

CHAPTER 45-03-22

MUTUAL INSURANCE HOLDING COMPANY ACT RULES

Section

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45-03-22-01. Definitions.

As used in this chapter:

1. "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
2. "Commissioner" means the North Dakota insurance commissioner.
3. "Department" means the North Dakota insurance department.
4. "Domestic mutual insurance company" means an insurance company organized on a mutual plan and incorporated under the laws of North Dakota.
5. "Interested person" means:
 - a. An officer, director, partner, copartner, or employee of the mutual insurance holding company or its subsidiary or affiliates;
 - b. A member of the immediate family of any natural person who is an officer, director, partner, or employee of the mutual insurance holding company or its subsidiary or affiliates or who owns, controls, or holds with power to vote, directly or indirectly, five percent or more of the mutual insurance holding company's or its subsidiary's or affiliate's outstanding voting securities;
 - c. A person or partner or employee of any person who has acted as legal counsel for the person within the previous two years; or
 - d. A natural person whom the commissioner by order shall have determined to be an interested person by reason of having had, at any time within the last two years, a material business or professional relationship with another person or with a principal executive officer of another person.
6. "Intermediate holding company" means a subsidiary holding company of a mutual insurance holding company or part of a holding company system that is controlled by a mutual insurance holding company pursuant to North Dakota Century Code chapter 26.1-12.1.
7. "Member of the immediate family" means a spouse, parent, spouse of a parent, child, spouse of a child, brother or sister, including step and adoptive relationships.
8. "Mutual insurance holding company" means a holding company organized on a mutual plan and incorporated under the laws of North Dakota, resulting from the reorganization of a domestic mutual insurance company pursuant to North Dakota Century Code chapter 26.1-12.1.

9. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to North Dakota Century Code chapter 26.1-12.1.
10. "Stock" means any security evidencing an equity interest in the issuing entity.
11. "Stock offering" means any proposed sale, exchange, transfer, or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of these rules, "stock offering" does not mean:
 - a. An offering of preferred stock that is not convertible or exchangeable into common stock and which has no ordinary voting rights; or
 - b. A transfer of stock between any of the following:
 - (1) A mutual insurance holding company;
 - (2) An insurance company subsidiary of a mutual insurance holding company;
 - (3) An intermediate holding company subsidiary of a mutual insurance holding company; and
 - (4) An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-02. Purpose and scope.

A mutual insurance holding company and its subsidiary shall comply with North Dakota Century Code chapters 26.1-05 and 26.1-10 and the terms of all other applicable statutes or rules, including statutes or rules regulating investments, material transactions, and changes in control.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-03. General rules.

1. A merger or acquisition not subject to North Dakota Century Code chapter 26.1-12.1 involving a mutual insurance holding company must be approved by the commissioner pursuant to North Dakota Century Code chapter 26.1-07.
2. Each domestic mutual insurance holding company shall provide to the commissioner an audited annual statement based upon generally accepted accounting principles and statutory accounting principles by June first of each year.
3. Unless otherwise specified by the commissioner, the mutual insurance holding company's annual statement must include:
 - a. An income statement.
 - b. A balance sheet.
 - c. A cash flow statement.
 - d. An investment plan covering all assets.

- e. A statement disclosing any intention or agreement to pledge, borrow against, alienate, hypothecate, or otherwise encumber the assets of the mutual insurance holding company.
 - f. Complete information on the composition and status of any closed block formed as a part of a plan of reorganization.
4. At least fifty percent of the net worth of a mutual insurance holding company as determined under generally accepted accounting principles must be invested in insurance company subsidiaries.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-04. Stock offerings - Content of application.

1. A stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may not occur without the prior written approval of the commissioner secured through the application and hearing process under this chapter. An application for approval of a stock offering must contain the following:
- a. A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.
 - b. The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, the intended date or range of dates for the offer, and the manner in which the offer is to be conducted.
 - c. A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.
 - d. The name of any underwriter, syndicate member, or placement agent involved and, if known, the name of each entity, person, or group of persons to whom the offering is to be made who will, as a result of the offering, directly or indirectly control five percent or more of the total outstanding class of shares. If any involved underwriter, syndicate member, or placement agent is a corporation, or other entity, the name of each member of its board of directors or equivalent management team, with the names of the offeror's board of directors, must be provided. A copy of any offering documents, including any filing with the securities and exchange commission or a state securities regulator, must be included in the application.
 - e. A description of any subscription rights to be afforded a member of the mutual insurance holding company.
 - f. A detailed description of all expenses projected to be incurred in connection with the offering.
 - g. A statement as to the intended use of the funds raised by the offering.
 - h. A description of any fee, commission, or other valuable consideration earned by a director, officer, agent, or employee of the mutual insurance holding company or its affiliates specifically for aiding, promoting, or assisting in the structuring or placement of the offering. The commissioner may disallow any fee, commission, or other valuable consideration deemed to be unreasonable. This subdivision does not apply to the

payment of reasonable fees and compensation to attorneys at law, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions, even though the underwriters of such services are also directors of the mutual insurance holding company, its subsidiaries, or affiliates.

- i. A statement that the mutual insurance holding company, either directly or indirectly through an intermediate holding company of a mutual insurance holding company, shall retain ownership of at least a majority of the voting shares of the capital stock of the subsidiary stock insurance company as required by North Dakota Century Code section 26.1-12.1-02.
 - j. Such other information as the commissioner shall require.
2. An application for a stock offering must include the following provisions:
- a. A restriction prohibiting an officer, director, employee, or other interested person of the mutual insurance holding company or its subsidiaries or its affiliates from the purchase or ownership of a share of the offering or receipt of an option to or for the benefit of an officer, director, employee, or other interested person, for a period of at least six months following the conclusion of the offering. This subdivision does not limit the rights of an officer, director, or other interested person from exercising a subscription right generally accorded a member of the mutual insurance holding company, except that, pursuant to such subscription right, an officer, director, or other interested person of the mutual insurance holding company or its subsidiaries or affiliates may not purchase or own, in the aggregate, directly or indirectly, more than five percent of the securities offered in the offering for a period of at least six months following the conclusion of the offering.
 - b. A provision that an entity created under a plan of reorganization may issue more than one class of securities provided, however, that at all times a voting majority of each class must be held, directly or indirectly, by the mutual insurance holding company and, provided further, that no class of common stock may receive a dividend or other right greater than the class held, directly or indirectly, in the mutual insurance holding company.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-05. Stock hearing.

The commissioner may hold a public hearing to consider an application for approval of a stock offering. Upon receipt of an application for approval of an offering that includes an initial stock offering, the commissioner may hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. If a hearing is held, the commissioner must publish notice of the hearing in at least one newspaper of general circulation in the state. The applicant must provide its policyholders with notice of the hearing at least twenty, but not more than sixty, days prior to the hearing by regular mail. The notice must be approved by the commissioner. Following the hearing, the commissioner may approve, conditionally approve, or deny the application.

1. The commissioner must approve the offering if the applicant demonstrates clearly that:
 - a. The offering complies with this chapter and other provisions of law;
 - b. The method for establishing the price of the offering is consistent with generally accepted market or industry practices; and

- c. The plan and offering will not be unfair or contrary to the financial interests of the members of the mutual insurance holding company.
- 2. In determining whether the application and offering will not be unfair to or contrary to the financial interests of the members of the mutual insurance holding company, the commissioner may consider the following:
 - a. Whether the offering will dilute a current member's interest;
 - b. Whether the application provides a method whereby accumulated earnings, cash, or other nonoperating assets are distributed to or otherwise inure to the fair and equitable benefit of the eligible members, members, and new members;
 - c. Whether the offering will create a class of security holders with interests adverse to those of the members;
 - d. Whether the application and offering require a member to pay additional funds to keep a membership interest;
 - e. Whether the application and offering create an opportunity for the officers or directors of the mutual insurance holding company, its subsidiaries, or affiliates to enrich themselves at the expense of members;
 - f. Whether the offering will diminish a policyholder's contractual rights; and
 - g. Such other factors that the commissioner may deem necessary.

This section does not prohibit the filing of a registration statement with the securities and exchange commission.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-06. Subsequent offerings.

Notwithstanding the provisions of section 45-03-22-05, stock offerings that are not initial stock offerings must be approved by the commissioner and must be made in accordance with the following:

- 1. If an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company intends to make a stock offering that would be governed by the provisions of this section, then that entity must deliver to the commissioner, not less than thirty days prior to the offering, a notice of the planned offering which includes:
 - a. The total number of shares to be offered;
 - b. The intended date of sale;
 - c. A record of the trading price and volume of the security during the prior fifty-two weeks;
 - d. Evidence that, after the completion of the offering, the mutual insurance holding company will retain ownership of a majority of the voting shares of the capital stock of the reorganized insurer as required by North Dakota Century Code section 26.1-12.1-02; and
 - e. Such other information the commissioner may deem necessary.

2. Unless otherwise provided, the commissioner's approval of an offering expires one hundred eighty days after the date of the commissioner's order unless otherwise extended in writing by the commissioner.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-07. Prohibited practices.

The following practices are prohibited:

1. Borrowing funds by the mutual insurance holding company or its subsidiaries or affiliates from the mutual insurance holding company's subsidiary or affiliates to finance the purchase of a stock offering by the reorganized insurer.
2. Payment of a commission, special fee, or any other special payment or extraordinary compensation to an officer, director, interested person, or affiliate for arranging, promoting, aiding, or assisting in the reorganization of the mutual insurance holding company or for arranging, promoting, aiding, assisting, or participating in the structuring or placement of an offering of securities except as permitted by the commissioner.
3. Avoiding this chapter by entering into an understanding or agreement transferring a legal or beneficial ownership of voting securities to another person.
4. The publication of a prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant, may not contain a representation that the commissioner's approval of an offering constitutes an endorsement of the price, price range, fairness, suitability, or any other information or matter relating to the offered securities or arising from the offering. The front of the prospectus must contain in boldface type a statement that the commissioner's approval of an offering does not constitute an endorsement of the price, price range, fairness, suitability, or any other information or matter.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1

45-03-22-08. Reporting of stock ownership and transactions.

A director or officer of a mutual insurance holding company, its subsidiary, or affiliate who acquires directly or indirectly the beneficial ownership of any security issued by any member of the mutual insurance holding company system, within fifteen days following the transaction, shall file with the commissioner a statement of the transaction on a form prescribed by the commissioner.

History: Effective February 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-12.1