

211 CMR: DIVISION OF INSURANCE

211 CMR 140.00: PROCEDURES CONCERNING THE MERGER OR CONSOLIDATION OF INSURANCE COMPANIES

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140.01: Scope and Purpose

211 CMR 140 governs the Commissioner's review of a Merger or Consolidation Agreement between two or more insurance companies under M.G.L. c. 175, § 19A or § 19B.

140.02: Authority

211 CMR is promulgated in accordance with the authority of M.G.L. c. 175, §§ 3A, 4, 19A, 19B and 49A.

140.03: Definitions

When used in 211 CMR 140.00, the following words shall have the following meaning:

Agreement means an agreement in draft or final form and whether executed or unexecuted, which:

- (a) provides for:
 - 1. the merger or consolidation of two or more domestic insurance companies into one corporation, or
 - 2. the merger or consolidation of a domestic insurance company with any company or companies organized under the laws of any state of the United States into one domestic corporation pursuant to M.G.L. c. 175, § 19A; or
- (b) which provides for the merger of one or more Domestic Companies into a foreign company duly authorized to transact in the Commonwealth the same class or classes of business as such domestic company or companies, or the consolidation of one or more domestic companies with one or more foreign companies duly authorized as aforesaid to form a continuing corporation or a new corporation pursuant to M.G.L. c. 175, §19B.

Authorized Representative means an attorney, legal guardian or other person authorized by a person to represent him or her in any Hearing held under 211 CMR 140.00.

Commissioner means the commissioner of insurance appointed under the provisions of M.G.L. c. 26, § 6 or his or her designee.

Company means an insurance company proposing to merge or consolidate with one or more other insurance companies under M.G.L. c. 175, § 19A or under M.G.L. c. 175, § 19B.

Division means the Division of Insurance in the Department of Banking and Insurance of the

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Commonwealth of Massachusetts.

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Domestic Company means a Company that is a domestic company as defined in M.G.L. c. 175, § 1.

Examination means an examination under M.G.L. c. 175, § 4.

Foreign Company means a Company that is a foreign company as defined in M.G.L. c. 175, § 1.

Hearing means a public hearing on an Agreement under M.G.L. c. 175, § 19A or under M.G.L. c. 175, § 19B.

Person means an individual or legal entity.

Policyholder means a policyholder of a Company.

Presiding Officer means the Commissioner or any person designated by the Commissioner to preside over the Hearing pursuant to M.G.L. c. 26, § 7.

Special Meeting means a meeting called for the purpose of conducting a vote of Policyholders or Stockholders, if any, on an Agreement.

Stockholder means a stockholder of a Company.

Working Group means the employees of the Division that may be designated by the Commissioner to conduct an Examination of any or all of the Companies under M.G.L. c. 175, § 4, including but not limited to a review of the Agreement.

Working Group Advisors or Advisors means the outside legal, actuarial, financial and other consultants that may be retained by the Commissioner under his or her authority under M.G.L. c. 175, § 4 in order to assist the Working Group in its Examination of any or all of the Companies under M.G.L. c. 175, § 4, including its review of the Agreement and any other matters and documents related thereto as requested by the Commissioner. The proper cost of hiring such Advisors shall be borne by the Company or Companies which are the subject of the Examination or as otherwise agreed upon by the Companies with the approval of the Commissioner.

140.04: Standards of Review

In reviewing a proposed merger or consolidation, including the Agreement, the Commissioner may consider:

- (1) The fairness of the terms and conditions of the Agreement;
- (2) Whether the interests of the Policyholders, and Stockholders, if any, of the Domestic Company(ies) are protected;
- (3) Whether the proposed merger or consolidation is in the public interest.

140.05: Establishment of Working Group

Upon the proposal of two or more Companies to merge or consolidate under M.G.L. c. 175, § 19A or under M.G.L. c. 175, § 19 B, the Commissioner may designate a Working Group to conduct an Examination of any or all of the Companies under M.G.L. c. 175, § 4, including a review and evaluation of the Agreement, in draft form or otherwise.

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140.06: Examination of Companies

(1) Upon the submission of an Agreement by one or more Companies, in draft or final form and whether executed or unexecuted, or upon prior written request by one or more of the Companies, the Division may immediately commence an Examination under M.G.L. c. 175, § 4 of the Domestic Company(ies), and of the Foreign Company(ies), if any. The Companies shall be notified in writing of the commencement of such Examination. Nothing herein shall be construed to limit the powers of the Commissioner under M.G.L. c. 175, § 4.

(2) The Examination may include, but not be limited to, a review by the Working Group and the Working Group Advisors of the Agreement, and any other documents and matters determined by the Working Group and its Advisors to be relevant. The Working Group and its Advisors may consider, among other things, the items listed in 211 CMR 140.04(1) through (3).

(3) All information, documents and copies thereof, obtained by or disclosed to the Division, the Working Group or its Advisors during the Examination shall be given confidential treatment as provided in M.G.L. c. 175, § 4 and any other applicable law.

140.07: Approval by Board of Directors

The Agreement, in its final form, must be assented to by a vote of the majority of the Board of Directors of each Company.

140.08: Public Hearing

Upon his or her own motion, the Commissioner, or a Presiding Officer appointed by the Commissioner, may conduct a public Hearing in order to afford interested persons an opportunity to present data, views, arguments, or comments in regard to the proposed merger or consolidation, including, but not limited to, the Agreement.

140.09: Notice of Hearing

(1) The Commissioner shall issue timely written notice of the Hearing to each Domestic Company and direct it to provide such notice by publication and/or mail or delivery to its directors, officers, employees, Policyholders, and Stockholders, if any, as the Commissioner deems appropriate, as well as to the Foreign Company(ies), if any.

(2) Contents. The notice of the Hearing shall provide:

- (a) A reference to the applicable statutory section(s) and regulations;
- (b) The date, time and location of the Hearing;
- (c) A brief statement of the subject of the Hearing;
- (d) A brief statement of the dates and procedures for submission by any person of:
 1. A written statement concerning the Agreement; and
 2. A written notice of intent to make an oral statement at the Hearing.
- (e) A statement that the docket of the Hearing is maintained at the Division and is available for public inspection.

(3) Method of Notice. The notice of Hearing shall be mailed by the Domestic Company(ies) by first class mail or provided as the Commissioner deems appropriate to its directors, officers, employees, Policyholders and Stockholders, if any, and to the Foreign Company(ies), if any, at such time as directed by the Commissioner, but in no event later than 30 days prior to the Hearing.

(4) Other Materials. At the discretion of the Commissioner, the notice of Hearing mailed or provided to some or all of those persons entitled to receive notice may be accompanied or preceded by information relevant to the Agreement and other explanatory information, all of which shall be in a form satisfactory to the Commissioner. This information may include the notice of Special Meeting, proxies, ballots and other materials required and in a form approved by the Commissioner.

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(5) Newspaper Publication of Notice. The Domestic Company(ies) shall arrange for newspaper publication of the notice of Hearing in a newspaper or newspapers approved by the Commissioner. Such notice shall be published no later than 30 days prior to the Hearing.

140.10: Pre-Hearing Filing by Domestic Company(ies)

(1) No later than 30 days prior to the Hearing, the Domestic Company(ies) shall submit a filing to the Division in support of the Agreement. The filing shall include but not be limited to the following:

- (a) The title and docket number of the proceeding, and the complete name and address of the Domestic Company(ies) submitting the filing;
- (b) The name and address of any Authorized Representative as described in 211 CMR 140.03;
- (c) A summary containing a description of the contents of the filing;
- (d) A copy of the Agreement;
- (e) A copy of all information to be provided to policyholders or stockholders prior to the Special Meeting;
- (f) A list of the names and occupations of all persons who will present oral testimony, statements or comments on behalf of the Domestic Company(ies) at the Hearing;
- (g) All written testimony, statements or comments and any related supporting documents to be offered by the Domestic Company(ies) at the Hearing;
- (h) Any other information required by the Commissioner or the Presiding Officer.

(2) Amendments. No additions, amendments or corrections to the filing shall be allowed after its submission, except as permitted or required by the Presiding Officer.

140.11: Appearance at the Hearing

(1) Appearance. Any interested person may appear and file a written statement and/or make an oral statement at the Hearing. A person may appear in his or her own behalf or may be represented by an Authorized Representative.

(2) Notice of Appearance. Any person who wishes to appear at a Hearing shall file a written notice with the Presiding Officer within such time as ordered by him or her; however, nothing shall prohibit the Presiding Officer from allowing a person who has not filed such notice to appear at the Hearing. Such notice shall contain the name, address and telephone number of the person and his or her Authorized Representative, if any.

140.12: Conduct of Hearing

(1) Duties of the Presiding Officer. The Presiding Officer shall conduct the Hearing and take appropriate action to ensure the orderly conduct of the Hearing. Testimony may be taken under oath or affirmation at the discretion of the Presiding Officer.

(2) Transcript. The Domestic Company(ies) shall arrange that any Hearing held under these rules be officially recorded by a reporter approved by the Presiding Officer. The full cost of the reporter's fees, along with the cost of providing two copies of the transcript to the Division, shall be paid by the Companies.

(3) Docket. The Hearing shall be assigned a number on the hearing docket maintained by the Division. The docket shall list separately in chronological order all documents filed in the docket. Except as proscribed by law, the docket shall be available for inspection and copying by the public during the office hours of the Division. The rate for copying shall be rates as set by the Executive Office for Administration and Finance.

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(4) Filings Generally.

(a) Title. Papers filed in the docket shall state the docket number, the title of the proceeding, and the name of the person in whose behalf the filing is made.

(b) Signatures. Papers filed in the docket shall be signed and dated by the person on whose behalf the filing is made or by the person's Authorized Representative and shall state the address and telephone number of such person or authorized representative. This signature shall constitute a certification by the signer that he has read the document, knows the content thereof, and that such statements are true and, if the document has been signed by an authorized representative, that he has full power and authority to do so.

(c) Copies. The original of all papers shall be filed together with such number of additional copies as the Presiding Officer may require.

140.13: Approval by Stockholders or Policyholders

(1) Special Meeting. No Agreement shall be approved by the Commissioner unless it shall have been approved by the votes of the Stockholders, if any, owning at least $\frac{2}{3}$ of the stock of each Company at a Special Meeting called for the purpose. If there are no Stockholders, such Agreement shall have been approved by the votes of at least $\frac{2}{3}$ of such Policyholders of each Company as are present and voting at a Special Meeting called for the purpose. Stockholders, if any, or, if there are no Stockholders, Policyholders may vote in person, by proxy or by mail at the Special Meeting. Neither the Special Meeting nor the last date upon which proxies are eligible for inclusion in the Special Meeting vote count shall take place prior to the commencement of any Hearing held under 211 CMR 140.00.

(2) Notice of Special Meeting. Notice of the Special Meeting shall be given in accordance with law and consistent with the Charter and By-laws of the Domestic Company(ies), subject to the approval of the Commissioner. If the companies merging or consolidating are mutual companies, the Domestic Company(ies) shall send notice of the Special Meeting to its Policyholders as the Commissioner deems appropriate. Notice of the Special Meeting shall be published at least once a week for three successive weeks in some newspaper printed in the Commonwealth, and if any of the merging or consolidating companies are domiciled outside of the Commonwealth at least once a week for three successive weeks in some newspaper printed in the town where such company has its principal office, and, in any case, in a newspaper of national circulation or other publication(s) if the Commissioner so directs.

(3) Contents of Notice. The notice of Special Meeting shall set forth the reasons for the ballot vote and the time and place of the Special Meeting. The notice of Special Meeting and any ballot enclosed with the notice shall be in a form satisfactory to the Commissioner.

(4) Information Required in Proxy Statement or Information Statement. If 211 CMR 13.00 is applicable, any proxy statement or information statement shall contain the information required by 211 CMR 13.11(12).

(5) Certification. A certification of the votes cast by Stockholders, if any, or Policyholders shall be entered into the docket, which shall remain open for this purpose.

140.14: Approval of Commissioner

The Agreement to merge or consolidate, in its final form, shall be subject to the written approval of the Commissioner in such form as he or she may prescribe; provided that subsequent to the Special Meeting, it appears that the requirements of M.G.L. c. 175, § 19A or 19B, 211 CMR 140.00 and other applicable laws, if any, have been satisfied. The Commissioner may, in his or her discretion, refuse to issue such an approval in any case, and his or her decision shall be final.

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140.15: Rights of Minority Stockholders

If any Stockholder of a Domestic Company merging or consolidating under M.G.L. c. 175, § 19A or under M.G.L. c. 175, § 19B objects to the proposed merger or consolidation in the manner provided in M.G.L. c. 156B, § 86, then the provisions of M.G.L. c. 156B, §§ 86 through 98 shall be applicable.

140.16: Severability

If any rule contained herein is found to be unconstitutional or invalid by a Court of competent jurisdiction, the validity of the remaining rules will not be so affected.

REGULATORY AUTHORITY

211 CMR 140.00: M.G.L. c. 175, §§ 3A, 4, 19A, 19B and 49A.