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January 17, 2002

Mr. Steven J. Junior
Senior Insurance Examiner
Office of the Commissioner of Insurance
121 East Wilson Street
Madison, Wisconsin 53702

Daniel R. Doucette
PRESIDENT

Re: Application for the Formation and Subsequent Merger of a Mutual Holding Company (Case No. 01-C27045)

Dear Mr. Junior:

Thank you for your correspondence dated December 20, 2001 relative to the Mutual Holding Company Plan and the proposed merger plans recently submitted to your office by Milwaukee Mutual Insurance Company ("MMIC" or the "Company"). We appreciate your thorough review and careful consideration of the documents submitted to date, and we offer the following responses to the questions contained in your recent letter.

DEVELOPMENT OF THE RESTRUCTURING PLAN AND PROPOSED "MHC MERGER"

- 1. Please describe the process and time frame of deliberation that was undertaken by Milwaukee Mutual's management and board of directors in arriving at the current mutual holding company restructuring plan and MHC Merger Agreement.*

MMIC had been exploring potential options for restructuring the Company, including potential merger and acquisition opportunities, since mid-1998/early 1999 and continuing through May, 2001. With the passage of Wisconsin's Mutual Holding Company Law (the "MHC Law") in 1998, these options included the possibility of converting to a mutual holding company structure. The process of deliberation utilized by the Company included the following: (i) formal and informal discussions between MMIC's Board of Directors (the "Board") and MMIC's management (the "Management") regarding potential merger and acquisition opportunities and various restructuring options, including the implications of a possible conversion under the MHC Law; (ii) discussions between Management and the Office of the Commissioner of Insurance for the State of Wisconsin ("OCI") regarding the MHC Law generally; (iii) discussions between Management and the Company's outside legal counsel regarding various restructuring options, including a possible conversion under the MHC Law; and (iv) Management's identification and evaluation of potential acquisition targets and informal discussions between Management and representatives of some of those identified targets.

Ultimately, Management recommended to the Board a plan for converting to a mutual holding company structure (the "MHC Plan"), which the Board adopted by resolution dated May 17, 2001.

- 2. This Office will need copies of the portions of the Milwaukee Mutual board minutes that relate to deliberations on the mutual holding company plan or related transactions.*

Portions of the MMIC board minutes that relate to deliberations on the MHC Plan or related transactions are attached hereto as Exhibit A.

EFFECT ON MILWAUKEE MUTUAL AND THE HOLDING COMPANY SYSTEM

3. *Will the restructuring of Milwaukee Mutual and First Nonprofit Mutual Insurance Company or subsequent merger of the mutual holding companies trigger any change in control provisions under the terms of any executive employment agreement?*

Neither the conversion of MMIC nor First Nonprofit Mutual Insurance Company (“FNP Mutual”) to a mutual holding company structure will trigger change-of-control provisions. The proposed merger of the mutual holding companies created by FNP Mutual and MMIC as part of their respective conversions (the “Merger”) will trigger a change-of-control provision contained in an executive employment agreement between FNP Mutual and its Chief Executive Officer (“CEO”), Philip Warth. Since the Merger contemplates that only two of nine to thirteen directors of the surviving mutual holding company will be designated by the converted FNP Mutual, the latter will in effect become controlled by persons presently controlling MMIC. Mr. Warth’s contract has been reviewed and approved by the Illinois Department of Insurance (the “Illinois Department”). The Merger will not trigger any change-of-control provisions contained in any other executive employment agreement.

4. *With respect to the transactions described in the mutual holding company plan, have any executive employment agreements, side agreements, written plans, or assurances been made or placed under development concerning staff retention, salaries and benefits, or severance packages, for the officers or employees that provide services to Milwaukee Mutual or First Nonprofit Mutual?*

There are no such agreements, plans or assurances relative to the officers or employees that provide services to MMIC.

Pursuant to Section 6.8 of the current form of the proposed agreement and plan of merger, following the Merger the Surviving MHC (as that term is defined below) shall (i) continue the incentive plans and employee benefits of officers and employees of First Nonprofit Mutual Holding Company (“FNMHC”) and the FNMHC subsidiaries on substantially the same terms in effect immediately prior to the Merger (except for the employment contract with Phil Warth, current CEO of FNP Mutual and future CEO of First Nonprofit Insurance Company (“FNIC”), the entity that will serve as the converted stock insurance subsidiary of FNMHC following FNP Mutual’s conversion to a mutual holding company structure); and (ii) subject to FNIC's possible election to outsource certain company functions as previously disclosed in writing, maintain FNIC's operations and related staffing in substantially the same manner as had been in effect prior to the Merger. Section 9.5 of the proposed merger agreement provides for amendment of the employment contract between FNIC and Mr. Warth, the terms of which will be subject to review and approval by the Illinois Department. Otherwise, there are no other such

agreements, plans or assurances relative to the officers or employees that provide services to FNP Mutual.

5. *Is any reorganization of the succession of control or ownership of Milwaukee Mutual's or First Nonprofit Mutual's present subsidiaries contemplated?*

Not at present. However, Mr. Warth's employment agreement with FNP Mutual, as previously filed with and approved by the Illinois Department, provides him with an option to purchase the stock of a subsidiary of FNP Mutual engaged in the business of managing a limited liability corporation that serves the 501(c)(3) non-profit sector with self-funded unemployment benefit services. This subsidiary and its business were developed by Mr. Warth and the unemployment business has not been a part of FNP Mutual's insurance business. Mr. Warth's right to purchase stock of the subsidiary requires Mr. Warth to pay an amount equal to 300% of the subsidiary's average annual net income for the previous five years.

6. *What changes does management anticipate with respect to service, management, cost allocation, or other written agreements among members of the holding company system in consequence of the proposed restructuring and subsequent merger of the mutual holding companies?*

Management does not anticipate any changes with respect to service, management, cost allocation, or other written agreements among members of the holding company system in consequence of the proposed restructuring and subsequent merger of the mutual holding companies, subject to FNIC's possible election to outsource certain company functions as indicated in our response to Question No. 4, *supra*.

7. *Are there any plans to repay Milwaukee Mutual's surplus notes with the proceeds of a future public offering of common stock by a subsidiary of Mutual Insurers Holding Company following the MHC Merger?*

There are currently no surplus notes issued by MMIC. However, as part of the Merger, it is contemplated that Milwaukee Insurance Company ("MIC") – the entity that will serve as the converted stock insurance subsidiary of Mutual Insurers Holding Company ("MIHC") following MMIC's restructuring – will loan FNIC the sum of \$2 million in exchange for a surplus note issued to MIC. The terms of the surplus note have yet to be finalized, but there are no current plans to repay the FNIC surplus note through the proceeds of such an offering.

BUSINESS PLAN AND OPERATIONS OF CONVERTED MMIC

8. *Which types of insurance programs and services will the Converted MMIC prioritize for growth and development?*

Milwaukee Insurance Company ("MIC") will continue to market the same type of plans in the same general market as MMIC does currently. There are no plans to withdraw from any markets as a result of the MHC Plan or the Merger.

9. *Which types of insurance programs and services will the Converted MMIC seek to reduce or terminate?*

None.

10. *Will the Converted MMIC seek to reduce or terminate services in any region or jurisdiction in which it is currently active?*

No.

11. *Will Converted MMIC's distribution network be cross-licensed for agency on behalf of First Nonprofit Mutual? Will the First Nonprofit Mutual distribution network be cross-licensed for agency on behalf of the Converted MMIC? Will the producer networks be more or less comprehensively integrated, or will they remain more or less distinct?*

The producer networks of MIC and FNIC will remain more or less distinct after the Merger, with each entity negotiating separate agency contracts. There will be no attempt to comprehensively integrate the various producer networks of the two entities given the unique nature of the FNIC product lines. Should a specific agent request cross-licensing, the request will be reviewed in the normal course of agency appointments.

12. *Does management anticipate any changes in Converted MMIC's marketing practices or distribution channels?*

No.

13. *Describe the Converted MMIC's plans for charitable contributions and commitment to community outreach after the conversion in comparison to past practices.*

There will be no change relative to past practices in these regards. In addition, under the reinsurance agreement between FNP Mutual and MMIC referred to herein (*see* footnote 1 in response 23.b), an added ceding commission payable to FNIC based on positive underwriting results will be used to fund the establishment of an FNIC educational foundation.

14. *Does Milwaukee Mutual plan to purchase or sell any books of business over the next twelve months?*

There are no such specific plans at this time, but consistent with the proposed business model for the Surviving MHC, MMIC is actively seeking and evaluating additional mutual insurance entities as potential acquisition targets for the Surviving MHC.

EMPLOYMENT AND COMPENSATION MATTERS

15. *What is the anticipated effect of the proposed mutual holding company plan and the intended MHC Merger on the employees that presently provide services to Milwaukee Mutual?*

MMIC does not currently anticipate that the MHC Plan or the Merger will have any effect upon the employees that presently provide services to MMIC.

16. *Is it anticipated that the number of people employed to provide services to Milwaukee Mutual would increase or decrease? If so, what is the anticipated magnitude of the change?*

MMIC does not currently anticipate that the number of people employed to provide services to MMIC will change in any way as a result of the MHC Plan or the Merger.

17. *Is it anticipated that there will be any change in the companies that presently provide services to Milwaukee Mutual?*

No.

18. *Does management anticipate opening or closing any offices from which Milwaukee Mutual's operations are conducted or regularly supported?*

No.

CORPORATE GOVERNANCE UNDER THE MUTUAL HOLDING COMPANY STRUCTURE

19. *What preemptive or preferential rights will members of Mutual Insurers Holding Company have to participate in any future public offerings by subsidiaries of their mutual holding company? After the merger with First Nonprofit Mutual Holding Company, what preemptive or preferential rights will members of the surviving mutual holding company have to participate in any future public offerings by subsidiaries of their mutual holding company?*

There are no current plans to conduct any such public offerings of stock, either prior to or following the Merger. Should such an offering occur prior to the Merger, members of Mutual Insurers Holding Company ("MIHC") would have statutory subscription rights consistent with Wis. Stat. § 644.15(2). Following the Merger, in the event of any offering of stock by a company owned by the Surviving MHC, members of the Surviving MHC would have rights afforded to them by Section 59.2 of the Illinois Insurance Code. Any such stock offerings by a subsidiary of the Surviving MHC would have to be approved by the Illinois Department pursuant

to the terms and conditions of the Order issued by the Department approving FNP Mutual's conversion to a mutual holding company structure, and thus the interests of the members will be fully protected. (A copy of the Order is attached as Exhibit B. FNP Mutual is seeking modification to clarify certain aspects of the Order not related to this provision.) In the event of a conversion of the Surviving MHC under Section 59.1 of the Illinois Insurance Code, members would have first priority rights to purchase stock of the converting MHC. Again, the parties have no present plan to undertake any such conversion or otherwise issue stock.

20. *Please describe the factors taken into consideration in arriving at the proposed composition of the board of directors of First Nonprofit Mutual Holding Company following its intended merger with Mutual Insurers Holding Company.*

We assume the question relates to the proposed composition of the board of directors of the mutual holding company surviving the Merger, which is FNMHC – the Illinois entity – but renamed “Mutual Insurers Holding Company” (the “Surviving MHC”).

The composition of the board of directors of the Surviving MHC was agreed to through arms-length negotiations between representatives of MMIC and FNP Mutual. The basic factors guiding those negotiations included a desire to (i) ensure that MMIC obtained control of the board of the Surviving MHC, and (ii) provide FNP Mutual with a minority voice on the board of the Surviving MHC without compromising MMIC's ultimate control.

Consistent with the foregoing principles, the parties agreed that the Surviving MHC shall have a board of directors composed of nine (9) to thirteen (13) members, and that two (2) of the board members will be designated by FNIC, and the remaining members will be designated by MIHC.

21. *Following the MHC Merger, will Mutual Insurers Holding Company become the principal employer within the holding company subsystem in order to affirm the officers' and employees' continued commitment to mutuality?*

Following consummation of the MHC Plan and the Merger, there will be no change in the status of the officers and/or employees who provide services to MIC, and FNP Mutual's current officers and/or employees will remain employed by FNIC. It is not contemplated at this time that the Surviving MHC would become the employer. However, because there are no current plans to conduct any public offerings of stock in the insurance subsidiaries of the Surviving MHC, the officers of these subsidiaries will remain committed to the concept of mutuality because their sole shareholder will be a mutual holding company, of which all member interests will be held by the policyholders of the insurance subsidiaries.

22. *A mutual holding company structure can give rise to conflicts over how the growth of and profit from the business would be apportioned between policyholders and shareholders. What consideration has been given to mitigate such conflicts?*

There are no current plans to conduct public offerings of stock by any subsidiary of either FNMHC or MIHC before the Merger, or of the Surviving MHC following the Merger, so the only shareholders involved are the mutual holding companies, the member interests in which are held by the respective policyholders of FNP Mutual and MMIC. Accordingly, there is no potential conflict of interest between the interests of shareholders and the interests of policyholders. Moreover, should plans for a public offering of stock develop in the future, any such offering will have to be approved by the Illinois Department pursuant to Illinois law and the terms and conditions of the Order issued by the Department approving FNP Mutual's conversion to a mutual holding company structure (a copy of which is attached hereto as Exhibit B).

23. *In previous meetings regarding the mutual holding company plan, it was indicated that the surviving mutual holding company would be domiciled in Illinois because Illinois law offers flexibility. Please describe the specific business advantages presented by Illinois law that are impeded by Wisconsin law. How is it anticipated that these business advantages will work to advance the interests of the surviving mutual holding company's members?*

The choice of an Illinois domicile was agreed to through arms-length negotiations between representatives of MMIC and FNP Mutual, taking into account a variety of considerations, including, without limitation, (i) the additional protections accorded under Illinois law for the financial interests of the policyholders/members of the Surviving MHC, and (ii) the greater corporate flexibility accorded under Illinois law relative to the business model and future corporate planning for the Surviving MHC.

a. Financial Protections and Benefits.

There are several requirements under Illinois law protecting or benefiting the financial interests of the policyholders/members of a mutual holding company. First, Illinois law provides that the assets of a mutual holding company must be held in trust or subject to a lien for the benefit of policyholders of the converted stock insurance subsidiary, who are the members of the mutual holding company. *See* 215 ILCS 5/59.2(11)(d) (Supp. 2000). There is no such protection accorded to members of a mutual holding company under Wisconsin law.

Second, Illinois law requires a mutual holding company to have at least \$2 million of original surplus and to submit a statutory deposit of \$1.5 million with the Illinois Department in addition to the statutory deposit of FNP Mutual. *See* 215 ILCS §§ 5/43 & 5/53 (Supp. 2000). Such requirements are intended, at least in part, to secure the obligations of the underlying insurance operation to the policyholders/members of the mutual holding company. *See id.* Wisconsin law requires no such security for the financial interests of members of a mutual holding company.

Third, Illinois law treats mutual holding companies as "insurers" subject to most regulatory requirements applicable to any domestic mutual insurer. *See* 215 ILCS 5/59.2(11)(a) (Supp. 2000). Accordingly, Illinois regulates the investments of a domestic mutual holding

company in the same manner as it regulates the investments of a domestic mutual insurance company, *see* 215 ILCS § 5/126 *et. seq.*, while Wisconsin law provides no express authority for regulating the investments of a domestic mutual holding company. Moreover, as an “insurer,” an Illinois domestic mutual holding company is not subject to any state taxes other than premium taxes, and because it is an “insurer” which does not and cannot issue any insurance policies, it ultimately should not have to pay any state income, premium or franchise taxes. Under Wisconsin law, a domestic mutual holding company is expressly not an “insurer,” *see* Wis. Stat. § 644.03(2), and thus is presumably subject to all state taxes otherwise applicable to Wisconsin business entities that are not “insurers.”

b. Increased Corporate Flexibility.

At the same time, Illinois law provides greater corporate flexibility relative to certain matters affecting (i) the proposed business model for the Surviving MHC, and (ii) the future corporate planning for the Surviving MHC.

The proposed business model for the Surviving MHC is to pursue additional acquisitions or “roll up” opportunities with other mutual insurers. This business model advances the interests of the members of the Surviving MHC because it should improve the performance of the underlying insurance operations by the spreading and diversification of risk through reinsurance pooling and/or the enhanced growth generated through improved ratings and additional acquisitions. However, an important incentive for attracting additional mutual insurers to the holding company system will be the opportunity to receive an “A plus” rating from A.M. Best (MMIC’s current rating and the rating anticipated for the Surviving MHC’s entire holding company system).¹ The ability of the Surviving MHC to achieve and/or maintain this critical “A plus” rating as a Wisconsin domestic is unclear due to potential conflicts between Wisconsin law and the requirements of A.M. Best as to board composition. Specifically, Wisconsin law requires that the board of directors of a domestic mutual holding company have a majority of outside directors. *See* Wis. Stats. §§ 644.16(1) and 611.51(3). A.M. Best, however, requires that a majority of the directors on the board of the Surviving MHC must qualify as representatives of Unitrin, Inc. (“Unitrin”) in order for the Surviving MHC’s holding company system to be accorded an “A plus” rating.² It is unclear at this point whether such “Unitrin directors” would technically be considered “insiders” of the Surviving MHC for purposes of the Wisconsin statutes as a result of the existing affiliation between Unitrin and MMIC. If they are,

¹ Indeed, relative to the pending Merger with FNP Mutual, it is anticipated FNP Mutual will improve to an “A minus” rating as a result of the 80% quota share reinsurance treaty between FNP Mutual and MMIC (which your office has reviewed and recently “non-disapproved”). It is further hoped that FNIC’s rating will improve to the “A plus” rating accorded to MMIC once the Merger is completed. Such rating improvements were considered critical to FNP Mutual’s future growth plans and provided the primary motivation for FNP Mutual’s decision to merge with MMIC.

² Unitrin is the controlling affiliate of MMIC and the ultimate parent of MMIC’s reinsurer, Trinity Universal Insurance Company (“Trinity”).

the Surviving MHC would be unable to meet A.M. Best's requirements for an "A plus" rating as a Wisconsin domestic. In addition, it is expected that other mutual insurers that choose to affiliate with the Surviving MHC may seek board seats on the Surviving MHC's board of directors. If they were viewed as "inside" directors of a Wisconsin domestic MHC, the outside director control issue might have to be revisited with each acquisition. Illinois law poses no such obstacle to having "Unitrin directors" comprise a majority of the Surviving MHC's board, and thus choosing Illinois as the state of domicile eliminates a major impediment to securing an enhanced rating going forward and increases the viability of the proposed business model and its chances for success.

As for future corporate planning, there are no current plans to demutualize the Surviving MHC, and any such plans would interfere with the current business model as expressed above. Nevertheless, demutualization is a restructuring option available to every mutual holding company, and in the event of such a restructuring, Illinois law provides greater flexibility regarding the method of MHC conversion and the compensation which must be paid to members of the Surviving MHC in exchange for extinguishing their membership interests. Specifically, Illinois law allows for either the traditional "cashing-out" of membership interests through the payment of stock, cash, policy credits or a combination of the same equal to the members' determined equity in the company, *see* 215 ILCS 5/59.1(8) (Supp. 2000), or for the exchange of subscription rights for the membership interests, entitling members to purchase (with their own funds) shares of stock in the converted entity equal to their determined equity in the company, *see* 215 ILCS 5/59.1(6)(c) (Supp. 2000). Wisconsin law only allows for the traditional "cashing-out" of membership interests. *See* Wis. Stats. § 644.25(2)(b)(2). There could be situations in which it would *not* be in the best interests of the members and/or the financial solidity of the Surviving MHC to maintain the mutual holding company structure or to effectively distribute the net worth of the Surviving MHC to its members through a traditional demutualization. Thus, having the flexibility to pursue either type of demutualization advances the interests of the members of the Surviving MHC, because it enables them to choose the form of demutualization which they view as best suited to the particular needs and factual situation confronting the company at the time of a proposed demutualization.

In sum, we believe all of the foregoing financial protections, tax benefits and corporate flexibility accorded under Illinois law inure to the benefit of all members of the Surviving MHC. Moreover, MIC will continue as a Wisconsin domiciled property and casualty company and the interests of its policyholders will continue to be regulated by the Wisconsin OCI, unchanged by the Merger.

24. *The concept of mutuality as it relates to insurance companies includes two principles, among others, which are vital to its effective operation, the equity rights of policyholders and provision of insurance at cost. Under the traditional mutual structure, a mutual provides insurance at cost, given that income is either returned to policyholders in the form of dividends or retained for their exclusive benefit as surplus.*

In the present case, Milwaukee Mutual is seeking to build a mutual division for a publicly-traded stock company, much as some mutuals have utilized the stock form of organization, whether in a publicly-traded or privately-held form. How would a mutual division of a publicly-traded stock corporation retain the mutual principle of insurance at cost? Additionally, how will the policyholders participate equitably in the financial results of their mutual holding company's subsidiaries or in their insurer so that the substance of mutuality as well as its form is preserved?

As you know, MMIC became affiliated with Unitrin in 1995, following approval of the transaction by the Wisconsin OCI. MMIC reinsures most of its underwriting risk with Unitrin's subsidiary, Trinity, and enjoys Trinity's ratings. This lowers MMIC's financial leverage and enables it to compete more effectively. Since the affiliation with Unitrin, we have seen the mutual principle of "insurance at cost" retained in a variety of ways.

First, the financial strength and stability MMIC enjoys as a result of the reinsurance treaty with Trinity has enabled MMIC to continue to offer its insurance products at affordable prices, prices that are lower than would be the case if MMIC purchased reinsurance from third party reinsurers. Indeed, since the reinsurance treaty and corresponding affiliation, Trinity has not experienced underwriting profits on a cumulative basis relative to MMIC's book of business, suggesting that MMIC's members and policyholders have obtained insurance at prices below cost since the affiliation. Absent the Unitrin affiliation, MMIC would not have been able to offer insurance at such affordable prices and remain a financially sound insurance company.

Second, MMIC's expense ratios have decreased since the affiliation with Unitrin in 1995. This is partly due to the corporate culture of tighter fiscal discipline characteristic of publicly-traded stock entities such as Unitrin. It is also partly due to the fact that many services have been provided to MMIC at cost by Unitrin and its subsidiaries, enabling MMIC to take advantage of the tremendous economies of scale available to the Unitrin group as a whole. MMIC would not have been able to reduce costs in this way absent its affiliation with Unitrin. Lower expense ratios maximize MMIC's ability to provide affordable insurance at or below cost to its members/policyholders, and that is one important way in which such members/policyholders will continue to participate equitably in the financial results of the insurance subsidiaries.

Third, no profits will be generated within the Surviving MHC that will not be retained for the benefit of policyholders or, conceivably, distributed to them as dividends (subject to regulatory approvals). The terms and conditions of the reinsurance within the Surviving MHC group and with Trinity are subject to comprehensive regulation, assuring that reinsurance and support services provided by Unitrin and its subsidiaries to the MHC and its subsidiaries are fairly priced.

Finally, through the voting rights afforded members of the Surviving MHC, the members/policyholders of MMIC will continue to have a direct and potentially decisive influence upon the management of the Surviving MHC through the election of directors, and through that an indirect influence on the management of the insurance subsidiaries. Policyholders of the subsidiary insurance companies will continue their relationship with the Surviving MHC and its insurance subsidiaries in a manner similar to their historical relationships to the predecessor mutual insurance companies. Their membership interests will be continued in the Surviving MHC and their policyholder interests will continue with one of the Surviving MHC's wholly-owned insurance companies. No new constituent interests are being introduced.

OTHER REGULATORY INFLUENCES

25. *Are there any regulatory actions or approvals by any federal, state, or non-U.S. jurisdictions required for completion of the "MHC Merger", as that term is described in the Application, other than that of the Illinois Department of Insurance and Wisconsin's Office of the Commissioner of Insurance? If so, please identify these required regulatory actions and approvals.*

None.

26. *When is it anticipated that Milwaukee Mutual might obtain a private letter ruling from the U.S. Internal Revenue Service to the effect that, for U.S. federal income tax purposes, the formation of Mutual Insurers Holding Company and the conversion of Milwaukee Mutual from a mutual company into a stock company will qualify under sections 368(a) or 351(a) of the Internal Revenue Code? What is the anticipated time frame in which Milwaukee Mutual could receive a comparable opinion from special tax counsel? If these documents have already been received, please provide me with copies. Please provide the same information for First Nonprofit Mutual.*

Neither MMIC nor FNP Mutual are seeking such a private letter ruling from the IRS. Rather, each entity is obtaining a comparable legal opinion from its respective tax counsel to the same purpose and effect. MMIC anticipates receiving its legal opinion on or before February 1, 2002. FNP Mutual will receive its legal opinion on or before consummation of its conversion, currently anticipated to occur by April 15, 2002. Copies of both legal opinions will be provided upon MMIC's receipt of same.

27. *When is it anticipated that Milwaukee Mutual might obtain a "no-action" letter from the staff of the Securities and Exchange Commission relating to matters pertaining to the Securities Act of 1933 and the Securities Exchange Act of 1934, each as amended? If this has already been received, please provide me with a copy of that letter, together with company correspondence requesting the letter. Please provide the same information for First Nonprofit Mutual.*

MMIC mailed its request for a “no action” letter on December 19, 2001. Based on preliminary discussions with SEC Staff regarding the same, MMIC anticipates issuance of a “no action” letter in early February, 2002. Copies of the request and the “no action” letter will be provided upon MMIC’s receipt of the “no action” letter.

FNP Mutual has obtained a “no action” letter from the SEC. A copy of FNP Mutual’s request and the corresponding “no action” letter is attached hereto as Exhibit C.

PROCEDURAL AND MISCELLANEOUS

28. *Will Milwaukee Mutual establish a toll-free number for questions about the mutual holding company plan, and if so, when would it be operative?*

MMIC has not yet established such a toll free number, but it is certainly willing to do the same if and when OCI decides it is necessary.

29. *Please provide a copy of the Hart-Scott-Rodino filing, when available.*

MMIC does not believe that either the MHC Plan or the Merger are transactions requiring a filing under the Hart-Scott-Rodino law, and thus no such filing exists.

30. *Please provide correspondence from the Illinois Department of Insurance confirming their approval of the transactions related to the proposed restructuring of the First Nonprofit Mutual when these become available.*

A copy of the Order of the Illinois Department approving the conversion of FNP Mutual to a mutual holding company structure subject to various terms and conditions is attached hereto as Exhibit B. As previously mentioned, FNP Mutual is currently seeking certain modifications to clarify the Order and copies of any subsequent orders or approvals issued by the Illinois Department relative to the conversion of FNP Mutual or the Merger will be provided upon MMIC’s receipt of same.

31. *Has Milwaukee Mutual retained the services of a nationally significant tabulation agent to assist it in the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots and an independent public accounting firm to test and verify the process with respect to the mutual holding company plan and, if required by the OCI, the subsequent merger of Mutual Insurers Holding Company into First Nonprofit Mutual Holding Company?*

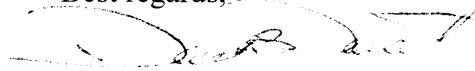
MMIC has retained the services of Firststar Bank as its tabulation agent. Given the relatively manageable size of the tabulation task, MMIC is not currently contemplating hiring a testing and verification agent separate from Firststar Bank in this matter.

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January 17, 2002
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I hope the foregoing adequately responds to your questions and concerns. MMIC and its legal counsel, Foley & Lardner, remain ready and willing to answer any further questions you may have relative to the MHC Plan and subsequent Merger.

Thank you for your kind and detailed attention to this matter.

Best regards,

A handwritten signature in black ink, appearing to read "Daniel R. Doucette", written over a horizontal line.

Daniel R. Doucette,
President and Chief Executive Officer

MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY

May 21, 1998

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held at 803 West Michigan Street, Milwaukee, Wisconsin, on May 21, 1998, at 2:00 p.m. (Central time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry Lee Van Der Aa and Richard C. Vie participated in the meeting, constituting all of the members of the Board of Directors of the Company.

Mr. Vie acted as Chairman of the meeting, and Mr. Joseph C. Branch acted as Secretary.

Directors Vie, Hemmings, Doucette, Branch and Gould then engaged in a discussion on mutual insurance governance. The considerable amount of reorganization activity in the insurance industry and particularly the mutual insurance industry was noted. While the Company has no shareholders and is not owned or controlled by any other single entity, the Board was reminded of the undertaking that the Company has entered into with the Office of the Commissioner of Insurance that it would treat all members of the Unitrin family of companies, the Company's principal reinsurance relationship and service provider, as transactions with affiliates and therefore subject to complete disclosure and regulation by the Office of the Commissioner of Insurance. The Board reiterated its commitment that all such arrangements and undertakings be entered into at arms length and on terms fair, reasonable and fully disclosed to all concerned, including the Office of the Commissioner of Insurance.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

February 11, 1999

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on February 11, 1999, at 10:00 a.m. (Central time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all of the members of the Board of Directors of the Company.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman then called upon President Daniel R. Doucette for his report. Mr. Doucette reviewed operations, acquisition strategy and the financial performance of the company, and responded to questions from the Board members.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

August 19, 1999

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on August 19, 1999, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all but one of the members of the Board of Directors of the Company. The remaining member, Peter Huizenga, did not participate in the meeting.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman then called upon Mr. Doucette to provide the President's report. Mr. Doucette reviewed and discussed various merger and acquisition opportunities for the Company. Mr. Doucette also discussed the applicability of the mutual holding company laws as they relate to the structure of Milwaukee Mutual. After an extended discussion, the Board agreed to further discuss this issue at a future Board meeting and directed management to prepare background informational materials related to this issue.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

November 18, 1999

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on November 18, 1999, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all of the members of the Board of Directors of the Company.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman next called upon President Doucette and Richard Hemmings to provide a presentation on the Mutual Holding Company Act and its potential implications on the Company. After extensive discussion, the Board directed management to discuss such implications with the Wisconsin Office of the Commissioner of Insurance and report their findings and results at the next meeting of the Board.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

February 17, 2000

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on February 17, 2000, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all of the members of the Board of Directors of the Company.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman next called upon President Doucette to provide a presentation on the Mutual Holding Company Act and its potential implications on the Company. President Doucette summarized his discussions with OCI regarding mutual holding company reorganizations and discussed OCI's views on this issue. He stated that to date no company has initiated a holding company reorganization in Wisconsin. After extensive discussion, the Board decided to table further discussion on this issue until the next regular Board meeting and requested that President Doucette continue to examine reorganization alternatives.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

May 18, 2000

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held at the offices of Milwaukee Insurance on May 18, 2000, at 2:30 p.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, , Sanford J. Jett, and Terry L. Van Der Aa participated in the meeting, constituting all but two of the members of the Board of Directors of the Company. Peter H. Huizenga and Richard C. Vie were absent from the meeting.

Mr. Doucette acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

Mr. Doucette then reviewed and discussed various merger and acquisition opportunities for the Company. Mr. Doucette stated that management is continuing to explore a mutual holding company structure to enhance the Company's position. Mr. Doucette then responded to questions, comments and suggestions from the Board regarding his reports.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

January 16, 2001

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on January 16, 2001.

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, Peter H. Huizenga and Richard C. Vie participated in the meeting, constituting a majority of the members of the Board of Directors of the Company. John P. Gould, Richard A. Hemmings, Sanford J. Jett, and Terry L. Van Der Aa did not participate in the meeting.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman stated that the purpose of the Meeting was to discuss a possible business combination opportunity for the Company involving First Nonprofit Mutual Insurance Company, an Illinois insurer. After discussion, the following Resolution was adopted unanimously:

“RESOLVED, that the Board of Directors hereby authorizes the Executive Committee of the Board of Directors to negotiate and execute a letter of intent between the Company and First Nonprofit Mutual Insurance Company regarding possible business combination transactions between the parties.”

There being no further business to come before the Board, the meeting was adjourned.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

February 15, 2001

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on February 15, 2001, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all but one of the members of the Board of Directors of the Company. The remaining member, John P. Gould, did not participate in the meeting.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman then called upon Daniel Doucette for the President's report. Mr. Doucette provided an overview of the proposed business transactions and letter of intent between the Company and First Nonprofit Mutual Insurance Company. Mr. Doucette reported that the Company intends to enter into a quota share reinsurance agreement with First Nonprofit to be effective April 1, 2001. Mr. Doucette also reported that the Company intends to meet with the Wisconsin Office of the Commissioner of Insurance to discuss the potential

business transactions between the Company and First Nonprofit. Mr. Vie added that the Company should experience a profitable revenue flow from the proposed business transactions with First Nonprofit.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

MAY 17, 2001

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held at the offices of Milwaukee Insurance on May 17, 2001, at 2:30 p.m. (Central Time).

David D. Chomeau, Daniel R. Doucette, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa, John P. Gould and Richard C. Vie participated in the meeting, constituting all but one of the members of the Board of Directors of the Company. The remaining member, Joseph C. Branch, was absent from the meeting.

Mr. Vie acted as Chairman of the meeting, and at the request of Mr. Vie, President Daniel R. Doucette acted as Acting Secretary.

The Chairman then called upon President Doucette to explain the proposed restructuring of the Company to a mutual holding company structure, including the proposed adoption of a Mutual Holding Company Plan (inclusive of the exhibits thereto) and corresponding Resolutions, copies of which were included in the materials forwarded to the Board members with the notice of this Meeting. Mr. Doucette summarized the various steps and consequences of the proposed

restructuring, and explained how a mutual holding company structure would enhance the Company's position, would be fair, equitable and beneficial to the Company's policyholders, and would not be contrary to the interests of the policyholders or the Wisconsin public. After extensive discussion, and upon motion duly made, seconded and unanimously carried, the following Resolutions were adopted:

"WHEREAS, the Board, upon consideration, believes it would be in MMIC's best interests to restructure its operations into a mutual holding company structure whereby MMIC would convert into a stock insurance company, organized under Chapter 611 of the Wisconsin Insurance Code ("Converted MMIC"), and which would be a wholly-owned subsidiary of a mutual holding company named "Mutual Insurers Holding Company" ("MIHC"), to be organized under Chapter 644 of the Wisconsin Insurance Code (collectively, the "Restructuring);

WHEREAS, the Board contemplates that the Restructuring will be one of a series of transactions whereby MMIC and First Nonprofit Mutual Insurance Company, an Illinois property and casualty insurer, will each form mutual holding companies under the laws of their respective states and, with the approval of the Wisconsin Commissioner and the Illinois Department of Insurance, merge those mutual holding companies into a single entity subsequent to the Restructuring;

WHEREAS, the Board believes that there are several reasons for pursuing the Restructuring at this time, including, but not limited to, the following:

1. In its current structure as a mutual insurance company, MMIC cannot merge with other mutual insurers without one of the two entities ceasing to exist as a separate insurer, which poses various difficulties for MMIC, including, but not limited to, the following:
 - a. Reduced options for merging, acquiring or affiliating with other mutual organizations in ways that allow for improved efficiencies while maintaining each organization's goodwill and the value of their respective "brands;"
 - b. Limitations upon MMIC's ability to merge, acquire or affiliate with non-insurers;
 - c. Restrictions on MMIC's ability to put its excess surplus to more efficient use;
 - d. Sub-optimal positioning for long-term growth; and

- e. A reduced ability to be a “first mover” during market consolidation;
2. An insurance company’s ability to be flexible and move quickly in its acquisition activities is increasingly important in light of the recent deregulation of financial services, which introduces new competitors to the market in which MMIC participates and may lead to significant consolidation within and/or between the banking, insurance, and securities industries;
3. In the future, the most successful insurance companies will be those that have the structural, financial and strategic flexibility to respond quickly and decisively to changes in the marketplace, both in terms of pursuing (or defending against) potential acquisition activity and in terms of making changes or improvements in existing operations; and
4. The Wisconsin Legislature specifically authorizes the restructuring of mutual insurance companies into mutual holding company structures, pursuant to Wis. Stat. § 644.07.

WHEREAS, relative to the foregoing concerns, the Board believes that the Restructuring will serve the following purposes:

1. It will allow MMIC to merge with other mutual organizations while preserving the separate insurance operations and “brands” of each organization as stock subsidiaries of the mutual holding company;
2. It will maximize MMIC’s ability to merge, acquire or affiliate with non-insurers without the costs and delays associated with formal regulatory approval;
3. It will maximize MMIC’s options and flexibility to merge, acquire or affiliate with other mutual, mutual holding or stock companies, thereby achieving efficiencies of scale and diversification of assets; and
4. It will allow MMIC to obtain the foregoing benefits while retaining its “mutuality” through the creation of a mutual holding company, thereby preserving MMIC’s historical focus on the interests and benefits of its current and future Policyholders (as that term is

defined in the Mutual Holding Company Plan, attached hereto as Exhibit A (“Mutual Holding Company Plan”));

WHEREAS, the Board believes that the Restructuring is fair and equitable to Policyholders, and the Board expects that the Restructuring will benefit Policyholders and will not be contrary to their interests or the interests of the Wisconsin public, for the following reasons:

1. It will preserve the Policyholders’ Equity Rights (as that term is defined in the Mutual Holding Company Plan) in MMIC by transforming the same into Equity Rights in MIHC. MIHC will, in turn, own 100% of the voting stock of Converted MMIC;
2. It will enhance the value of the Policyholders’ Equity Rights in the following ways:
 - a. Relative to the existing MMIC, MIHC and Converted MMIC will be better able to realize efficiencies of scale through the acquisition of, or merger with, other mutual, mutual holding or stock companies;
 - b. Relative to the existing MMIC, MIHC and Converted MMIC will be better able to make the capital purchases and allocations necessary to enhance the efficiency and long-term growth of the insurance operations, which are important components of the value of those operations as an enterprise;
3. It will increase the financial strength and flexibility of the insurance operations, thereby enhancing the long-term stability of the insurance operations and the Policyholders’ security that MMIC will have the funds necessary to meet its current and future policy obligations;
4. It will enhance the efficiency and management of the insurance operations, thereby making MMIC’s insurance products more competitive;
5. It will not substantially lessen competition in any line of insurance business within the State of Wisconsin; and
6. It is expressly authorized by, and will comply in all respects with, the provisions of Chapter 644 of the Wisconsin Insurance Code.

WHEREAS, MMIC is required, in order to convert to a mutual holding company structure under Chapter 644 of the Wisconsin Insurance Code, to (i) adopt a mutual holding company plan, (ii) file the mutual holding company plan and related documents with the Wisconsin Commissioner (as that term is defined in the Mutual Holding Company Plan) for his or her review and/or approval, (iii) make such other filings with governmental entities which may be necessary to consummate the mutual holding company plan, and (iv) subject to approval by the Wisconsin Commissioner, submit the mutual holding company plan to the Eligible Members (as that term is defined in the Mutual Holding Company Plan) for their review and approval.

NOW, THEREFORE, BE IT RESOLVED, that for the reasons, purposes and findings set forth above, the Board concludes that (i) the Restructuring is fair and equitable to Policyholders, (ii) the Restructuring is expected to benefit Policyholders, and (iii) the Restructuring will not be contrary to the interests of the Policyholders or the Wisconsin public;

RESOLVED, that the Mutual Holding Company Plan, and the transactions contemplated thereby, be and they hereby are authorized, approved and adopted by the Board in all respects, and that the Officers of MMIC be, and each of them individually hereby is, authorized and directed, in the name and on behalf of MMIC, to (i) execute the Mutual Holding Company Plan and any other agreements, certificates, instruments and documents as may be required in connection therewith, including, but not limited to, any policyholder information or disclosure statement (ii) perform the obligations and carry out the duties of MMIC under the Mutual Holding Company Plan and other such agreements, certificates, instruments and documents required in connection therewith, and (iii) take such other further action as may be contemplated by the Mutual Holding Company Plan;

RESOLVED, that the Mutual Holding Company Plan, together with all other relevant documents, be submitted to the Wisconsin Commissioner for his or her approval, and that all other regulatory filings be made on behalf of MMIC with the appropriate governmental entities;

RESOLVED, that, subject to the approval of the Wisconsin Commissioner, the Mutual Holding Company Plan, together with all other relevant documents including, but not limited to, a policyholder information or disclosure statement prepared by the Officers, be submitted for review and approval by a vote of the Eligible Members at any regular or special meeting of the

Policyholders, and that in connection with the same, the Board recommends to the Eligible Members that they approve the Mutual Holding Company Plan;

RESOLVED, that MMIC form MIHC, a mutual holding company organized under Chapter 644 of the Wisconsin Insurance Code, and appoint the current Board of Directors and Officers of MMIC as the directors and officers of MIHC until their successors have been duly elected and qualified;

RESOLVED, that the proposed Articles of Incorporation and the proposed Bylaws of MIHC, in the form attached to the Mutual Holding Company Plan as Exhibits C and D, respectively, are approved, in each case effective as of the date contemplated in the Mutual Holding Company Plan;

RESOLVED, that the Board finds it desirable, as part of the Mutual Holding Company Plan, that the Articles of Incorporation of MMIC be amended and restated in the form attached to the Mutual Holding Company Plan as Exhibit A (the "Amended and Restated Articles of Incorporation") and that the Bylaws of MMIC be amended and restated in the form attached to the Mutual Holding Company Plan as Exhibit B (the "Amended and Restated Bylaws");

RESOLVED, that the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws are approved, in each case effective as of the date contemplated in the Mutual Holding Company Plan;

RESOLVED, that any Officer of MMIC individually is authorized and directed in the name and on behalf of MMIC, to (i) take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered, and where necessary or appropriate, file or cause to be filed, all such other instruments and documents, including but not limited to, all policyholder information or disclosure statements, certificates, bonds, agreements, documents, instruments, receipts, plan amendments, plan withdrawals, or other papers, (ii) incur and pay or cause to be paid all fees and expenses, and (iii) engage such persons as it shall determine to be necessary or appropriate to carry out fully the intent and purposes of the forgoing resolutions and each of the transactions contemplated thereby."

Mr. Doucette also updated the Board members as to the status of the potential transaction with First Nonprofit Mutual Insurance Company, an Illinois mutual property & casualty insurer, referenced in the Mutual Holding Company Plan. Mr. Doucette explained that this transaction is

still in its formative, non-binding stage, but that in anticipation of such a transaction, the Company needs to become accredited as a reinsurer in the State of Maryland. Mr. Doucette explained that one of the requirements for such accreditation is passage of a Board Resolution appointing the Maryland State Insurance Commissioner as Company Attorney or Resident Agent for Service of Process in Maryland. After discussion, and upon motion duly made, seconded and unanimously carried, the following Resolution was adopted:

“RESOLVED, that the Company having been admitted, or having applied for admission to transact insurance business or as an accepted reinsurer or as an accepted surplus lines insurer in the State of Maryland in conformance with the laws thereof, does hereby authorize the President and Secretary, under the Corporate Seal of the Company, to make, constitute and appoint the State Insurance Commissioner of Maryland its true and lawful ATTORNEY, or Resident Agent in and for the State Maryland, on whom all Process of law whether mesne or final, against the Company, may be served in any Action or special Proceedings against the Company in the State of Maryland, subject to and in accordance with all the provisions of the statutes and laws of said State of Maryland now in force and such other acts as may be hereafter passed amendatory thereof and supplementary thereto. And the said Attorney is duly authorized and empowered, as the Resident Agent of the Company, to receive and accept services of process in all cases as provided by the laws of the State of Maryland and such service shall be deemed valid personal service upon the Company. Said appointment is to continue in force for the period of time and in the manner provided by the statutes of the State of Maryland.”

The Chairman then called upon President Doucette to provide the Investment Committee Report. Mr. Doucette reviewed the Scudder Insurance Asset Management First Quarter Investment Report with members of the Board and then responded to questions and comments from the Board regarding the Investment Committee’s report.

The Chairman then called upon President Doucette to provide a real estate update. Mr. Doucette discussed the Company’s current real estate investments, including the Clearwater and Eagle Mountain developments, and then responded to questions and comments from the Board regarding the same.

The Chairman then called upon Elisha Wright to review the actuarial valuation of the postretirement medical plans for the fiscal year beginning January 1, 2000 for the Unitrin , Inc. Milwaukee Insurance Group. After reviewing the actuarial valuation, Ms. Wright responded to questions from the Board members regarding the same.

There being no further business to come before the Board, the meeting was adjourned.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

August 16, 2001

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on August 16, 2001, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all but one of the members of the Board of Directors of the Company. The remaining member, Peter Huizenga, did not participate in the meeting.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman then called upon Mr. Doucette to provide the President's report. Mr. Doucette provided a general update on the status of the Company. Mr. Doucette then discussed the status of the proposed restructuring of the Company to a mutual holding company structure and the subsequent potential merger of the mutual holding companies to be formed by the Company and First Nonprofit Mutual Insurance Company. Mr. Doucette also reported on the Company's discussions with the Wisconsin Office of the Commissioner of Insurance regarding the proposed restructuring and potential merger involving First Nonprofit Mutual Insurance Company.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
MILWAUKEE MUTUAL INSURANCE COMPANY**

November 15, 2001

Pursuant to notice, a Meeting of the Board of Directors of Milwaukee Mutual Insurance Company was held by telephone conference on November 15, 2001, at 10:00 a.m. (Central Time).

Joseph C. Branch, David D. Chomeau, Daniel R. Doucette, John P. Gould, Richard A. Hemmings, Peter H. Huizenga, Sanford J. Jett, Terry L. Van Der Aa and Richard C. Vie participated in the meeting, constituting all of the members of the Board of Directors of the Company.

Mr. Vie acted as Chairman of the meeting, and Mr. Branch acted as Secretary.

The Chairman then called upon Mr. Doucette for the President's report. Mr. Doucette reported on his recent attendance at the Board meeting of First Nonprofit and discussed the status of the intended merger of the mutual holding companies of the Company and First Nonprofit, which is expected to close during the first quarter of 2002. At the request of Mr. Doucette, Richard Hemmings and Joseph Branch reported on the status of the regulatory review being conducted by the Illinois Department of Insurance and the Wisconsin Office of the Commissioner of Insurance regarding the mutual holding company conversion of First Nonprofit and the Company, respectively, and the intended merger of their mutual holding companies. Mr. Doucette then reported on an increased interest by other mutual insurance companies in possibly exploring similar mutual holding company arrangements with the Company.

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF:

THE REORGANIZATION OF
FIRST NONPROFIT MUTUAL
INSURANCE COMPANY

HEARING NO. 3868

ORDER

The undersigned Nathaniel S. Shapo, Director of Insurance for the State of Illinois, hereby certifies that I have read the attached Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, Cynthia J. Lamar, heretofore appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a hearing into the above-captioned matter. I have carefully considered and reviewed the Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer attached hereto and made a part hereof.

The undersigned being duly advised in the premises, does hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as his own and based upon said Findings of Fact, Conclusions of Law, and Recommendations enters the following Order under the authority granted him by the applicable sections of the Illinois Insurance Code.

This Order is a final administrative decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.).

IT IS HEREBY ORDERED that the Plan of Conversion is approved subject to the following conditions:

1. In addition to any other provisions of the Illinois Insurance Code governing the operation of an Illinois domestic insurance company, approval of the Plan of Conversion is subject to the following conditions:
 - a. All of the following are subject to prior approval of the Director, and the Director may impose additional conditions as he deems appropriate in accordance with the

standards set forth in 215 ILCS 5/59.2(5)(c):

- (i) any acquisition or formation of an affiliated entity of the mutual holding company, including the formation of any intermediate holding company;
- (ii) any change or amendment to the articles or certificate of incorporation, bylaws, or capital structure of any intermediate holding company;
- (iii) any change to the trust agreement;
- (iv) any issuance (with or without consideration) of equity (voting or nonvoting) or debt securities by any intermediate holding company or First Nonprofit Insurance Company, including but not limited to a private sale or public offering. The term "issuance of equity" includes, but is not limited to, any sale, exchange, subscription, award, or transfer of stock, warrants, options, voting rights, or other ownership rights or interests in the issuer, or of any securities directly or indirectly convertible or exchangeable into any of the foregoing. Any transfer or encumbrance, the effect of which would diminish the ownership by the mutual holding company or an intermediate holding company to less than 50% is prohibited;
- (v) the implementation of any non-qualified executive compensation plan, with respect to the mutual holding company, First Nonprofit Insurance Company, or any intermediate holding company;
- (vi) the expansion of the mutual holding company, any intermediate holding company, or any affiliated entity into lines of business, industries, or operations not presented at the time of the conversion;
- (vii) the distribution or employment of excess accumulated earnings of First Nonprofit Insurance Company. First Nonprofit Insurance Company must annually advise the Director if it has excess accumulated earnings and propose how it wishes to distribute or otherwise employ the excess accumulated earnings;
- (viii) any dividend distributions from any intermediate holding company and any waiver by the mutual holding company of any dividends or distributions payable to the mutual holding company. Pending allocation of waived dividends, funds shall be set aside in a designated fund or account by First Nonprofit Insurance Company for the exclusive benefit of policyholders;
- (ix) the distribution or employment of excess accumulated earnings of the mutual holding company, which shall inure to the exclusive benefit of

the members of the mutual holding company; and

- (x) the pledge, encumbrance, or transfer of the stock of First Nonprofit Insurance Company or any intermediate insurance company.

In connection with the Director's evaluation of any of the foregoing, he shall retain the right to engage outside experts as he deems appropriate.

b. All of the foregoing actions also shall be:

- (i) approved by the board of directors of the mutual holding company and, if such actions taken by First Nonprofit Mutual would have required the approval of the members of First Nonprofit Mutual and relates to or affects their membership interests (including economic interests) in the mutual holding company, or if such approval is required by law or the articles of incorporation or bylaws of the mutual holding company or otherwise at the direction of the mutual holding company's board of directors, the mutual holding company members; and
- (ii) whether or not required to be approved by the mutual holding company members, described in an annual report provided to the mutual holding company members with respect to the year in which such action was taken.

c. Article 5 of the articles of incorporation of First Nonprofit Mutual Holding Company shall be amended to incorporate language providing the opportunities for dividends and distributions as described in sections 9.3 and 9.4 of the Plan.

2. The following shall be filed with the Department and are subject to final approval:

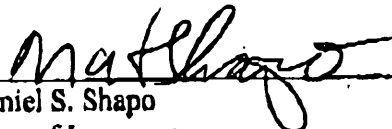
- a. proposed letters, notice, proxy, and other solicitation materials to be submitted to policyholders to assure that changes recommended and conditions imposed by this Order are properly described and meet the requirements of 215 ILCS 5/59.2(6)(b);
- b. the amended trust agreement, proposed articles of incorporation and bylaws of the mutual holding company and the revised articles of incorporation and bylaws of First Nonprofit Insurance Company, which shall reflect the conditions and requirements of this Order, prior to notification of policyholders; and
- c. a revised Plan of Conversion which shall reflect the conditions and requirements of this Order, prior to notification and vote of policyholders.

3. The costs of the Hearing shall be charged to First Nonprofit Mutual.

DEC 17 '01 03:32PM DEPT INSURANCE RCPT

P.5

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Official
Seal of the Department of Insurance, in the
City of Springfield, State of Illinois, this
14th day of December AD, 2001.



Nathaniel S. Shapo
Director of Insurance

Citation	Search Result	Rank 1 of 1	Database
2001 WL 1298883 (S.E.C.)			FSEC-NAL
(Cite as: 2001 WL 1298883 (S.E.C.))			

(SEC No-Action Letter)

***1 First Nonprofit Mutual Insurance Company**
Publicly Available October 24, 2001

LETTER TO SEC

October 19, 2001

OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE
SECURITIES AND EXCHANGE COMMISSION
450 FIFTH STREET, N.W.
WASHINGTON, D.C. 20549

Re: **First Nonprofit Mutual Insurance Company**

Dear Sir/Madam:

We are counsel to **First Nonprofit Mutual Insurance Company**, a mutual insurance company incorporated under the laws of Illinois (the "Company"), and a mutual holding company to be organized under the laws of Illinois to be named **First Nonprofit Mutual Holding Company** (from time to time the "MHC"), in connection with the Company's proposed reorganization from a mutual insurance company to a stock insurance company. The conversion process (the "Reorganization"), described in detail below, will be effected under the provisions of Section 59.2 of the Illinois Insurance Code ("§59.2"), which permits the formation of mutual insurance holding companies by mutual insurance companies. A copy of §59.2 is attached hereto as Exhibit A.

I. Request

We respectfully request that the staff of the Division of Corporation Finance (the "Staff") advise us that no enforcement action will be recommended by the Staff to the Securities and Exchange Commission (the "Commission") if (i) the Reorganization and operation of the MHC is undertaken, (ii) the membership interests of the policyholders in the Company become membership interests of the MHC and (iii) the policyholders receive membership interests in the MHC automatically by operation of law as a result of purchasing policies of insurance ("Policies") from time to time, without registration under the Securities Act of 1933 (the "1933 Act") or the Securities Exchange Act of 1934 (the "1934 Act").

II. Background

The Company is a property and casualty insurance company based in Chicago and is the leading insurer of nonprofit organizations in Illinois. Under its mutual form of organization, the Company is constrained from pursuing acquisitions,

2001 WL 1298883 (S.E.C.)
(Cite as: 2001 WL 1298883, *1 (S.E.C.))

diversifying its operations, undertaking corporate realignments and restructurings and raising additional capital. Because it is not authorized to issue capital stock, the Company must rely primarily on internally generated funds (i.e., the accumulation of earnings). The capital raising limitations imposed by the Company's mutual form place it at a competitive disadvantage with its competitors organized as stock companies. This competitive disadvantage has become increasingly significant in recent years with the market's focus on financial strength and flexibility.

In the Company's present mutual form, a policyholder of the Company has rights both as an insured and as a member of the Company. As an insured, a policyholder is entitled to insurance coverage to the extent and in the amount specified in the insured's Policy. The membership interests accompanying the insurance coverage consist generally of the rights to vote in the election of directors of the Company and on other matters that properly come before the members and to receive a distribution of the Company's surplus, if any, in the event of a dissolution or liquidation of the Company.

III. Illinois Law

*2 §59.2 permits a domestic mutual insurance company to reorganize into a mutual insurance holding company and stock insurance company, after the occurrence of certain events, by separating the membership interests and contractual rights of the mutual insurance company's policyholders. In a conversion under §59.2, the membership interests of the mutual insurance company's policyholders are transferred to the mutual insurance holding company, while their contractual rights remain at the mutual insurance company, which converts into a stock insurance company and becomes a direct or indirect wholly owned stock subsidiary of the mutual insurance holding company. Holders of insurance policies of the stock insurance company, through their status as policyholders, automatically become members of the mutual insurance holding company in accordance with §59.2(2)(a). Membership interests in a mutual insurance holding company are not securities under Illinois law. See § 59.2(3)(d).

All of the stock insurance company's initial shares of capital stock must be issued to the mutual insurance holding company or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. Therefore, the mutual insurance holding company must at all times, directly or indirectly, own a majority of the voting shares of the converted stock insurance company or an intermediate holding company which directly or indirectly owns all of the voting stock of the converted company. See §59.2(1)(f)(ii).

Any reorganization undertaken pursuant to §59.2 is subject to the approval of the Director of the Illinois Department of Insurance (the "Director"). Before approving a conversion, the Director must conduct a public hearing at which policyholders and other interested parties may appear and be heard. The Director will approve the conversion upon finding that the provisions of §59.2 have been complied with and that "the plan is fair and equitable as it relates to the interests of the members." [FN1] §59.2(5)(a)(ii). The Director's approval may be made conditional "whenever he determines that such conditions are reasonably

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 (Cite as: 2001 WL 1298883, *2 (S.E.C.))

necessary to protect policyholder interests." §59.2(5)(c).

FN1. It is our view that a finding by the Director that the Plan is "fair and equitable as it relates to the interests of the members" includes the conclusion that the Plan is procedurally and substantively fair to the Company's policyholders.

End of Footnote(s).

After its formation, the mutual insurance holding company is subject to the provisions of §59.1, applicable to the demutualization of a domestic mutual insurance company, as if it were a mutual insurance company. See §59.2(13). The mutual insurance holding company cannot be dissolved or liquidated without the approval of the Director unless required by judicial order.

A mutual insurance holding company is subject to regulation at a level substantially equivalent to that of a domestic mutual insurance company incorporated in Illinois. §59.2(11)(a) states that

*3 a mutual holding company shall have the same powers granted to domestic mutual companies and be subject to the same requirements and provisions of Article III [Illinois Insurance Code provisions relating to mutual insurance companies] and any other provisions of this Code applicable to mutual companies that are not inconsistent with the provisions of this section, provided however that a mutual holding company shall not have the authority to transact insurance pursuant to Section 39.1.

A mutual insurance holding company is also subject to the provisions of the Illinois Insurance Code concerning Insurance Holding Company Systems, §131 et seq. (the "Insurance Holding Company Systems Law").

The assets of the mutual insurance holding company are required by §59.2(11)(d) to be held in trust, under such arrangements and on such terms as the Director may approve for the benefit of the policyholders of the converted stock insurance company.

The mutual insurance holding company's ability to engage in non-insurance related activities is regulated substantially to the same extent as the mutual insurance company's. See §59.2(11)(a). Under §39(2) of the Illinois Insurance Code, a mutual insurance company may render investment advice, render services relating to the functions involved in the operation of an insurance business and engage in "any other business activity reasonably complementary or supplementary to its insurance business; either to the extent necessarily or properly incidental to the insurance business the company is authorized to do in this State or to the extent approved by the Director and subject to any limitations he may prescribe for the protection of the interests of the policyholders of the company." Under §131.2 of the Code, a domestic company may, among other things (i) invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, subject to certain limitations; (ii) invest in one or more insurance corporation subsidiaries and (iii) with the approval of the Director, invest any greater amount in common stock, preferred stock, debt obligations or securities of one or more subsidiaries.

Under §59.2(11)(c), a mutual insurance holding company may enter into an

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affiliation agreement or a merger agreement with any mutual insurance company doing business in Illinois or another mutual holding company with the approval of the Director. Under §131.4, any agreement to merge or consolidate with or acquire control of an Illinois insurer requires the approval of the Director.

As a result of the provisions of §59.2(11), which regulate the mutual insurance holding company to the same extent as a mutual insurance company, acquisitions by the mutual insurance holding company or investments in permitted subsidiaries or other investments of a mutual insurance holding company would also be regulated under §§131.2, 131.3, 131.4 and 131.8 of the Illinois Insurance Code to the same extent as a mutual insurance company.

*4 In addition, under §59.2(5)(c), the MHC will be subject to any additional conditions that the Director may require in connection with approval of a plan of conversion. These conditions may include prior approval of acquisitions, prior approval of the capital structure of any intermediate holding company, prior approval of any public or private sale of securities of the converted company, prior approval of the expansion of the mutual holding company system into new lines of business, certain limitations on dividends and distributions and limitations on the pledge or transfer of stock of the converted company. Consistent with prior Illinois conversions, the Company expects (and will so advise the Director) that the order approving the Company's conversion will include each of these conditions.

IV. The Reorganization

In accordance with §59.2, the Company adopted on May 16, 2001 a plan of conversion (the "Plan") pursuant to which it intends to reorganize into a mutual insurance holding company structure by, among other things, (i) forming **First Nonprofit** Mutual Holding Company as the mutual insurance holding company (or MHC) and (ii) amending and restating its Articles of Incorporation to authorize the issuance of capital stock. On the effective date of the Reorganization, the membership interests and the contractual rights of the Company's policyholders will be separated. The membership interests of the policyholders in the Company will automatically become membership interests, by operation of law, in the mutual insurance holding company, while the contractual rights will remain with the Company, reorganized as a stock insurance company (hereinafter referred to as the "Reorganized Stock Company"). The membership rights of the holders of membership interests in the MHC, including without limitation voting rights, will be substantially the same as those they had as holders of membership interests in the Company. The Company submitted the Plan and related documents to the Director on May 21, 2001. After notice to policyholders, a public hearing was held on October 10, 2001 at which policyholders were entitled to appear.

The Company does not intend to issue certificates evidencing the membership interests in the MHC nor does Illinois law require such issuance. Rather, a list of members will be kept on the books and records of the MHC.

On the effective date of the Reorganization, all of the initial shares of the Reorganized Stock Company will be issued to the mutual holding company. The Reorganized Stock Company will be a wholly owned subsidiary of the MHC. The MHC will at all times, in accordance with the Plan and as required by statute, own a

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majority of the outstanding voting shares of the Reorganized Stock Company.

Membership interests in the mutual holding company are not transferable or alienable in any manner whatsoever, other than through a transfer of the ownership of the insurance policy itself, and a membership interest in the MHC will automatically terminate and cease upon the lapse or termination of the Policy from which such membership interest in the mutual insurance holding company is derived.

*5 The membership interests in the mutual insurance holding company will consist generally of the rights to vote on the election of directors of the MHC and on other matters that properly come before the members. Each member will be entitled to only one vote, irrespective of the number of Policies or amount of insurance owned by such member.

Under its Articles of Incorporation, the mutual insurance holding company will not be permitted to pay dividends or make other distributions, except upon its dissolution or liquidation or as directed or approved by the Director. It is expected that the MHC will reinvest earnings in the Reorganized Stock Company or, with the approval of the Director, make payments to the Reorganized Stock Company for the exclusive benefit of the policyholders.

The mutual insurance holding company will, under its proposed Articles of Incorporation, have the power to conduct any lawful business that may be conducted by a mutual insurance holding company under Illinois law and have perpetual existence unless sooner dissolved as provided by law.

V. Summary of the Reorganization

The terms of the Reorganization may be summarized as follows: (1) the Reorganization will be undertaken in accordance with §59.2, which permits the formation of mutual insurance holding companies by mutual insurance companies, (2) the membership rights of members of the mutual insurance holding company will be substantially the same as those they had as members of the Company, (3) on and after the effective date, holders of Policies will automatically become members of the mutual insurance holding company, (4) the Reorganization is subject to the approval of two-thirds of the votes cast by the eligible members of the Company and the approval by the Director, who must first conduct a public hearing on the Plan to which the eligible members had notice and at which such members were entitled to appear, (5) the Director may approve the Plan only upon finding that the plan is fair and equitable to the Company's policyholder members, which finding we believe includes the conclusion that the Plan is procedurally and substantively fair to the Company's policyholders, (6) the mutual insurance holding company will be subject to regulation by the Director at least equal to that of the Company, and (7) the mutual insurance holding company will not make any distributions to its members except upon dissolution or liquidation or as directed or approved by the Director.

VI. Registration Pursuant to the Securities Act of 1933

Based upon the foregoing facts and the analysis set forth herein, it is our opinion that the membership interests in the mutual insurance holding company

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received by the Company's policyholders in connection with the Reorganization and created from time to time by virtue of the issuance of a Policy by the Reorganized Stock Company would not constitute the offer or sale of a "security" as that term is defined in the 1933 Act.

*6 Section 2(a)(1) of the 1933 Act, as amended, defines a "security" as including:

any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, ... or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Although the term "membership interests" is not specifically included in the above definition, an unlisted interest, participation, or instrument may still be deemed a "security" if it falls within one of two general categories: an "investment contract" or an "interest or instrument commonly known as a 'security.'"

Insurance policies, including their related membership interests, are generally not considered securities. Section 3(a)(8) of the 1933 Act exempts insurance policies from the registration requirements of the 1933 Act if the policies are "issued ... subject to the supervision of the insurance commissioner ... of any state ... of the United States." This section "makes clear what is already implied in the [1933] Act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the [1933] Act." H.R. Rep. No. 73-85, at 15 (1933).

The fact that two different companies are involved should not alter the analysis. Since no "specific consideration in return for a separable financial interest with the characteristics of a security" is paid for the membership interest (because only the Policy is purchased), this interest does not constitute a security. *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 559 (1979).

A. Membership Interests are not Investment Contracts

The Supreme Court set forth the criteria to determine the existence of an investment contract in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Continuing the approach articulated earlier in *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344 (1943), the *Howey* test focuses on the economic realities of a transaction. An instrument or interest constitutes an investment contract if it: (1) involves an investment of money (2) in a common enterprise (3) with an expectation of profits (4) solely from the efforts of others. See *Howey*, 328 U.S. at 299. [FN2]

FN2. While the *Howey* test focused only on investment contracts, the Court subsequently applied the test more broadly. See *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 691 n.5 (1985) (stating that the categories of investment

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contracts and instruments commonly known as a security are properly analyzed by applying the Howey test); United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 852 (1975) (stating that the basic test for distinguishing a transaction involving a security and other commercial dealings is the Howey test).

End of Footnote(s).

1. Investment of Money

*7 The first criterion under the Howey test, investment of money, is not satisfied because the Reorganization does not require Company policyholders (or Reorganized Stock Company policyholders) to pay cash or any other property to acquire their membership interests in the MHC. An investment is characterized by "an exchange for value," most often a monetary contribution. See *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564, 574-75 (10 superth Cir. 1991). The membership interests are not issued upon a simple monetary contribution; instead, membership interests automatically accompany, by operation of law, the ownership of a Policy. The money paid by Company or Reorganized Stock Company policyholders is in the form of premiums with the intent to obtain insurance, and not with any profit-making, profit-sharing or investment intent with respect to membership in the MHC. Indeed, at the time of issuance of the Policies, the membership interests have no value separate and apart from the insurance policies.

Also, the membership interests will not be marketed as investments. The Reorganized Stock Company's selling efforts will focus on insurance coverages. Additionally, current members have been and prospective members must be qualified and accepted as insureds by the Company and the Reorganized Stock Company, respectively. Such qualification is an independent requirement that must be satisfied on the basis of objective insurance underwriting criteria. Finally, there is no basis for the current or prospective members to regard the membership interests in the Company or in the Reorganized Stock Company as investments because the membership interests are and will be nontransferable.

2. Expectation of Profits

The third criterion of the Howey test, expectation of profits, is not satisfied because membership interests do not provide any distribution of profits. Membership interests only provide voting rights and other rights as may be provided under Illinois law, such as those occurring upon demutualization or dissolution. The Court defines "profits" under the Howey test as "capital appreciation resulting from the development of the initial investment ... or participation in earnings resulting from the use of investors' funds." *United Housing Foundation, Inc. v. Forman*, 421 U.S. at 852. On its face, voting rights and the opportunity to receive money only in the event of the company's subsequent demutualization or dissolution do not meet the Forman profit definition.

In cases where investors are "attracted solely by the prospects of a return on their investment," the securities laws are applicable. *Id.* at 858. By contrast,

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"when a purchaser is motivated by a desire to use or consume the item purchased ... the securities laws do not apply." Id. The economic reality of becoming a mutual holding company member is that policyholders part with their money not for the purpose of reaping profits from the efforts of others, but for the purpose of purchasing insurance, a commodity for personal consumption. As indicated above, the MHC will not be permitted to make any direct payment of dividends, distributions, or any other distributions of income or profits to a member with respect to any mutual insurance holding company membership interest, other than as directed or approved by the Director. Furthermore, there is no potential to realize profit by transferring the membership interest to a third party because the membership rights are not assignable. In sum, the inability to receive dividends or other distributions of profits (except in limited circumstances such as a dissolution) or to sell the membership interest to a third party assures that a policyowner will not be motivated "solely by the prospect of a return" on the membership interests. Id. at 852 (citing *Howey*, 328 U.S. at 300).

B. Membership Interests are not securities under *Reves*

*8 In *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Court discussed four factors which are "the same factors which this Court has held apply in deciding whether a transaction involves a 'security'": (1) the transaction in which the interest was received must be reviewed to determine the motivations which would prompt a reasonable seller and buyer to enter into it, (2) the "plan of distribution" must be examined to determine "whether it is an instrument in which there is 'common trading for speculation or investment,'" (3) the "reasonable expectations of the investing public" with respect to the interest should be examined and (4) the existence of an alternative regulatory scheme which might reduce the risks associated with the interest alleged to constitute a security and "thereby rendering application of the Securities Act unnecessary." Id. at 66-67.

As to the first factor, the Court noted that "if the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security.'" Id. at 66. This factor suggests that the mutual holding company membership interests would not constitute securities because, as discussed above, a reasonable buyer would not purchase a Policy with an expectation of receiving a profit on account of the related membership interest.

As to the second factor, the membership interests cannot be freely traded or transferred apart from the accompanying Policy, terminate upon non-renewal of the policy and cannot be pledged or encumbered. Consequently, there cannot be common trading of the membership interest for speculation or investment.

As to the third factor, the Court noted that the marketing efforts employed in selling an alleged security are relevant to the expectations of the general public. Id. at 69. This third factor suggests that the membership interests would not constitute securities for several reasons. First, as noted earlier, membership interests are an inseparable part of the related insurance policies,

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which traditionally are not regarded as securities. Also as noted earlier, the membership interests will not be marketed to the general public as interests which would give rise to a profit expectancy (sales efforts will focus on the insurance coverage). Furthermore, no certificates will be issued with respect to the membership interests. Finally, the membership interests are not recognized as securities under Illinois law.

As to the fourth factor, since the mutual insurance holding company is subject to extensive regulation by the Director, this factor also supports the conclusion that the membership interests in the MHC would not constitute securities. The Director will hold a public hearing at which policyholders and other interested parties are permitted to attend and be heard. The Director also must conclude that the interests of the policyholders will be properly protected after the Reorganization and that the terms and conditions of the Plan are fair to the policyholder members. After the Effective Date, the Director would retain jurisdiction over the mutual insurance holding company pursuant to §59.2. Under §59.2(5)(c), the Director is empowered to condition his or her approval of the Plan on retaining broad authority to regulate the acquisition or formation of affiliate entities of the mutual insurance holding company, expansion of the mutual holding company systems and other matters. In addition, the mutual insurance holding company would be regulated under the Insurance Holding Company Systems Law and Article XIII of the Illinois Insurance Code relating to rehabilitation, liquidation, conservation and dissolution of insurance companies to the same extent as an insurance company. Affiliates of the MHC are regulated to the same extent as affiliates of the mutual insurance company pursuant to the Insurance Holding Company Systems Law.

*9 Because the membership interests do not meet the tests articulated by the Court in *Howey* and *Reves*, it is our opinion that the membership interests are not securities under Section 2(1) of the Securities Act. Thus, we believe that under the circumstances described herein, it would be appropriate for the Staff to take a position consistent with that taken in numerous similar no-action letters issued by the Staff. [FN3]

FN3. See *The Baltimore Life Insurance Company* (publicly available December 11, 2000); *National Travelers Life Company* (publicly available December 29, 1999); *Woodmen Accident and Life Company* (publicly available December 28, 1999); *American Republic Insurance Company* (publicly available December 23, 1999); *The Security Mutual Life Insurance Company of Lincoln, Nebraska* (publicly available November 30, 1999); *Trustmark Insurance Company*; *Mutual Trust Life Insurance Company* (publicly available August 4, 1999); *Mutual of Omaha Insurance Company* (publicly available November 27, 1998); *National Life Insurance Company* (publicly available September 23, 1998); *National Capital Reciprocal Insurance Company* (publicly available July 10, 1998); *Security Benefit Life Insurance Company* (publicly available June 3, 1998); *Minnesota Mutual Life Insurance Company* (publicly available May 21, 1998); *FCCI Mutual Life Insurance Company* (publicly available March 30, 1998); *Ameritas Life Insurance Company* (publicly available December 8, 1997); *Acacia Mutual Life Insurance Company* (publicly available June 27, 1997); *Pacific Mutual Life Insurance Company*; *General American Life Insurance Company* (publicly available February 20, 1997); and

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American Mutual Life Insurance Company (publicly available June 13, 1996).

End of Footnote(s).

VII. Registration Pursuant to the Securities Exchange Act of 1934

Section 12(g) of the 1934 Act and Rule 12(g)-1 promulgated thereunder provides that certain "issuers" with total assets exceeding \$10,000,000 and a class of "equity securities" held of record by 500 or more persons must register such securities under the 1934 Act. However, section 3(a)(8) of the 1934 Act defines "issuer" as "any person who issues or proposes to issue any security" and section 3(a)(11) defines "equity security" as including "stock or similar security" and certain other instruments or rights, each of which must, in itself, be a security.

Thus, to be subject to registration pursuant to section 12(g) of the 1934 Act, a person must issue "securities." The definition of "security" in section 3(a)(10) is in all pertinent respects identical to the definition of that term in section 2(1) of the 1933 Act. See *Landreth Timber Co.*, 471 U.S. at 686 n.1 (1982). Consequently, in accordance with the discussion of the 1933 Act above, we are of the opinion that the mutual holding company membership interests are not securities, and that the mutual holding company therefore will neither be an "issuer" nor have any "class of equity securities." Accordingly, it is our view that the mutual insurance holding company will not be subject to the registration requirements of section 12(g) of the 1934 Act.

VIII. Conclusion

*10 In consideration of the foregoing facts and our conclusions with respect to the application of the 1933 Act and the 1934 Act, we request that the Staff advise us whether it would recommend to the Commission that no action be taken if the Reorganization and issuance of policies of insurance as set forth above is effected by the mutual insurance holding company and the Reorganized Stock Company without compliance with the registration requirements of the 1933 Act and the 1934 Act.

Because of the importance of the Reorganization to the Company, we would appreciate hearing from the Staff at its earliest convenience. In the event you anticipate formulating a response not consistent with any interpretation or position stated in this request, we would appreciate the opportunity to discuss the matter with the Staff prior to any final decision. If you should have any comments or would like additional information, please contact the undersigned at (312) 443-1773.

Very truly yours,
J. Brett Pritchard
LORD BISSELL BROOK
115 S. LaSalle Street I Chicago, Illinois 60603-3901
312.443.0700

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SEC LETTER

1933 Act / s 2(a)(1)

October 24, 2001

Publicly Available October 24, 2001

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Re: **First Nonprofit** Mutual Insurance Company
Incoming Letter dated October 19, 2001

Based on the facts presented, but without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if, in reliance on your opinion of counsel that membership interests in **First Nonprofit** Mutual Holding Company are not securities within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, **First Nonprofit** Mutual Insurance Company causes its current and future policyholders to become members of **First Nonprofit** Mutual Holding Company after the Reorganization without registration under either statute.

In reaching this position, we particularly note that:

. The Reorganization will be effected under Illinois law permitting the formation of mutual insurance holding companies by mutual insurance companies;

. Membership rights in **First Nonprofit** Mutual Holding Company will be substantially the same as membership rights in **First Nonprofit** Mutual Insurance Company;

. With the Reorganization, **First Nonprofit** Mutual Insurance Company's policyholders will automatically become members of **First Nonprofit** Mutual Holding Company;

. The Reorganization is subject to approval by the Director of the Illinois Department of Insurance after notice to policyholders and a public hearing where policyholders are entitled to appear;

. The Director of the Illinois Department of Insurance will approve the Reorganization only after finding that it is fair and equitable to **First Nonprofit** Mutual Insurance Company's policyholders;

. **First Nonprofit** Mutual Holding Company will be subject to regulation by the Director of the Illinois Department of Insurance at a level equivalent to that applicable to **First Nonprofit** Mutual Insurance Company before the Reorganization; and

*11 . **First Nonprofit** Mutual Holding Company will not be permitted to pay dividends or to make other distributions or payments of income or profits to its members, other than upon dissolution or liquidation, except as directed or approved by the Director of the Illinois Department of Insurance.

This position is based on the representations made to the Division in your letter. Different facts or conditions might require a different result. This letter expresses the Division's position on enforcement action only and does not express a legal conclusion on the question presented.

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Sincerely,

Robert Plesnarski
Special Counsel

Securities and Exchange Commission (S.E.C.)
2001 WL 1298883 (S.E.C.)
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