

## **IC 27-14-4**

### **Chapter 4. Issuance of Capital Stock**

#### **IC 27-14-4-1**

##### **Applicability of chapter; issuance of stock**

Sec. 1. (a) This chapter applies only to the initial public offering of voting capital stock by a reorganized insurer or stock holding company.

(b) A reorganized insurer or a stock holding company may issue any type of stock permitted by the law under which it is organized. However, a reorganized insurer and a stock holding company may issue shares of stock to a person or entity other than:

- (1) the MIHC of which it is a subsidiary; or
- (2) a stock holding company or reorganized insurer that is a direct or indirect subsidiary of the MIHC referred to in subdivision (1);

only in compliance with this article.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-2**

##### **Adoption of plan to issue stock**

Sec. 2. A plan to issue stock under this chapter must be adopted:

- (1) in the case of a plan to issue stock that is concurrent with the formation of the MIHC, by the board of directors of the MIC; or
- (2) in the case of a plan to issue shares of stock that is not concurrent with the formation of the MIHC, by the board of directors of the MIHC and reorganized insurer or stock holding company proposing to issue the stock.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-3**

##### **Amendment or withdrawal of plan**

Sec. 3. A board of directors that adopts a plan to issue stock under this chapter may amend or withdraw that plan at any time before the effective date. However, after the commissioner has approved a plan to issue stock, the plan may not be amended unless the commissioner approves the amendment.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-4**

##### **Application to issue stock**

Sec. 4. Within ninety (90) days after the adoption of a plan to issue stock, the reorganized insurer or stock holding company adopting the plan must file with the commissioner an application that contains the following:

- (1) A proposed plan to issue stock.
- (2) A description of the reasons for and purpose of the proposed plan and the manner in which the issuance will benefit the members of the MIHC.
- (3) If it is necessary to amend the current articles of

incorporation or bylaws of a company that is affected by the plan, a copy of the proposed articles of amendment and amended bylaws of the company, which in the case of each domestic insurance company must comply with IC 27-1-8.

(4) A list of the officers and directors of a company that is affected by the plan.

(5) A description of:

- (A) the stock intended to be offered by the applicant;
- (B) all shareholder rights applicable to the stock intended to be offered by the applicant;
- (C) the total number of shares authorized to be issued;
- (D) the estimated number of shares the applicant intends to offer; and
- (E) the intended date or range of dates for the offering.

(6) A list of:

- (A) the name of any underwriter, syndicate member, or placement agent involved;
- (B) if known by the applicant, the name of each person or group of persons who will control five percent (5%) or more of the total outstanding shares of the class of stock to be offered; and
- (C) if any of the persons listed under clause (A) or (B) is a corporation or other business organization, the name of each member of its board of directors or equivalent management body.

(7) A description of all expenses expected to be incurred in connection with the offering.

(8) Any other information requested by the commissioner.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-5**

##### **Mandatory provisions of plan to issue stock**

Sec. 5. A plan to issue stock in a public offering (other than an offering solely in connection with a consolidation, merger, share exchange, or other business combination or an offering of stock under a stock option or other employee benefit plan) must do the following:

- (1) Provide for each eligible member to receive, without payment, nontransferable subscription rights to purchase a portion of the stock of the applicant.
- (2) Specify how subscription rights are to be allocated in whole shares of stock among the eligible members.
- (3) Provide a fair and equitable means for allocating shares of stock in the event of an over-subscription to the shares by eligible members exercising subscription rights received under this chapter.
- (4) Provide that any shares of stock not subscribed to by eligible members exercising subscription rights received under this chapter, or not subscribed to by an employee benefit plan or by directors, officers, and employees exercising subscription rights,

will be sold:

- (A) in a public offering through an underwriter;
  - (B) through private placement; or
  - (C) by any other method approved by the commissioner that is fair and equitable to members.
- (5) Provide that the MIHC will adopt articles of incorporation or articles of amendment that include a provision prohibiting the MIHC from waiving any dividends from its subsidiaries except after approval of the waiver by the board of directors of the MIHC and by the commissioner.
- (6) Establish a pricing committee within the board of directors of the entity making the offering of stock, consisting exclusively of outside directors.
- (7) Require that the shares not be issued without the favorable written opinion of the independent financial advisor as required by IC 27-14-6-4.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-6**

##### **Permitted provisions of plan to issue stock**

Sec. 6. Subject to the limitations of IC 27-14-5, a plan to issue stock may do the following:

- (1) Provide an allocation without payment of nontransferable subscription rights to purchase not more than ten percent (10%) of the total amount of outstanding stock to one (1) or more employee benefit plans that satisfy the requirements of Section 401(a), 403(b), 404(c), 408, 423, or 501(c)(9) of the Internal Revenue Code, limited to the extent that unsubscribed shares of stock remain after the members have exercised their subscription rights.
- (2) Provide for:
  - (A) the establishment of; and
  - (B) the allocation of not more than four percent (4%) of the total amount of outstanding stock to;  
an employee benefit plan that provides benefits that are subject to taxation under Section 83 of the Internal Revenue Code or that complies with the requirements of Section 422 of the Internal Revenue Code, for the purpose of granting stock or stock options.
- (3) Provide that the articles of incorporation of a subsidiary of the MIHC may, subject to specified exceptions, prohibit a:
  - (A) person; or
  - (B) group of persons acting in concert;  
acting directly or through associates, from acquiring more than a specified percentage of any class of the issued and outstanding shares of capital stock of the issuing subsidiary.
- (4) Provide that the aggregate number of shares of outstanding stock purchased by an eligible member that exercises subscription rights may not exceed:
  - (A) a specified number of shares equal to at least one percent

- (1%) of the total number of outstanding shares; or
  - (B) a specified percentage of not less than one percent (1%) of the total number of outstanding shares.
- (5) Provide that subscription rights need not be granted to an eligible member who resides in a foreign country or other jurisdiction for which the commissioner determines that all of the following apply:
- (A) A small number of eligible members reside in the jurisdiction.
  - (B) The granting of subscription rights or the offer or sale of stock to eligible members in the jurisdiction would require the issuer or its officers or directors to:
    - (i) register, under the security laws of the jurisdiction, as a broker, dealer, salesman, or agent; or
    - (ii) register, or otherwise qualify, the stock for sale in the jurisdiction.
  - (C) The registration, qualification, or filing in the judgment of the commissioner would be impracticable or unduly burdensome for reasons of cost or otherwise.
- (6) Provide that an eligible member that exercises subscription rights must subscribe for at least a minimum number of shares of stock or a minimum dollar amount of stock unless the commissioner has determined that either minimum is unreasonable based on the respective interests of the issuer of stock and the eligible members.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-7**

##### **Stock option as compensation of officer or director prohibited**

Sec. 7. Notwithstanding any provision of this article, an MIHC or an affiliate of an MIHC may not use any form of a stock option or other preference with respect to the sale or purchase of any stock or other equity instrument of the MIHC or an affiliate of the MIHC to compensate an officer or director of the MIHC or an affiliate of the MIHC for services in connection with a plan to issue stock.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-4-8**

##### **Restrictions on dividends and distributions**

Sec. 8. Neither a stock holding company nor a reorganized insurer may pay dividends or make other distributions with respect to its stock to its shareholders if the reorganized insurer has failed to pay policyholder dividends under IC 27-14-3-11.

*As added by P.L.5-2000, SEC.4.*