

Statute file

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SECURITIES DIVISION
1300 West Washington
Third Floor

TELEPHONE: (602) 542-4242
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May 25, 1994

Richard C. McQuown, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, OH 43215-3406

RE: Midland Mutual Life Insurance Company\No-action Request
A.R.S. § 44-1844(A)(6)

Dear Mr. McQuown:

On the basis of the facts set forth in your letter of May 5, 1994, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:jb
Attachment

**PORTER, WRIGHT
MORRIS & ARTHUR
ATTORNEYS AT LAW**

RICHARD C. McQUOWN
COLUMBUS, OHIO
(614) 227-1975

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May 5, 1994

Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

Attn: Ms. Wendy Coy

Re: No-Action Request - The Midland Mutual Life Insurance Company

Dear Ms. Coy:

We are counsel to The Midland Mutual Life Insurance Company, an Ohio mutual life insurance company ("The Midland"), in connection with the proposed conversion of The Midland from a mutual life insurance company to a stock life insurance company (the "Conversion"). The conversion of an Ohio domiciled mutual life insurance company into a stock life insurance company is subject to the requirements of Sections 3913.11 to 3913.13 of the Ohio Revised Code, attached hereto as Exhibit A (the "Demutualization Statute").

The Midland's Board of Directors adopted a Plan of Reorganization and Conversion on June 30, 1993, as amended February 23, 1994 (the "Plan"), pursuant to which certain policyholders whose contracts or policies were in force on June 30, 1993 will receive common stock (the "Shares") of a new holding company, Midland Financial Services, Inc. (the "Holding Company"), which will own all of The Midland's issued and outstanding common shares. A copy of the Plan (exclusive of certain voluminous exhibits) is attached hereto as Exhibit B.

As required by the Demutualization Statute, the Ohio Superintendent of Insurance ordered an examination of The Midland as of June 30, 1993. The examination verified that The Midland had unassigned surplus at least equal to the capital and surplus required under Ohio law for a life insurance company to commence business in Ohio, that the Conversion would benefit The Midland, that adequate provision for the protection of policyholders' interests was made, and the Conversion would not be inequitable, unreasonable, or contrary to law. Following the examination, the Superintendent appointed an appraisal committee to determine the value of The Midland as of June 30, 1993. The Midland will call a meeting of its policyholders within 60 days of the date of the final appraisal report. At least a majority of the votes cast by the policyholders at that meeting must be cast in favor of the Plan.

If the policyholders approve the Plan, the Superintendent will hold a public hearing where anyone adversely affected by the Plan may present evidence regarding why the Plan does not meet the statutory requirements. If, after the hearing the Superintendent finds that the

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Conversion meets the statutory requirements, he will issue an order authorizing the Conversion. On the effective date of the Conversion, The Midland will be converted to a stock company and will issue 1,000 common shares, \$1,000 par value, to the Holding Company. Pursuant to the Plan and the Demutualization Statute, as soon as practicable after the effective date the ownership interests of eligible policyholders will be converted into Shares according to a valuation of The Midland and an actuarial allocation of that value among classes of policyholders. Eligible policyholders who have ownership interests in the Company entitling them to receive less than a number of Shares to be specified by the board of Directors will receive cash equal to the stated capital of the Shares which they would otherwise be allocated. Other terms of the Conversion and the regulatory requirements under Ohio law are discussed in greater detail in the Plan.

We write to request your confirmation that any offer or sale of the Shares occurring in your jurisdiction will be exempt from state securities registration requirements if the Holding Company, without registration under the securities laws of your jurisdiction, delivers the prospectus required by the Demutualization Statute to policyholders in your jurisdiction and issues the Shares upon the effective date of the Conversion. If you are unable to confirm the foregoing we request your no-action position with respect to the transactions contemplated by the Plan.

We believe that the transactions contemplated by the Plan are exempt transactions pursuant to Arizona Revised Statutes Section 44-1844(A)(6) that exempts any transaction incident to a statutory or judicially approved reorganization, merger or consolidation that is incident to a vote of security holders pursuant to the relevant controlling statute.

The Conversion is a statutory reorganization authorized under the Demutualization Statute. The Demutualization Statute requires that, in addition to the approval of the Superintendent, the Conversion must be approved by the policyholders. The Conversion, which will result in The Midland becoming a wholly-owned subsidiary of the Holding Company, is similar to a merger or consolidation of the two entities. The policyholders' interests in the mutual company include the right to one vote at meetings of the members, the right, upon liquidation of the mutual company, to share in any assets remaining after providing for the debts and obligations of the mutual company, and, if a policyholder has a participating policy, the right to receive dividends when and if declared by the directors. Those rights will be exchanged or reclassified into shares of the Holding Company.

The Plan describes the method by which the policyholders will receive full disclosure of material facts regarding the Conversion. Each policyholder will receive a notice of the meeting to approve the Plan at least 30 days prior to the meeting. That notice must include (i) a prospectus approved by the Superintendent, which must contain full disclosure of the details of the Conversion; (ii) a summary of the examination approved by the Superintendent; (iii) a uniform ballot for voting on the Conversion; (iv) a copy or summary of the report of the appraisal committee; (v) a statement of the consideration to be given each policyholder; and (vi) a statement that if the Conversion is approved by the policyholders, the Superintendent shall fix a time and place for a public hearing on the Conversion within sixty days after such meeting.

The insurance industry in general, and the demutualization process in particular, are highly regulated. Policyholders affected by the Conversion have the benefit of the Superintendent's review of the Plan, will receive full disclosure of all material facts regarding the Conversion, will have the right to vote on the Conversion, and will have the opportunity to appear at a public hearing to express concerns regarding the propriety of the Conversion. We respectfully suggest that state securities registration with respect to the demutualization will increase the cost of the demutualization without providing any corresponding benefit to the policyholders.

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Based on the foregoing, we request your confirmation that the delivery of the prospectus required by the Demutualization Statute and the issuance of the Shares will be exempt from the securities registration requirements of your jurisdiction or, in the alternative, your no-action position with respect to the transactions contemplated by the Conversion.

Because of the time periods specified in the Demutualization Statute, The Midland expects to notify its policyholders of a special meeting to vote on the Plan (accompanied by the prospectus required by the Demutualization Statute) shortly following the issuance of the report of the appraisal committee, now expected by mid-May. Accordingly, we would appreciate your response to this letter at your earliest convenience. If you have any questions or require additional information, please contact the undersigned at (614) 227-1975.

Please acknowledge receipt of this letter by date-stamping the enclosed copy of this letter and returning it in the enclosed envelope.

Sincerely,


Richard C. McQuown