

## CLIENT MEMORANDUM

# New York Enacts Law to Allow Smaller Mutual Life Insurers to Reorganize as Mutual Holding Companies

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## AUTHORS

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On November 13, 2013, New York enacted a new Article 80 of the New York Insurance Law to allow New York mutual life insurance companies with admitted assets of less than \$10 billion to reorganize in a mutual holding company structure (the “NY MHC Law”). Although the NY MHC Law does not apply to large New York mutual life insurers, it is a milestone in New York since for many years interested parties had attempted, without success, to pass a mutual holding company reorganization law in New York. The NY MHC Law was supported by upstate mutual life companies looking for opportunities for growth through the mutual holding company form.

The NY MHC Law became effective upon enactment. Under the NY MHC Law, a New York mutual life insurer with admitted assets of less than \$10 billion may reorganize as a domestic stock life insurer within a mutual holding company structure. The mutual holding company is required to own, directly or indirectly through one or more stock holding companies, at least 51 percent of the voting stock of the reorganized domestic stock life insurer. The policyholders of the reorganizing mutual insurer become members of the mutual holding company, and their membership interests in the mutual insurer are extinguished.

Other key provisions of the NY MHC Law include the following:

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- Intermediate stock holding companies may be interposed between the domestic stock life insurer and the mutual holding company, allowing greater financial flexibility for the stock holding companies in accessing the capital markets.
- Before the date on which the mutual holding company owns, directly or indirectly, less than 75 percent of the voting securities of the reorganized domestic stock insurer, the insurer is required to establish a closed block for policyholder dividend protection purposes or an alternative protection provision as approved by the Superintendent of the New York Department of Financial Services.
- The Superintendent, following a public hearing, must approve the plan of reorganization if he finds that the plan is “fair and equitable to policyholders” and does not violate the NY MHC Law and that the reorganized stock insurer will have an amount of capital and surplus that is “reasonably necessary for its future solvency.”
- Following the public hearing, the plan of reorganization must be submitted to a vote of policyholders of the New York mutual insurer. Approval of the plan requires the affirmative vote of at least two-thirds of all votes cast by policyholders entitled to vote.

For smaller New York mutual insurers, the ability to reorganize as a stock insurer within a mutual holding company structure will facilitate access to the capital markets while maintaining the mutual structure at the holding company level. Currently, the only methods for these insurers to access capital are the issuance of surplus notes or capital notes, or traditional bank loans. The new law allows smaller mutual life insurers to reorganize into the well-established structure of a stock life insurer owned by an intermediate stock holding company, which is in turn owned by the mutual holding company. The mutual holding company would be able to take the intermediate stock company public through an initial public offering or raise money through a private placement of equity securities.

This multi-tiered structure has enabled successful capital raising for a number of life insurers in other states, with proceeds used for acquisitions or for simply increasing the capital strength of the converting insurer. In some cases, the mutual holding company structure has served as an intermediate step before a full demutualization, and the new law permits the converting insurer to eventually undergo a full demutualization under New York’s demutualization law. In other cases, converted insurers have maintained the mutual holding company structure for years, enjoying the flexibility it brings without seeing the need to undergo a full demutualization. There are a number of smaller mutual life insurers in New York that would be eligible to use the new law.

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