



Ruling

Category: Corporate Governance

[NOTICE*](#)

Subject: Demutualization – Property and casualty companies – Eligible policyholders

No: 2015 – 01

Issue: The issue is whether, for the purpose of the *Mutual Property and Casualty Insurance Company with Non-mutual Policyholders Conversion Regulations* (the Regulations), a person who is an eligible policyholder on the eligibility date must hold the applicable policy past the eligibility date to permanently become an eligible policyholder.

Background: Section 237 and certain other provisions of the *Insurance Companies Act*, together with the Regulations, set out the framework governing the conversion of a federally regulated mutual property and casualty insurance company (MPCC) that has both mutual and non-mutual policyholders into a company with share capital. As a result of this conversion, which is often referred to as “demutualization”, certain policyholders, defined in the Regulations as “eligible policyholders”, receive benefits. Section 1 of the Regulations sets out the following definitions, among others:

“eligible policyholder” means
(a) an eligible mutual policyholder; or
(b) an eligible non-mutual policyholder.

« souscripteur admissible » L’un ou l’autre des souscripteurs admissibles suivants :
a) le souscripteur admissible d’une police mutuelle;
b) le souscripteur admissible d’une police non mutuelle.

“eligible mutual policyholder” means a person who holds a mutual policy if
(a) they held it on the eligibility date;
(b) they applied for it before the date specified in the resolution passed under section 3 and it was issued after the eligibility date but before the day on which the special resolution referred to in section 5 is passed; or
(c) they held it before the eligibility date but it lapsed before that date and was reinstated after that date but before the day on which the special resolution referred to in section 5 is passed.

« souscripteur admissible d’une police mutuelle » Titulaire d’une police mutuelle à qui s’appliquent l’une des situations suivantes :
a) il était titulaire de la police à la date d’admissibilité;
b) il a présenté sa demande avant la date précisée dans la résolution visée à l’article 3 et la police lui a été émise au cours de la période débutant après la date d’admissibilité et se terminant avant la date d’adoption de la résolution extraordinaire visée à l’article 5;
c) il était titulaire de la police, mais celle-ci est tombée en déchéance avant la date d’admissibilité et a été remise en vigueur au cours de la période débutant après la date



d’admissibilité et se terminant avant la date de l’adoption de la résolution extraordinaire visée à l’article 5.

“eligible non-mutual policyholder” means a person who

- (a) holds a non-mutual policy and has done so for the 12-month period ending on the eligibility date; or
- (b) belongs to any other group of policyholders specified in the resolution passed under section 3.

« souscripteur admissible d’une police non mutuelle » L’une ou l’autre des personnes suivantes :

- a) le titulaire d’une police non mutuelle ayant détenu sa police pendant une période de douze mois se terminant à la date d’admissibilité;
- b) la personne appartenant à tout autre groupe de souscripteurs précisé dans la résolution visée à l’article 3.

“eligibility date” means the date on which the directors of a mutual property and casualty insurance company pass a resolution under section 3 recommending conversion of the company.

« date d’admissibilité » Date à laquelle une résolution recommandant la transformation d’une société mutuelle d’assurances multirisques est adoptée par le conseil d’administration de celle-ci au titre de l’article 3.

The passing of the directors’ resolution under section 3 of the Regulations initiates the demutualization process. The passing of the eligible mutual policyholders’ special resolution under section 5 of the Regulations (the First Special Resolution) continues the demutualization process by authorizing negotiations with eligible non-mutual policyholders to, among other things, establish the method of allocating the value of the demutualized company.

Considerations:

Applicable Provisions

The issue involves the interpretation of paragraph (a) of the “eligible mutual policyholder” definition and paragraph (a) of the “eligible non-mutual policyholder” definition (collectively, Paragraph (a)).

Applicable Principles of Statutory Interpretation

The Supreme Court of Canada has adopted and applied the “Driedger approach” to guide statutory interpretation in Canada:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.¹

¹ *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at p. 41, citing E. Driedger, *Construction of Statutes* (2nd ed., 1983) at p. 87. See also *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 at p. 580.

In this Ruling, the Driedger approach will be applied by considering the text and context of Paragraph (a), the object of the Regulations and the legislative intent. Since the English and French versions of the Regulations are equally authoritative,² both versions will also be considered.

A. *Text of Paragraph (a)*

Based on a grammatical and ordinary reading of the English and French versions of Paragraph (a), OSFI is of the view that Paragraph (a):

- 1) speaks from the perspective of a point in time after the eligibility date (so do paragraphs (b) and (c) of the “eligible mutual policyholder” definition); and
- 2) does not provide that a person permanently becomes an eligible policyholder on the eligibility date, but rather sets out two requirements to be an eligible policyholder:
 - a) the person held a policy issued by the MPCC either (i) on the eligibility date, in the case of a mutual policy, or (ii) for the 12-month period ending on the eligibility date, in the case of a non-mutual policy (i.e., a fixed requirement); and
 - b) the person holds such a policy (i.e., a fluid requirement).³

Given that “to hold” a policy is an ongoing concept, the fluid requirement above not only prevents a person from permanently becoming an eligible policyholder on the eligibility date, but also raises the following question: does a person need to hold the applicable policy throughout the demutualization process to maintain the eligible policyholder status, or is there a point in time where such a person permanently acquires that status (and may thereafter cease to hold such policy while maintaining the status for the remainder of the process)? The other elements of the Driedger approach, as well as the other principles of statutory interpretations described further below, allow us to answer this question.

B. *Context of Paragraph (a)*

Beyond the definitions, OSFI is of the view that the Regulations generally do not contemplate ongoing variations to the pool of eligible policyholders (e.g., the Regulations do not set out mechanisms to deal with the practical implications of a fluid pool of eligible policyholders throughout the demutualization process).⁴ Given this context in which Paragraph (a) must be read, the fluid requirement described above should end early in the demutualization process (but after the eligibility date, given the text of Paragraph (a)). In this regard, OSFI notes that:

- 1) the first step in the Regulations to follow the passing of the directors’ resolution under section 3 (which sets the eligibility date) is the passing of the First Special Resolution;

² See section 18 of the *Canadian Charter of Rights and Freedoms*.

³ As it relates to paragraph (a) of the “eligible non-mutual policyholder” definition, OSFI also considered the text of paragraph 3(b) of the Regulations in coming to this view.

⁴ Exceptions would be (i) paragraph 3(a) of the Regulations, which informs the scope of paragraph (b) of the “eligible mutual policyholder” definition and *vice versa*, and (ii) paragraph 3(b) of the Regulations, which informs the scope of the “eligible non-mutual policyholder” definition and *vice versa*.

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- 2) paragraphs (b) and (c) of the “eligible mutual policyholder” definition provide that the last day that persons may become eligible mutual policyholders is the day before the First Special Resolution is passed; and
 - 3) the step in the Regulations that follows such an affirmative vote consists of the MPCC seeking the Superintendent’s approval to send to all of its eligible policyholders a notice of intent to negotiate, which suggests that the pool of eligible policyholders must be fixed by that point.

All of the above suggests that the day on which the First Special Resolution is passed is the appropriate point in time where the fluid requirement described above comes to an end.

C. Object of the Regulations

According to the Regulatory Impact Analysis Statement (RIAS) accompanying the Regulations, the object of the Regulations is to provide MPCCs “with the option to demutualize within a framework that

- ensures fair and equitable treatment of policyholders; and
- establishes an orderly and transparent process for demutualizing.”⁵

A concrete point in time where a person would permanently become an eligible policyholder that is as close as possible to the eligibility date would align with this object. Based on the three points noted in *B.* above, this would seem to be the day on which the First Special Resolution is passed.

D. Legislative Intent

The RIAS discusses the two sets of regulations relating to the demutualization of MPCCs: the Regulations and the *Mutual Property and Casualty Insurance Company Having Only Mutual Policyholders Conversion Regulations*. The RIAS states, in reference to the definition of “eligible policyholder” in the latter regulations (which is similar to the “eligible mutual policyholder” definition in the Regulations), that:

[a]ll mutual policyholders of the company, on the day on which the directors recommend conversion, as well as certain other mutual policyholders who obtained or reinstated their policies within the time frames set out in the definition of “eligible mutual policyholder”, are considered to be eligible policyholders (policyholders entitled to vote on, and receive benefits from, demutualization).⁶

This statement may be interpreted to suggest that Paragraph (a) policyholders were intended to permanently become eligible policyholders (i.e., “policyholders entitled to vote on, and receive benefits from, demutualization”) on the eligibility date. If this is the case, a concrete point in time where a person would permanently become an eligible policyholder that is as close as possible to the eligibility date would most closely align with this intent and the text of Paragraph (a). Based on the three points noted in *B.* above, this would seem to be the day on which the First Special Resolution is passed.

⁵ *Canada Gazette* Part II, Vol. 149, No. 13 at p. 2171.

⁶ *Supra* note 5 at p. 2173.

In addition to the Driedger approach to statutory interpretation, OSFI notes: (i) section 12 of the *Interpretation Act*, which provides that “[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” and (ii) the tenet of statutory interpretation that insurance legislation be liberally construed in favour of the insured.⁷ These two additional statutory interpretation principles suggest crystallizing eligibility at the earliest possible concrete date in the demutualization process, and thereby capturing the largest pool of policyholders.

Conclusion: OSFI is of the view that the considerations above support a determination that Paragraph (a) policyholders permanently become eligible policyholders on the day on which the First Special Resolution is passed. As a result, OSFI concludes that, for the purpose of Paragraph (a), a person who is an eligible policyholder on the eligibility date must also hold the applicable policy on the day on which the First Special Resolution is passed to permanently become an eligible policyholder for the remainder of the demutualization process.

In addition, based on the considerations above, OSFI would also conclude that persons who obtained or reinstated their mutual policies, within the scope of paragraphs (b) and (c) of the “eligible mutual policyholder” definition, would also have to hold their mutual policies on the day on which the First Special Resolution is passed to permanently become an eligible mutual policyholder for the remainder of the demutualization process.

Legislative References:

Please refer to the provisions set out in the Background portion above.

Concordance:

The *Bank Act*, the *Trust and Loan Companies Act* and the *Cooperative Credit Associations Act* do not contain similar provisions.

* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI’s consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling’s publication.

⁷ *McIntyre Estate v. Scott* (2003), 68 O.R. (3d) 45 (Ont. C.A.) at para. 18.