

Internal Revenue Service

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Person to Contact:

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Date:

December 20, 1999

Re:

Mutual =

Holding =

The Act =

Country X =

We respond to a letter dated May 7, 1999, in which you request rulings as to the federal income tax consequences of a proposed transaction. Additional information was received in subsequent submissions. The facts submitted for consideration are substantially as set forth below.

Mutual is a mutual life insurance company incorporated in Country X which is engaged in the sale of individual and group life, disability, health and dental insurance, annuities, and pension products. As a mutual life insurance company, Mutual has no authorized, issued, or outstanding stock. Mutual's products include policies that entitle the holders thereof to participate in the profits of Mutual ("Participating Policies") and policies that do not so entitle the holders ("Nonparticipating Policies"). Aside from the contractual right to receive policy benefits, the holders of Participating Policies possess

proprietary rights including the right to vote and the right to receive dividends when declared by Mutual's board of directors. A limited number of Mutual's Nonparticipating Policies have voting rights.

Mutual's products include policies that are issued as tax-deferred annuities under § 403(b) of the Internal Revenue Code, individual retirement annuities under § 408(b), and annuities for tax-qualified retirement plans described in §§ 401(a) and 403(a) (Tax Qualified Policies). Upon the conversion described below, all policies will remain in force as policies of Mutual and all policy premiums, benefits, values, guarantees or other policy obligations will remain unchanged, except that policies credited with policy credits, as defined below, will be enhanced by such credits. Thus, the contract rights of a holder will remain unchanged. However, all policyholder rights with respect to Mutual as a mutual company will cease upon the conversion. Policy credits, generally in the form of increased account benefits, will be added to the Tax Qualified Policies.

Mutual's branch operations in the United States are taxable under Part I of Subchapter L of the Code because Mutual's United States branch would qualify as a life insurance company within the meaning of § 816(a) if it were a domestic corporation.

For what have been represented to be valid business reasons, Mutual's Board of Directors has decided to demutualize. In furtherance of this objective, Mutual proposes to reorganize as a stock insurance company and a subsidiary of Holding. Pursuant to the plan:

- (i) As part of the proposed transaction, Holding was incorporated in Country X under the Act as a new stock holding company. Mutual purchased common stock of Holding, taking into account the legal requirements under the Act, including minimum capitalization requirements applicable to Holding.
- (ii) Mutual will cease to be a mutual company and will become a life insurance company with common shares under the Act.
- (iii) Policyholder rights in Mutual as a mutual company will cease. Holding will issue common shares and will make cash payments (in circumstances described below) to policyholders who are owners of policies entitled to vote (which includes all of the Participating Policies and a limited number of Nonparticipating Policies) (Eligible Policyholders) and will issue policy credits involving an increase in the dividend accumulation account, an increase to the dividend addition value, or an increase in the policy reserve, depending on the policy or contract. Eligible Policyholders residing outside Country X who are issued Holding common shares can elect to sell their shares in connection with a planned initial public offering

of Holding common shares (the Resale Shares), and those Eligible Policyholders residing inside Country X may elect to have their shares repurchased by Holding for cash immediately after issuance. Holding will cancel these repurchased shares. Eligible Policyholders living in other than certain countries, and certain governments and government agents that are Eligible Policyholders, will receive cash from Holding. Only policy credits will be received in exchange for those membership interests associated with Tax Qualified Policies.

Solely for the purpose of determining the amount of consideration each Eligible Policyholder is to receive, each Eligible Policyholder will be allocated (but not necessarily issued) a number of Holding shares. Fractional shares will not be issued.

- (iv) Mutual will issue common shares to Holding.
- (v) Mutual will surrender to Holding, and Holding will cancel, all of the shares previously issued by Holding to Mutual.

As part of the proposed transaction, Holding will offer for sale additional shares of its common stock (Primary Shares) in an initial public offering (IPO). The shares so offered will be issued to underwriters (the Underwriters) pursuant to firm commitment underwriting agreements. The Underwriters will also sell the Resale Shares purchased from Eligible Policyholders who reside outside of Country X pursuant to the plan as described in step (iii) above.

Holding will issue to Transfer Agent global certificates representing all Holding common shares outstanding at the time of the conversion. Transfer Agent will then serve as the agent for Holding's purchase of the shares of policyholders who elect cash payments.

Mutual has represented that, to the best of its knowledge and belief, the deemed transfer by Eligible Policyholders of Mutual stock to Holding in exchange for Holding common shares, the transfer of cash to Holding by purchasers in the IPO in exchange for Primary Shares, and the transfer of cash to Holding by the Underwriters in exchange for Holding common shares to the extent that the Underwriters retain any Holding common shares after the IPO, will qualify as a transfer pursuant to § 351. The taxpayer also has made the following representations in connection with the formation of the holding company structure:

- (a) No stock or securities will be issued in exchange for services rendered to or for the benefit of Holding in connection with the proposed transaction.
- (b) No stock or securities will be issued for indebtedness of Holding that is not

evidenced by a security or for interest on indebtedness of Holding.

- (c) The transfers by the Transferors (Eligible Policyholders receiving Holding common stock, purchasers of shares in the IPO, and the Underwriters to the extent they retain any shares) are not the result of the solicitation by a promoter, broker, or investment house.
- (d) The Transferors will not retain any rights in property transferred to Holding.
- (e) Holding will not assume any indebtedness of the Transferors in connection with the proposed transaction, and to the best of the knowledge of Mutual, transferred property will not be subject to any indebtedness.
- (f) There is no indebtedness between Holding and the Transferors and there will be no indebtedness created in favor of the Transferors in exchange for transferred property as a result of the transaction.
- (g) The transfers and exchanges will occur under a plan, adopted and approved before the transaction, in which the rights of the parties are defined.
- (h) Holding has no plan or intention to dispose of any of the stock of Mutual to be received by it in the exchange. To the best of management's information and belief, policyholders have no plan or intention to dispose of any of the stock of Holding to be received by them in the exchange.
- (i) There is no plan or intention on the part of Holding to redeem or otherwise reacquire any stock other than the repurchased shares of certain Eligible Policyholders and the shares previously issued by Holding to Mutual, as described above.
- (j) To the best of the knowledge of Mutual, taking into account any issuance of additional shares of Holding stock; any issuance of Holding stock for services; the exercise of any Holding stock rights, warrants or subscriptions; a public offering of Holding stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Holding to be received in the exchange, the Transferors will be in "control" of Holding within the meaning of § 368(c) immediately after the proposed transaction.
- (k) The common shares, policy credits, and cash distributed in the conversion will have a fair market value estimated to be equal to the fair market value of the policyholder rights that cease in connection with the conversion.

Each Transferor will receive stock or other property approximately equal to the fair market value of the property transferred to Holding.

- (l) Holding will remain in existence, and it has no plan or intention to dispose of the transferred property, other than in the normal course of business operations, except that Holding may lend or contribute part of the property to Mutual.
- (m) Each of the parties to the transaction will pay his, her, or its own expenses, if any, incurred in connection with the proposed transaction.
- (n) Holding will not be an investment company within the meaning of § 351(e)(1) and §1.351-1(c)(1)(ii) of the Income Tax Regulations.
- (o) To the best of the knowledge of Mutual, none of the Transferors is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (p) Holding will not be a “personal service corporation” within the meaning of § 269A.

The following additional representations have been made in connection with the conversion of Mutual from a mutual life insurance company to a stock life insurance company.

- (q) The fair market value of the stock of Mutual deemed received by Eligible Policyholders will be approximately equal to the fair market value of the policyholder rights in Mutual that cease in connection with the conversion.
- (r) Mutual will continue to conduct its insurance business following the conversion.
- (s) Each of the parties to the conversion will pay his, her, or its own expenses, if any, incurred in connection with the conversion.
- (t) Following the conversion, Mutual will be treated under the Country X law as the same corporation that existed prior to the transaction.
- (u) The demutualization is not part of a plan to periodically increase the proportionate interest of any policyholder or shareholder in the assets or earnings and profits of Mutual.

Additional representations have been made, as follows:

- (v) Upon completion of the conversion, each U.S. Eligible Policyholder will own less than 5 percent of the total voting power and the total value of Mutual, taking into account the attribution rules of § 318 as modified by § 958(b).
- (w) Upon completion of the proposed transaction, each U.S. Eligible Policyholder will own less than 5 percent of the total voting power and the total value of Holding, taking into account the attribution rules of § 318 as modified by § 958(b).
- (x) Neither Mutual nor Holding will have been a controlled foreign corporation (CFC) under § 957 during the 5-year period ending immediately before the conversion.
- (y) Mutual will not be a CFC immediately after the conversion, and Holding will not be a CFC immediately after the completion of the proposed transaction.
- (z) Approximately 10 percent of the Eligible Policyholders will be U.S. residents, and such U.S. Eligible Policyholders will receive approximately 22 percent of the total Holding shares issued in connection with the proposed transaction.
- (aa) No U.S. person will own 10 percent or more of the total combined voting power of all classes of Holding stock or total value of Holding stock upon completion of the proposed transaction.
- (bb) Mutual currently conducts business directly in the United States through a branch, and, after the proposed transaction, Mutual will continue to conduct business in the United States through that U.S. branch.
- (cc) Mutual's U.S. branch operations would qualify as a life insurance company under § 816(a) if it were a domestic corporation, and, after the proposed transaction, Mutual's branch operations will continue to be taxable under Subchapter L of the Code.
- (dd) No § 882 or § 884 tax implications will result from the proposed transaction.
- (ee) Mutual's conversion will be an exchange of stock in a foreign corporation in a reorganization described in both § 354 and §1036, and the proprietary interests in Mutual surrendered in the exchange are not stock to which an amount has been attributed under Treas. Reg. §§7.367(b)-5 through 7.367(b)-12.

- (ff) All exchanges will occur on approximately the same date.

Based solely on the information submitted and the representations made, we hold that:

- (1) For Federal income tax purposes, the transaction will be viewed as the conversion of mutual to a stock insurance company followed by a transfer of the Mutual stock to Holding.
- (2) For purposes of an analysis under § 351, the issuance of Primary Shares from Holding to the Underwriters for sale to the public in the IPO will be disregarded, and the members of the public that acquire such stock from the Underwriters for cash will be treated as transferring cash directly to Holding in exchange for such stock (§1.351-1(a)(3)).
- (3) The transfer by Eligible Policyholders of stock in Mutual to Holding in exchange for voting common stock of Holding will be treated as part of the same transaction in which (i) purchasers in the IPO exchange cash for Primary Shares and (ii) the Underwriters transfer cash to Holding in exchange for Holding voting common stock to the extent that the Underwriters retain any Holding voting common stock after the IPO.
- (4) Provided that the Transferors will be in control of Holding within the meaning of § 368(c) immediately following the transfer of Mutual stock and cash to Holding in exchange for Holding common shares, the sale of Resale Shares in step (iii), above, will not affect any characterization of the transfers by the Transferors as transfers of property to Holding in exchange for Holding common shares for purposes of analysis under § 351.
- (5) Holding's issuance of shares to Eligible Policyholders residing inside Country X and Holding's repurchase of those shares will not affect any characterization of the transfers by the Transferors as transfers of property to Holding in exchange for Holding common shares for purposes of analysis under § 351.
- (6) Holding's issuance of shares to Mutual in step (i), above, and Mutual's surrender to Holding, in step (v), above, of such shares will not affect any characterization of the transfers by the Transferors as transfers of property to Holding in exchange for Holding common shares for purposes of analysis under § 351.
- (7) Provided there are no United States persons who own 5 percent or more (applying the attribution rules of § 318, as modified by § 958(b)) of either

the total voting power or the total value of all stock in Holding, § 367(a)(1) will not apply to the formation of the holding company structure to the extent it qualifies under § 351 (Treas. Reg. §1.367(a)-3(b)(1)).

- (8) The change in the form of operation of Mutual from a mutual insurance company to a stock insurance company and the exchange of the membership interests in Mutual, as discussed above, for voting common stock of Mutual will be a reorganization within the meaning of § 368(a)(1)(E). Mutual will be “a party to a reorganization” within the meaning of § 368(b).
- (9) No gain or loss will be recognized by Mutual on the receipt of the membership interests in Mutual in exchange for Mutual voting common stock (§1032(a)).
- (10) No gain or loss will be recognized by policyholders on the exchange of membership interests in Mutual for voting common stock of Holding (§ 354).
- (11) The tax attributes of Mutual will remain unchanged as tax attributes of Mutual upon conversion to a stock insurance company. (See Rev. Rul. 54-482, 1954-2 C.B. 148). Accordingly, such attributes as asset basis, holding periods, net operating loss carryovers, capital loss carryovers, earnings and profits, and accounting methods will not be changed by reason of the conversion of Mutual from a mutual insurance company to a stock insurance company in the recapitalization.
- (12) Pursuant to Treas. Reg. §1.367(a)-3(a), § 367(a)(1) will not apply to the § 368(a)(1)(E) recapitalization.
- (13) Provided that the § 368(a)(1)(E) recapitalization qualifies as a §1036 exchange and the proprietary interests in Mutual surrendered in the § 368(a)(1)(E) recapitalization are not stock to which an amount has been attributed under Treas. Reg. §§ 7.367(b)-5 through 7.367(b)-12, pursuant to Treas. Reg. §7.367(b)-4(c), § 367(b) will not apply to the § 368(a)(1)(E) recapitalization.
- (14) The proposed conversion will not cause an actual or deemed distribution under § 403(b)(11) or otherwise disqualify a policy under § 403(b) and will not constitute a distribution from or contribution to any § 401(a) plan policy, § 403(b) policy, or § 408(b) policy, although no specific ruling is being issued with regard to § 408(e), which is within the United States Department of Labor’s jurisdiction.

- (15) The proposed conversion will not result in any transaction that constitutes a distribution and thus will not result in (a) gross income to an employee or other beneficiary of a Tax Qualified Policy as a distribution under § 72; (b) any 10 percent additional income tax under § 72(t) for premature distributions from a qualified retirement plan; (c) any six or 10 percent excise tax under § 4973 or § 4979 for excess contributions to certain qualified retirement plans; or (d) any designated distribution under § 3405(e)(1)(A) that is subject to withholding under § 3405(b) or (c). No specific ruling is being issued with regard to § 408(e).
- (16) Policy credits will be treated for purposes of §§ 401(a)(9), 403(b)(10), and 408(b)(3) as investment earnings under the policies, attributable to the year such policy credits are made to the policies.
- (17) For purposes of § 403(b)(11) and the effective date of provisions applicable thereto, a pro rata portion of the policy credits added to the Tax Qualified Policies to which contributions have been made pursuant to a salary reduction agreement will be treated as earnings attributable to such contributions and will be treated as credited under the contracts in the year such policy credits are made to the contracts pursuant to the proposed conversion.
- (18) Mutual may share with Holding, solely for taxpayer information reporting and backup withholding purposes, TINs and taxpayer certifications that Mutual possesses with respect of its policyholders without violating any duty under § 3406(f), or the regulations thereunder, to keep such taxpayer information confidential.
- (19) Holding may share with the Underwriters and Transfer Agent, solely for taxpayer information reporting and backup withholding purposes, TINs and certifications that Mutual possesses with respect of its policyholders without violating any duty under § 3406(f), or the regulations thereunder, to keep such taxpayer information confidential.
- (20) The conversion by taxpayer from a mutual to a stock insurance company will have no effect on the date each life insurance or annuity contract of taxpayer was issued, entered into, purchased, or came into existence for purposes of §§ 72(e)(4), 72(e)(5), 72(e)(10), 72(e)(11), 72(q), 72(s), 72(u), 72(v), 101(f), 264(a)(3), 264(a)(4), 7702, and 7702A. Moreover, the conversion will not require retesting or the start of new test periods for the contracts under §§ 264(c)(1), 7702(f)(7)(B) through (E), and 7702A(c).

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed

by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings.

We express no opinion on whether any or all of the above-described foreign corporations are passive foreign investment companies within the meaning of § 1297(a) and the related regulations to be promulgated. If it is determined that any of the above-described foreign corporations are passive foreign investment companies, we express no opinion related to the application of §§ 1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of the taxpayers for the taxable year in which the transaction covered by this ruling letter is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to the taxpayer.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: *Filiz A. Serbes*
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Assistant to the Chief, Branch 5