYHOLDERS

### Superintendent's authorization

**14.** (1) Once the conversion proposal is completed, a converting company must obtain the Superintendent's authorization to send to the eligible mutual policyholders a notice of a special meeting at which the eligible mutual policyholders may vote by special resolution on whether to amend the company's by-laws to permit all eligible non-mutual policyholders to vote on the conversion proposal and on the authorization referred to in paragraph 237(1.1)(c) of the Act.

### Information and documents to Superintendent

(2) To obtain the Superintendent's authorization, the converting company must submit to the Superintendent

- (a) the conversion proposal, as well as the description of the conversion proposal that is to be included in the notice sent to eligible policyholders under paragraph 237(1.2)(a) of the Act;
- (b) an opinion prepared by the actuary of the converting company and an opinion prepared by an independent actuary stating
  - (i) that the benefits referred to in paragraph 13(1)(d) and the method referred to in paragraph 13(1)(e) are fair and equitable to the eligible policyholders, and
  - (ii) that the financial strength and vitality of the converting company and the security of its policyholders with respect to the continuation of their policies will not be materially adversely affected by the conversion;
- (c) an opinion prepared by an independent valuation expert stating that the method and assumptions referred to in paragraph 13(1)(a) that were employed to estimate the value of the converting company are appropriate and that the estimated value reasonably reflects prevailing market conditions as of the day the value was estimated;
- (d) if other benefits are to be provided in lieu of shares, an opinion prepared by an independent actuary or an independent valuation expert stating that the alternative benefits are appropriate substitutes for the shares as of the day the value of the converting company was estimated;
- (e) an opinion prepared by an independent financial market expert stating that the measures referred to in paragraph 13(1)(i) are likely to assist the eligible policyholders and the persons or classes of persons referred to in paragraph 13(1)(c) who receive the shares to sell those shares on a public market and to address any potential imbalances that may arise between the volume of shares offered for sale by them and the volume of shares sought for purchase by public market participants;
- (f) the annual statement for the most recently completed financial year of the converting company, in addition to the reports required by the Act for that year, prepared by the converting company's auditor and actuary;
- (g) if the notice of the special meeting is to be sent to the eligible mutual policyholders more than 120 days after the end of the most recently completed financial year of the converting company, financial statements for the portion of the current financial year ending prior to a day that is not more than 120 days before the day on which the notice is sent, and the converting company's auditor's comfort letter in respect of those statements;
- (h) pro forma financial statements of the future converted company showing the effect of the conversion and any other significant transactions contemplated in relation to the conversion, including any proposed initial public offering of common shares, based on

- (i) the annual statement for the most recently completed financial year, or
  - (ii) in the circumstances referred to in paragraph (g), the financial statements for the portion of the current financial year referred to in that paragraph;
- (j) the compilation report of the converting company's auditor, and a statement of reconciliation, in respect of the financial statements referred to in paragraph (h);
  - (j) a detailed description of any significant transaction contemplated in relation to the conversion;
  - (k) if the converted company is required under the laws of any jurisdiction in which it carries on business to file a prospectus in respect of its issuance of shares to eligible policyholders or the persons or classes of persons referred to in paragraph 13(1)(c), a copy of that prospectus;
  - (l) the proposed resolution to amend the company's by-laws to permit all eligible non-mutual policyholders to vote on the conversion proposal;
  - (m) the special resolutions referred to in subsection 237(1.5) of the Act to be proposed subsequently at a special meeting of eligible policyholders;
  - (n) if shares in the converted company are to be issued to a holding corporation, a copy of the holding corporation's existing or proposed incorporating instrument and by-laws;
  - (o) the summaries referred to in paragraph 15(h); and
  - (p) the notice of the special meeting, as well as the information and documents referred to in section 15 and the form of proxy and any management proxy circular to be sent with the notice.

#### Financial statement requirements

(3) The financial statements referred to in paragraphs (2)(g) and (h) must be

- (a) prepared in accordance with the accounting principles referred to in subsection 331(4) of the Act; and
- (b) accompanied by a report of the chief financial officer of the converting company stating that the financial statements have not been audited but have been prepared in accordance with the accounting principles referred to in subsection 331(4) of the Act.

#### Decision to authorize

(4) In deciding whether to authorize the sending of the notice, the Superintendent must consider the information and documents submitted under subsection (2) and may consider any additional information or documents relating to the converting company or any aspect of the conversion proposal.

#### Deadline

(5) The conversion proposal and the opinions referred to in paragraph (2)(b) must be submitted no later than one year after the day on which the court appoints the members of the policyholder committees.

#### Conditions of authorization

(6) As a condition of authorizing the sending of the notice, the Superintendent may require

- (a) that any information that the Superintendent considers appropriate, in addition to that required under section 15, be sent with the notice; and
- (b) that the converting company
  - (i) hold one or more information sessions for the eligible mutual policyholders prior to the holding of the special meeting, for which the rules may be set by the Superintendent, and
  - (ii) take any other measures that the Superintendent considers appropriate to assist the eligible mutual policyholders in forming a reasoned judgment on the special resolution.

**Information and documents to eligible mutual policyholders****15.** The notice referred to in subsection 14(1) must be sent with

- (a) a description of the steps that have been taken in the conversion process and the steps that are to be taken;
- (b) the conversion proposal and description referred to in paragraph 14(2)(a);
- (c) a description of the advantages and disadvantages of the proposed conversion to the converting company and to its policyholders;
- (d) a description of the alternatives to conversion that the directors of the converting company have considered and the reasons why, in their opinion, the conversion is in the best interests of the company and its policyholders;
- (e) a description of the form, amount and estimated market value or range of market values of the benefits to be provided as a result of the conversion to the eligible policyholder to whom the notice is sent;
- (f) a description of any right of policyholders to vote after the conversion, as policyholders or shareholders of the converted company;
- (g) for each jurisdiction in which at least one per cent of all eligible policyholders reside, a description of the income tax treatment accorded the benefits referred to in paragraph (e) in that jurisdiction;
- (h) summaries of
  - (i) the opinions referred to in paragraphs 14(2)(b) to (e), other than those that are subject to an exemption under section 22, and
  - (ii) the documents referred to in paragraph 14(2)(n);
- (i) the financial statements referred to in paragraphs 14(2)(f) to (h), other than those that are subject to an exemption under section 22;
- (j) the documents referred to in paragraphs 14(2)(i) and (j), other than those that are subject to an exemption under section 22;
- (k) a brief description of the business carried on by the converting company and its subsidiaries, and the general development of that business, during the three years preceding a day that is not more than 120 days before the day on which the notice is sent to the eligible mutual policyholders, and any future business foreseen as of that day;
- (l) a brief description of any substantial variations in the operating results of the converting company during the three most recently completed financial years preceding the notice and, if the notice is sent to the eligible mutual policyholders more than 120 days after the end of the most recently completed financial year of the converting company, during the portion of the current financial year ending on a day that is not more than 120 days before the day on which the notice is sent;
- (m) the names of all persons who, on the day on which the notice is sent to the eligible mutual policyholders, have a significant interest in the converting company or who, as a result of the conversion, will have a significant interest in the converted company, and a description of the type and number of shares held or to be held by those persons;
- (n) the name and address of the converted company's auditor;
- (o) the names and addresses of the proposed transfer agents and registrars;
- (p) the proposed location for the securities registers for the initial issuance of common shares;
- (q) a description of any sales by the converting company, within the 12 months preceding a day that is not more than 120 days before the day on which the notice is sent to the eligible mutual policyholders, of securities of the same type as those to be provided as benefits to the eligible

policyholders under the conversion proposal;

(r) a copy of any prospectus referred to in paragraph 14(2)(k);

(s) a description of the restrictions set out in sections 23 and 24 and of any plans that the converting company has for the establishment of stock option or stock incentive plans for the persons referred to in those sections after the period referred to in section 24;

(t) a description of any measures, including the establishment of toll-free lines and websites, the holding of information sessions, and the placement of advertisements in widely circulated publications, that the converting company will take before holding a special meeting referred to in subsection 237(1.1) of the Act to provide eligible policyholders with information about the proposed conversion and an opportunity to raise questions or concerns about the proposed conversion;

(u) a description of the measures that the converting company will take to encourage eligible policyholders to vote on the conversion proposal, in person or by proxy, at the special meeting referred to in subsection 237(1.1) of the Act;

(v) an indication of the eligible mutual policyholders' right under section 164.01 of the Act to appoint a proxyholder to attend and act at the special meeting on their behalf; and

(w) any other information that the Superintendent has required under paragraph 14(6)(a).

## SPECIAL MEETING OF ELIGIBLE POLICYHOLDERS

### Superintendent's authorization

**16.** (1) Once a converting company's by-laws are amended to permit the eligible non-mutual policyholders to vote on the conversion proposal and on the authorization referred to in paragraph 237(1.1)(c) of the Act, the converting company must obtain the Superintendent's authorization to send the notice referred to in paragraph 237(1.2)(a) of the Act.

### Information and documents to Superintendent

(2) To obtain the Superintendent's authorization, the converting company must submit to the Superintendent

(a) if the notice is to be sent to eligible policyholders more than 120 days after the end of the most recently completed financial year of the converting company, financial statements for the portion of the current financial year ending prior to a day that is not more than 120 days before the day on which the notice is sent, and the converting company's auditor's comfort letter in respect of those statements;

(b) pro forma financial statements of the future converted company showing the effect of the conversion and any other significant transactions contemplated in relation to the conversion, including any proposed initial public offering of common shares, based on

(i) the annual statement for the most recently completed financial year, or

(ii) in the circumstances referred to in paragraph (a), the financial statements for the portion of the current financial year referred to in that paragraph;

(c) the compilation report of the converting company's auditor, and a statement of reconciliation, in respect of the financial statements referred to in paragraph (b);

(d) a detailed description of any significant transaction contemplated in relation to the conversion;

(e) the notice of the special meeting, as well as the information and documents referred to in section 17 and the form of proxy and any management proxy circular to be sent with the notice;

(f) if the converted company is required under the laws of any jurisdiction in which it carries on business to file a prospectus in respect of its issuance of shares to the eligible policyholders or the persons or classes of persons referred to in paragraph 13(1)(c), a copy of that prospectus;

- (g) a copy of the by-laws of the converting company indicating the amendments that have been made to them to permit all eligible non-mutual policyholders to vote on the conversion proposal;
- (h) the proposed special resolutions referred to in subsection 237(1.5) of the Act;
- (i) if shares in the converted company are to be issued to a holding corporation, a copy of the holding corporation's existing or proposed incorporating instrument and by-laws;
- (j) the summaries referred to in paragraph 17(h); and
- (k) evidence that all amounts determined by the court under section 11 have been paid by the converting company.

#### Information and documents already submitted

(3) The converting company is not required to resubmit to the Superintendent any information or document referred to in subsection (2) that is unchanged from that submitted to the Superintendent under subsection 14(2).

#### Financial statement requirements

(4) The financial statements referred to in paragraphs (2)(a) and (b) must be

- (a) prepared in accordance with the accounting principles referred to in subsection 331(4) of the Act; and
- (b) accompanied by a report of the chief financial officer of the converting company stating that the financial statements have not been audited but have been prepared in accordance with the accounting principles referred to in subsection 331(4) of the Act.

#### Decision to authorize

(5) In deciding whether to authorize the sending of the notice, the Superintendent must consider the information and documents submitted under subsection (2) and may consider any additional information or documents relating to the converting company or any aspect of the conversion proposal.

#### Conditions of authorization

(6) As a condition of authorizing the sending of the notice, the Superintendent may require

- (a) that any information that the Superintendent considers appropriate, in addition to that required under section 17, be sent with the notice; and
- (b) that the converting company
  - (i) hold one or more information sessions for the eligible policyholders prior to the holding of the special meeting, for which the rules may be set by the Superintendent, and
  - (ii) take any other measures that the Superintendent considers appropriate to assist the eligible policyholders in forming a reasoned judgment on the conversion proposal.

#### Information and documents to eligible policyholders

**17.** The notice referred to in paragraph 237(1.2)(a) of the Act must be sent with

- (a) a description of the steps that have been taken in the conversion process and the steps that are to be taken;
- (b) the conversion proposal;
- (c) a description of the advantages and disadvantages of the proposed conversion to the converting company and its policyholders;

- (d) a description of the alternatives to conversion that the directors of the converting company have considered, and the reasons why, in their opinion, the conversion is in the best interests of the company and its policyholders;
- (e) a description of the form, amount and estimated market value or range of market values of the benefits to be provided as a result of the conversion to the eligible policyholder to whom the notice is sent;
- (f) a description of any right of policyholders to vote after the conversion, as policyholders or shareholders of the converted company;
- (g) for each jurisdiction in which at least one per cent of all eligible policyholders reside, a description of the income tax treatment accorded the benefits referred to in paragraph (e) in that jurisdiction;
- (h) summaries of
- (i) the opinions referred to in paragraphs 14(2)(b) to (e), other than those that are subject to an exemption under section 22, and
  - (ii) the documents referred to in paragraph 16(2)(i);
- (j) the financial statements referred to in paragraphs 14(2)(f) and 16(2)(a) and (b), other than those that are subject to an exemption under section 22;
- (k) the documents referred to in paragraphs 14(2)(c) and (d), other than those that are subject to an exemption under section 22;
- (l) a brief description of the business carried on by the converting company and its subsidiaries, and the general development of that business, during the three years preceding a day that is not more than 120 days before the day on which the notice is sent to the eligible policyholders, and any future business foreseen as of that day;
- (m) a brief description of any substantial variations in the operating results of the converting company during the three most recently completed financial years preceding the notice and, if the notice is sent to the eligible policyholders more than 120 days after the end of the most recently completed financial year of the converting company, during the portion of the current financial year ending on a day that is not more than 120 days before the day on which the notice is sent;
- (n) the names of all persons who, on the day on which the notice is sent to the eligible policyholders, have a significant interest in the converting company or who, as a result of the conversion, will have a significant interest in the converted company, and a description of the type and number of shares held or to be held by those persons;
- (o) the name and address of the converted company's auditor;
- (p) the names and addresses of the proposed transfer agents and registrars;
- (q) the proposed location for the securities registers for the initial issuance of common shares;
- (r) a description of any sales by the converting company, within the 12 months preceding a day that is not more than 120 days before the day on which the notice is sent to the eligible policyholders, of securities of the same type as those to be provided as benefits to the eligible policyholders under the conversion proposal;
- (s) a copy of any prospectus referred to in paragraph 16(2)(f);
- (t) a description of the restrictions set out in sections 23 and 24 and of any plans that the converting company has for the establishment of stock option or stock incentive plans for the persons referred to in those sections after the period referred to in section 24;
- (u) a description of any measures, including the establishment of toll-free lines and websites, the holding of information sessions, and the placement of advertisements in widely circulated publications, that the converting company has taken or will take before holding the special meeting to provide eligible policyholders with information about the proposed conversion and an opportunity

to raise questions or concerns about the proposed conversion;

(*u*) a description of the measures that the converting company has taken or will take to encourage eligible policyholders to vote on the conversion proposal, in person or by proxy, at the special meeting;

(*v*) an indication of the eligible policyholders' right under section 164.01 of the Act to appoint a proxyholder to attend and act at the special meeting on their behalf; and

(*w*) any other information that the Superintendent has required under paragraph 16(6)(*a*).

#### Notice to policyholders

**18.** Within 30 days after the approval of a conversion proposal by the eligible policyholders, the directors of a converting company must send a notice to all of its policyholders informing them of the approval and indicating the company's intention to make an application under section 19.

### MINISTERIAL APPROVAL

#### Application to Minister

**19.** Within three months after the approval of a conversion proposal by the eligible policyholders, the directors of a converting company must make an application referred to in subsection 237(1) of the Act.

#### Contents of application

**20.** (1) An application referred to in subsection 237(1) of the Act must be submitted to the Superintendent and must include

(*a*) the conversion proposal;

(*b*) the documents referred to in paragraphs 14(2)(*b*) to (*f*) and 16(2)(*a*) to (*d*), (*i*) and (*j*), other than those that are subject to an exemption under section 22;

(*c*) the notice referred to in paragraph 237(1.2)(*a*) of the Act and the documents sent with that notice;

(*d*) the proposed letters patent of conversion and any by-laws, amendments to by-laws or repeals of by-laws that are necessary to implement the conversion proposal; and

(*e*) the special resolutions of the eligible policyholders referred to in subsection 237(1.5) of the Act, accompanied by a certificate issued by the converting company indicating the results of the votes held in respect of those resolutions.

#### Information and documents already submitted

(2) The converting company is not required to resubmit to the Superintendent any information or document referred to in subsection (1) that is unchanged from that submitted to the Superintendent under subsection 14(2) or 16(2).

#### Additional information

(3) The Superintendent may request any additional information that he or she considers necessary to make a recommendation to the Minister for the purpose of subsection 237(1) of the Act.

### TERMINATION OF CONVERSION PROCESS

#### Resolution

**21.** (1) The directors of a converting company may pass a resolution terminating the conversion process at any time before the letters patent of conversion are issued.

## Failure to meet deadlines

(2) The conversion process is terminated if the required documents are not submitted to the Superintendent within the time limit set out in subsection 14(5) or if no notice referred to in paragraph 237(1.2)(a) of the Act is sent within one year after the day on which the Superintendent authorizes its sending.

## EXEMPTION BY SUPERINTENDENT

### Exemption

**22.** The Superintendent may exempt a converting company from any of the requirements of paragraphs 14(2)(d) to (i), subsection 14(5) and paragraphs 15(g), (l) and (r), 16(2)(a) to (c) and 17(g), (l) and (r), on such terms and conditions as he or she considers appropriate.

## RESTRICTIONS

### Compensation to directors, officers or employees

**23.** (1) A converting company or converted company must not pay any fee, compensation or other consideration in relation to the conversion of the company to any director, officer or employee of the company, other than

- (a) the regular compensation provided to the person in that person's capacity as a director, officer or employee of the company; and
- (b) any benefits provided to eligible policyholders or the persons or classes of persons referred to in paragraph 13(1)(c) as a result of a conversion.

### Contracts for services

(2) A converting company or converted company must not pay any fee, compensation or other consideration under a contract for services in relation to the conversion of the company to an entity with which a director, an officer or an employee of the company is associated in any way unless the terms and conditions of that contract are at least as favourable to the company as market terms and conditions, as defined in subsection 534(2) of the Act.

### Issuance of shares

**24.** A converted company must not, prior to the listing of its shares on a recognized stock exchange in Canada and for a period of one year after that listing, issue or provide shares, share options or rights to acquire shares to the following persons, other than shares issued to eligible policyholders or the persons or classes of persons referred to in paragraph 13(1)(c) as a result of a conversion:

- (a) any director, officer or employee of the company; or
- (b) any person who was a director, officer or employee of the converted company during the year preceding the day on which the conversion takes effect.

### Acquisition

**25.** During a company's first two years as a converted company, the Minister may only give an approval under subsection 407(1) of the Act in respect of the company if

- (a) the proposed acquisition would not result in the converted company having a major shareholder; or
- (b) the Minister is of the opinion that the converted company is, or is about to be, in financial



difficulty and that the proposed acquisition would facilitate an improvement in its financial condition.

## COMING INTO FORCE

### Publication

**26.** These Regulations come into force on the day on which they are published in the *Canada Gazette*, Part II.

**N.B. The Regulatory Impact Analysis Statement for these Regulations appears following SOR/2015-167, Mutual Property and Casualty Insurance Company Having Only Mutual Policyholders Conversion Regulations.**

#### Footnote a

S.C. 1999, c. 1, s. 5(4); S.C. 2014, c. 20, s. 211

#### Footnote b

S.C. 2005, c. 54, s. 364

#### Footnote c

S.C. 1991, c. 47

Date modified: 2015-07-01