

211 CMR 144.00. Procedures for the Regulatory Review of and Public Hearings on Plans of Reorganization or Conversion Pursuant to M.G.L. c. 175, §§ 19F-19W

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144.01: Purpose, Scope, and Authority.

211 CMR 144.00, promulgated pursuant to M.G.L. c. 175, § 19W, governs regulatory review of and public hearings on plans of reorganization or conversion pursuant to M.G.L. c. 175, §§ 19F-19W.

144.02: Definitions.

As used in 211 CMR 144.00, the following words mean:

Commissioner. The Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Company. A mutual company or a mutual holding company, as defined in M.G.L. c. 175, § 19G, that proposes to reorganize or convert pursuant to M.G.L. c. 175, §§ 19F-19W.

Division. The Division of Insurance established pursuant to M.G.L. c. 26, § 1, including outside consultants or advisors retained by the Division of Insurance.

Hearing. The public hearing required by M.G.L. c. 175, § 19H(c) or § 19U(b)(1), including any pre-hearing orders and conferences.

Intervenor. A person who may be substantially and specifically affected by the plan and is granted permission, pursuant to 211 CMR 144.07, to intervene in all or a part of a hearing.

Papers. All documents filed in a hearing.

Participant. A person who may be affected by the plan and is granted permission, pursuant to 211 CMR 144.07, to participate in a hearing as determined by the presiding officer.

Party. The company, the Division, and any intervenor.

Person. An individual or legal entity.

Plan. A plan of reorganization or conversion as defined in M.G.L. 175, § 19G.

Policyholder. A policyholder of the company.

Presiding Officer. The person or persons who preside at the hearing.

144.03: Submission of a Plan for Approval.

The company shall submit twelve copies of a plan for the Commissioner's approval. A copy of a plan must also be submitted on a computer disk in a format determined by the Commissioner. The Commissioner or presiding officer may order the company to submit additional copies of a plan, and may specify electronic or other format requirements.

144.04: Designation of Division Staff.

The Commissioner may designate Division staff and outside consultants or advisors to conduct examinations of one or more of the companies involved in or that are a part of the reorganization or conversion for which approval is sought, pursuant to M.G.L. c. 175, § 4 and § 19H or § 19U, to assist the Division and Commissioner in determining whether the reorganization or the conversion meets the requirements of M.G.L. c. 175, §§ 19F-19W. The examination may include a review and evaluation of all documents and information in the custody or under the control of the company that the Division considers relevant to the reorganization or conversion or related issues.

144.05: Notice of Hearing.

(1) Publication. The company shall publish the hearing notice issued by the Commissioner in newspapers or other publications as determined by the Commissioner. The notice will specify the date on or before which petitions to intervene or participate must be filed and served. The notice must be published at least 15 days before the hearing, but not more than 60 days before the hearing. The Commissioner will specify the time for publication. The company shall file proof of publication within 14 days of publication.

(2) Mailing. At least 60 days before the hearing, the company shall mail the notice of hearing, via first class mail or by such other method as the Commissioner deems appropriate, to its directors, officers, employees and eligible policyholders at their last known addresses as shown on the records of the company. The notice shall be preceded or accompanied by a true and complete copy of the plan, or by a summary of the plan approved by the Commissioner, and any other explanatory information that the Commissioner shall approve or require.

(3) Other notification. At least 60 days before the hearing, or at such time as otherwise ordered by the Commissioner, the company shall post the notice of hearing on its internet site in accordance with any instructions given by the Commissioner. Unless the Commissioner directs otherwise, the company shall also post a complete copy of the plan and the summary of the plan approved by the Commissioner, together with any other explanatory information that the Commissioner shall approve or require.

144.06: General Provisions Applicable to the Hearing.

(1) Docket. No later than the date on which the Commissioner issues the notice of hearing, the hearing will be assigned a number on the docket maintained by the Division. The docket file will contain all papers filed in the record of the hearing.

(2) Consolidation. The Commissioner or presiding officer may consolidate for hearing any application or request for approval deemed relevant to the plan of reorganization or conversion where consolidation would facilitate consideration of issues concerning the plan or related matters.

(3) Filings, Generally.

(a) Filing and Service of Papers. All papers filed in a hearing must be filed with the Docket Clerk, Hearings and Appeals, at the Division's principal office during business hours. The presiding officer may determine the number of copies of papers that must be filed and served, and may specify format requirements. The presiding officer may order that an additional copy of papers must be submitted on computer disk in an electronic format determined by the presiding officer. Concurrently with filing papers, a copy of the papers must be served on the company, the person(s) designated to receive service for the Division, intervenors, and any other person(s) designated by the presiding officer. All papers filed must be accompanied by a statement signed under the penalty of perjury that copies have been served, specifying the mode of service, date, the person to whom sent, and address of service. Failure to comply with this rule may be grounds for such action as the presiding officer deems appropriate.

(b) Timely Filing. Papers must be filed within the specified time limits. The date of filing will be determined as follows:

1. Papers delivered by hand or by facsimile during regular business hours will be deemed filed on that day.
2. Papers delivered by hand or by facsimile at other times will be deemed filed on the next regular business day.
3. Papers mailed to the Division's principal office will be deemed filed on the day the Division receives them.

(c) Computation of Time. Computation of any time period prescribed by or established under the authority of 211 CMR 144.00 begins with the first day after the date of the initiating act. The last day of the period so computed is included unless it is a day when the Division's principal office is closed, in which case the period runs until the end of the next business day. When the period is five days or fewer, Saturdays, Sundays and legal holidays are excluded from the computation.

(d) Modifications of Time. The presiding officer has the discretion to modify for good cause a time limit prescribed by or established under the authority of 211 CMR 144.00.

(e) Signatures. All papers must be signed by the filer or its counsel or authorized representative. This signature constitutes a certification by the signer that he or she has read

the document and knows the content thereof, that it has not been interposed for delay and that if the document has been signed by an authorized representative that he or she has full power and authority to do so.

144.07: Appearances and Public Comment at the Hearing.

(1) Appearance. A person may appear in his or her own behalf. A person may also be represented by an authorized representative.

(2) Public Comment.

(a) Oral statements. Members of the public, including policyholders, directors, officers, and employees of the company, may present oral statements at the start of the public hearing or at another time determined by the presiding officer. A person who wishes to offer an oral statement shall file a written notice by the date specified in the notice of hearing. Such notice shall contain the name, address and telephone number of the person and his or her authorized representative, if any. The presiding officer, in his or her discretion, may allow a person who has not filed a notice of intention to make a statement to speak. The presiding officer may specify the amount of time allowed to a speaker. If the presiding officer determines that an oral statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker.

(b) Written statements. Members of the public may file written statements before the close of the evidentiary record or by such other time as determined by the presiding officer.

(c) Responses to written statements. The presiding officer may order a party to respond to written statements and to file and serve a copy of its response.

(3) Other Participation and Intervention.

(a) Petitions. A person, other than the company or the Division, who wishes to participate in the hearing other than by offering an oral or written statement as provided in 211 CMR 144.07(2) shall file and serve a petition for leave to participate or to intervene on or before the date specified in the notice of hearing, which date will not be less than 15 days following the date of the notice. Five copies of the petition shall be filed, unless otherwise ordered by the presiding officer.

1. The petition of a person seeking to participate must state the name and address of the petitioner; the manner in which the petitioner is affected by the plan; the issues the petitioner wishes to address; the relief sought and the statutory or other authority therefor; a description of the petitioner's proposed participation, including the nature of any evidence the petitioner seeks to present; and a statement explaining why the petitioner's interests would not be adequately served by submitting an oral or written statement at the hearing.

2. The petition of a person seeking to intervene must state the name and address of the petitioner; the manner in which the petitioner is substantially and specifically affected by the plan; the issues the petitioner wishes to address; the relief sought and the statutory or other authority therefor; a description of the petitioner's proposed intervention, including the nature of any evidence the petitioner seeks to present; and a statement explaining why the petitioner's interests would not be adequately served by submitting an oral or written statement at the hearing.

(b) Responses to Petitions. If a party opposes a petition to participate or intervene, it shall file a written objection, setting forth the grounds for its opposition, no later than five days after service of the petition or by such time set forth in the hearing notice. The party shall file five copies of any objection, unless otherwise ordered by the presiding officer.

(c) Action on Petition. The presiding officer may schedule a hearing on a petition to participate or intervene. The presiding officer may permit any person who may be substantially and specifically affected by the plan to intervene in all or a part of the hearing. The presiding officer may allow a person who may be affected by the plan, and who is not permitted to intervene, to participate as determined by the presiding officer. The presiding officer may order two or more intervenors or participants to consolidate their appearances or presentations if consolidation will facilitate or expedite the hearing.

144.08: Prehearing Procedures.

(1) Pre-hearing Conference. The presiding officer may hold one or more pre-hearing conferences to consider: the simplification or clarification of the issues; admissions of fact, and agreements on documents to avoid unnecessary proof or to dispose of any issues; limits on the number of witnesses and avoidance of duplicative, repetitious, or cumulative evidence; the schedule of testimony; the organization of exhibits; the conduct and format of the hearing; and other matters that may affect the hearing.

(2) Prefiled Evidence. The presiding officer may order the submission in advance of the hearing, at a time designated by the presiding officer, of sworn written direct testimony of any or all witnesses. Such prefiled written testimony will be received in evidence with the same force and effect as though it were stated orally by the witnesses who have given the evidence, provided that each witness shall be present at the hearing at which the prefiled testimony is offered, shall adopt the written testimony under oath, and shall be made available for cross-examination as directed by the presiding officer. The presiding officer may also order that documentary evidence be filed in advance of the hearing, at a time designated by the presiding officer.

(3) Discovery.

(a) Voluntary discovery is encouraged. If voluntary discovery fails, a party may file and serve an application for an order directing discovery. The application must set forth, with reasonable particularity, the discovery sought, its relevance to the issues to be considered at the hearing, and the efforts previously made to obtain the requested discovery.

(b) The person from whom discovery is sought may respond to the application within three days or at such other time as determined by the presiding officer.

(c) The presiding officer may schedule a hearing on the application for order directing discovery. Orders of the presiding officer may include limitations on the scope, method, time and place for discovery, provisions for protecting confidential information or documents, and provisions to protect against annoyance, embarrassment, oppression or undue burden or expense. If allowed, discovery must be conducted expeditiously. An application for discovery will not be grounds to delay the hearing except for good cause.

144.09: Conduct of Hearing.

(1) Presiding Officer. The presiding officer will conduct the hearing, may administer oaths and affirmations, and shall make all decisions on the admission or exclusion of evidence, scheduling, and other procedural matters that arise during the hearing. The presiding officer may impose sanctions for noncompliance with an order issued in connection with the hearing. Such sanctions may include entering orders for decision on one or more issues, limiting the introduction of evidence or participation in the hearing, and addressing other matters he or she deems appropriate.

(2) Evidence. The presiding officer need not observe the rules of evidence observed by the courts, but will observe the rules of privilege recognized by applicable law. Evidence can be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The presiding officer may exclude evidence which he or she determines to be unduly repetitious or likely to delay the hearing unnecessarily, or which he or she determines should have been submitted earlier in the hearing.

(3) Control of Testimony. The presiding officer may question witnesses during the course of their testimony. If the presiding officer determines that the testimony of a witness is irrelevant, immaterial, or repetitious, or beyond the scope of any prefiled direct testimony, he or she may order the witness to limit or omit further testimony on a certain subject or to cease testimony altogether.

(4) Witness Examination. A party may cross-examine witnesses. The presiding officer may impose reasonable time limits on witness examination. If a witness fails to be present for his or her cross-examination or unreasonably obstructs cross-examination, the presiding officer may find the witness to be unavailable, and may order all previous testimony or evidence for which the witness is responsible stricken from the record.

(5) Additional Evidence. At any stage of the hearing, the presiding officer may call for further evidence on an issue, and require that the additional evidence be presented. The presiding officer may limit, strike or terminate irrelevant, immaterial or repetitious evidence.

(6) Official Notice. The presiding officer may take official notice of a fact that can be judicially noticed by the courts and may take official notice of general, technical or scientific facts within his or her specialized knowledge. The presiding officer will notify the parties of the material so noticed and will permit a party, upon timely request, to contest the facts noticed. The presiding officer may use his or her experience, technical competence and specialized knowledge in the evaluation of evidence presented.

(7) Conduct of Persons Present. All persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts. If these standards are not observed, the presiding officer may issue orders appropriate to maintain order, including the exclusion of a disorderly person from the hearing.

(8) Transcripts. The company shall engage a qualified stenographer, subject to the approval of the presiding officer, to record and transcribe the public hearing and any prehearing conferences and hearings. The company shall pay the cost of the stenographer's fees, and the cost of providing the Division with five copies of the transcript in the quantity and format determined by the presiding officer, which can include computer disk. Any person may obtain copies of the transcript from the stenographer at his or her own expense.

(9) Evidence After Completion. No evidence will be admitted after the close of the record, unless otherwise ordered by the presiding officer.

(10) Communications. No person shall communicate ex parte with the Commissioner or presiding officer with respect to the merits of a plan. A communication concerning the status of a regulatory review or hearing, or agency practice, procedure or schedule applicable thereto, is not prohibited by this rule. If any ex parte communication is directed to a person in violation of this rule, the person shall immediately inform the presiding officer of the substance of the communication and the circumstances of its receipt. Without limiting the remedies otherwise available to the presiding officer, if a person or organization or agent thereof has violated this rule, the presiding officer, in his or her discretion, may decide against such person or organization with prejudice or may exclude such person or organization from any further participation in the hearing.

144.10: Briefs.

The presiding officer may order the filing of briefs by the parties and participants, at times determined by the presiding officer. The presiding officer may set a page limit for briefs. Each brief must include: a concise statement of the case; a clear and specific identification of all evidence relied upon with references to the pages in the transcript of exhibits where the evidence appears; arguments and supporting authorities; a statement of the specific relief requested on every contested issue; and any other information required by the presiding officer, including proposed findings of fact and rulings of law. Unless otherwise ordered by the presiding officer, five copies of briefs must be filed, and one copy must be filed on a computer disk in an electronic format determined by the presiding officer.

144.11: Final Decision.

The final decision of the Commissioner will be in writing and will be issued no more than 60 days following the final oral or written submissions or arguments in the hearing.

144.12: Policyholders Vote.

(1) Supervision of Vote. The Commissioner will have the authority to supervise and direct and prescribe rules governing the procedure for the conduct of voting on a plan submitted to policyholders for approval consistent with M.G.L. c. 175, §§ 19F-19W.

(2) Good Faith Efforts by the Company to Encourage Voting. The company shall use good faith efforts to encourage eligible policyholders or members to vote on a plan. The company must describe its efforts in the plan. Subject to approval or direction by the Commissioner, these efforts should include, but need not be limited to, one or more of the following: establishing a toll-free call center, establishing an internet site, adding messages to routine policy statements,

providing written communications to policyholders entitled to vote, and advertising in national publications.