



**IDAHO**  
DEPARTMENT OF FINANCE

**C. L. "BUTCH" OTTER**  
Governor

**GAVIN M. GEE**  
Director

February 6, 2013

Re: Request for No Enforcement Action Position Regarding Conversion from Mutual Insurer to Stock Insurer (File number )

Dear M

We have reviewed your letter on behalf of (" ") and the accompanying materials.

wishes to rely on a no enforcement action ("no-action") position from our Department in connection with the conversion of from a mutual insurance company to a stock insurance company. This conversion is part of a larger plan of acquisition of by based in , Idaho. Your letter represents that there is one eligible Idaho policyholder that will be affected by the conversion.

As noted in your letter, it appears that this transaction would be exempt from registration under Section 30-14-202(22)(b) of the Idaho Uniform Securities Act ("IUSA") if not for the fact that the conversion will not be judicially approved. In lieu of judicial approval, the conversion will not proceed without the determination of the California Insurance Commissioner ("Commissioner") that the conversion plan is fair and equitable to the insurer and its policyholders, does not violate the law, and will become insurance licensed after the conversion as required by the California Insurance Code. The Commissioner will hold a hearing on the conversion plan at which each eligible policyholder will have the right to appear, ask questions, express their opinion, and to submit written comments. Policyholders will also receive a package of information regarding the conversion plan, including an offering circular. The conversion plan must be approved by a quorum of 5% of the eligible policyholders.

In light of the constraints that will be imposed by the Commission on the conversion plan, and policyholders' opportunity to be heard by the Commission prior to approval of the conversion plan, we agree to take a no-action position regarding the conversion of from a mutual insurer to a stock insurer if the conversion proceeds as outlined.

**SECURITIES BUREAU**  
Bureau Chief – Marilyn T. Chastain  
800 Park Boulevard, Suite 200, Boise, ID 83712  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8004 Fax: (208) 332-8099  
<http://finance.idaho.gov>

It is our understanding from your representations that the written materials provided to eligible policyholders will be their primary source of information regarding the conversion plan. However, certain employees of \_\_\_\_\_ will be available to policyholders to answer questions through \_\_\_\_\_ toll free number. These employees will not receive additional direct or indirect compensation for providing this service to policyholders.

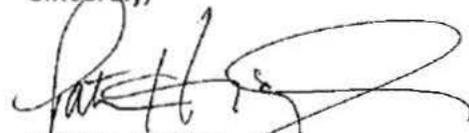
We agree to take a no-action position regarding the registration of these employees as agents under the IUSA.

Based on the information provided, it does not appear that, in this matter, \_\_\_\_\_ will be acting as a broker-dealer as that term is defined in Section 30-14-102(4) the IUSA.

Please be aware that our no-action position in this matter is based solely on the facts and circumstances as presented in your letter and attachments dated February 1, 2013. Should the facts and circumstances change in any way, our view may also change.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,



Patricia Highley  
Senior Securities Analyst  
Idaho Department of Finance

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STATE OF IDAHO  
DEPT OF FINANCE

February 1, 2013

**VIA ELECTRONIC MAIL (patty.highley@finance.idaho.gov) AND FEDERAL EXPRESS**

State of Idaho  
Department of Finance  
800 Park Boulevard, Suite 200  
Boise, Idaho 83720

**ATTN: Ms. Patricia R. Highley**  
**Senior Securities Analyst**

**Re: Request for No-Action Letter Regarding Issuance of Securities to  
Policyholders of part of  
Conversion from Mutual Insurer to Stock Insurer under California Law**

Dear Ms. Highley:

We are counsel to \_\_\_\_\_ a California-domiciled mutual insurer ("\_\_\_\_\_"), in connection with \_\_\_\_\_ proposed conversion from a mutual insurer to a stock insurer pursuant to California Insurance Code ("CIC") § 11535 et seq. This process, described in greater detail below, is referred to as the "Plan" or the "Conversion." \_\_\_\_\_ has authorized this law firm to make the factual representations set forth in this letter on its behalf.

We are writing on behalf of \_\_\_\_\_ to request your confirmation that, based upon the facts and representations set forth below, the Idaho Department of Finance (the "DOF") concurs that an exemption exists or that it will take no action to require:

(1) the registration of the securities to be issued to the Entitlement Policyholder (as defined below) resident in Idaho based upon the exemption from registration contained in Idaho Code § 30-14-202(22)(b); or

(2) the registration of \_\_\_\_\_ or the "Associates" (as defined below) as broker-dealers or agents.

We note that the DOF has issued no action letters in connection with previous demutualizations pursuant to a predecessor statute that is substantially identical to Idaho Code § 30-14-202(22)(b). See e.g., 2001 Id. Sec. No-Act. LEXIS 71 (June 5, 2001)(Anthem Insurance Companies, Inc); 1999 Id. Sec. No-Act. LEXIS 23 (May 10, 1999)(Sun Life Assurance Company of Canada); 1999 Id. Sec. No-Act. LEXIS 24 (May 10, 1999)(Canada Life Assurance Company).

**currently anticipates that it will mail the Policyholder Informational Materials (as defined below) to the policyholders on February 12, 2013. Accordingly, we respectfully request that the DOF rule on this request before that date so that the Entitlement Policyholder who is an Idaho resident may have a choice regarding the preferred form of payment. records indicate that one Entitlement Policyholder currently resides in Idaho.**

does not intend to file a registration statement with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act") (codified at 15 U.S.C. § 77a et seq.), with respect to the Common Stock (as defined below) or the Certificates of Contribution (as defined below). Such securities will be issued pursuant to an exemption from registration under Section 3(a)(10) of the Act, which exempts from registration securities issued when a state regulatory agency has determined, after a hearing on the matter, that the terms and conditions of the securities exchange are fair to those whom securities will be issued. Based upon such exemption, the Common Stock and Certificates of Contribution to be issued on the Conversion will not be subject to restriction of future sales under the Act.

A check in the amount of \$50.00 made payable to the Idaho Department of Finance in payment of the filing fee is enclosed.

## FACTS

### A. Background.

is a mutual property and casualty insurer that transacts business only in California and is primarily engaged in providing homeowners insurance to residents of California's greater Central Valley and surrounding areas. It issued its first insurance policy in 1906.

is currently organized in a "mutual" rather than a "stock" form, meaning that it has no shareholders and possesses no authority under its Articles of Incorporation to issue capital stock. Policyholders are "members" of and have voting rights to elect directors and to vote on other matters. The policyholders are considered "owners" of while their policies are in force and they have the same types of rights as stockholders in a stock corporation on such things as access to records, management, and general business affairs. If were dissolved (liquidated), each policyholder would have the right to share in assets after all other liabilities had been paid or provided for. Similarly, if financial circumstances permitted and the Board of Directors ("Board") were to declare dividends, policyholders

could receive dividends. If the Plan becomes effective, the policyholders of \_\_\_\_\_ will no longer own the company. CIC § 11537 requires that each Entitlement Policyholder receive compensation in consideration for the extinguishment of his ownership interest in \_\_\_\_\_ as described below.

## B. The Plan

The Board unanimously adopted the Plan on October 24, 2012. The Board amended and restated the Plan on January 21, 2013. The Plan (i) establishes the terms under which the \_\_\_\_\_ proposes to convert from a mutual insurance company to a stock insurance company pursuant to the provisions of Cal. Ins. Code Section 11535 et seq. and (ii) provides for the acquisition of control of \_\_\_\_\_ by \_\_\_\_\_, an Idaho corporation ('\_\_\_\_\_'), pursuant to a First Amended and Restated Stock Purchase Agreement ("Stock Purchase Agreement"), dated January 15, 2013, that was executed by and between \_\_\_\_\_ and \_\_\_\_\_ (the "Acquisition").

A policyholder is eligible to vote on the Plan if he was a \_\_\_\_\_ policyholder on October 24, 2012 (each an "Eligible Policyholder"). \_\_\_\_\_ has 5,114 Eligible Policyholders. Of these 5,114 Eligible Policyholders, 4,797 qualify as Entitlement Policyholders who are eligible to receive consideration under the Plan. Under California law, an "Entitlement Policyholder" is an Eligible Policyholder who was a \_\_\_\_\_ policyholder continuously for at least one year prior to October 24, 2012. See Cal. Ins. Code § 11537(c). As noted above, \_\_\_\_\_ records indicate that one Entitlement Policyholder currently resides in Idaho.

Pursuant to the Plan, 400,000 shares of one class of common stock with a par value of \$10.00 per share ("Common Stock") are being offered to Entitlement Policyholders at the subscription price of \$31.00 per share.

### 1. Options for Entitlement Policyholders' Receipt of Payment for Equity in \_\_\_\_\_

Assuming the Plan is completed, each Entitlement Policyholder will have the following four options regarding the form of consideration in which he may receive payment in exchange for his allocable equity in \_\_\_\_\_.

**Option #1 - Purchase Stock For Immediate Resale to \_\_\_\_\_ for Cash Payment.** Each Entitlement Policyholder may elect to apply 100% of his equity in \_\_\_\_\_ toward the purchase of Common Stock (including any fractional shares) in the converted company and immediately resell such Common Stock (including any fractional shares) to \_\_\_\_\_ in exchange for receiving a cash payment from \_\_\_\_\_ equal to 80% of his equity in \_\_\_\_\_.

**Option #2 - Cash.** Each Entitlement Policyholder may elect to receive a cash payment from \_\_\_\_\_ equal to 50% of his equity in \_\_\_\_\_. This 50% limitation on the payment of cash consideration by \_\_\_\_\_ is imposed by CIC § 11537(d).

**Option #3 – Certificate of Contribution.** Each Entitlement Policyholder may elect to receive a certificate of contribution ("Certificate of Contribution") -- an instrument that is similar to a surplus note -- in a principal amount equal to 100 percent of his equity in \_\_\_\_\_ that shall bear simple interest at the rate of 3.50%, payable annually on each anniversary date of the effective date of the Conversion, the principal amount of which shall be repayable within 10 years of the effective date of the Conversion, but only with the written consent of the California Insurance Commissioner (the "Commissioner") and only out of the company's surplus in excess of \$13,500,000. The Certificate of Contribution's terms are established by CIC § 11537(d).

**Option #4 - Purchase Stock and Retain For Own Account.** Each Entitlement Policyholder may elect to apply 100% of his equity in \_\_\_\_\_ toward the purchase of whole shares of Common Stock in the converted company and to retain such whole shares of Common Stock for his own account. With respect to Option #4, an Entitlement Policyholder may buy only the number of whole shares allocated to him. He may not buy fractional shares for his own account because \_\_\_\_\_ will not issue share certificates for fractional share amounts.<sup>1</sup>

There is no current market for the shares of the Common Stock and there can be no assurances that any market for the shares will develop upon completion of the offering. \_\_\_\_\_ has no intention of seeking a listing of the Common Stock on any securities exchange, or to seek quotation of the stock on any inter-dealer quotation system, in the foreseeable future.

Any Entitlement Policyholder who fails to make an affirmative election regarding his preferred form of payment will receive a Certificate of Contribution, as required by CIC § 11537(d).

## **2. Stock Purchase Agreement with UHFG**

Pursuant to the Stock Purchase Agreement, \_\_\_\_\_ has agreed to purchase from each Entitlement Policyholder who elects Option #1 all shares of Common Stock purchased by such Entitlement Policyholder in exchange for a cash payment equal to 80% of the Entitlement Policyholder's equity in \_\_\_\_\_. The agreement conditions \_\_\_\_\_ obligation to purchase these shares from Entitlement Policyholders upon \_\_\_\_\_ acquiring a minimum of ninety percent (90%) of the Common Stock outstanding after the Conversion.

## **3. Description of the Regulatory Process**

An application was submitted to the Commissioner on October 30, 2012 seeking his approval of the Plan, as required by CIC § 11536(b) (the "Plan Application"). Pursuant to CIC §

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<sup>1</sup> Each Entitlement Policyholder's allocable number of whole shares shall be determined by calculating his allocable number of shares and, if there is a fractional share interest, rounding up the allocable number of shares to the next whole share amount to eliminate the Entitlement Policyholder's fractional share interest. If the amount of the Entitlement Policyholder's equity is less than the total purchase price of his allocable number of whole shares, he is required to pay \_\_\_\_\_ the difference between (i) the total purchase price of his allocable number of whole shares and (ii) the amount of his equity.

11538(a), the Commissioner will hold a hearing regarding the Plan at which each Eligible Policyholder will have the right to appear, to ask questions, to express his opinion regarding the proposed Conversion and to submit oral or written comments. Each Eligible Policyholder will receive written notice of both the Commissioner's hearing and the Special Meeting at which Eligible Policyholders will vote on the Plan.

In addition, shall mail to each Entitlement Policyholder a package of information regarding the Plan that includes, *inter alia*, the following documents: (i) a proxy statement, (including a complete copy of the Plan and all exhibits), (ii) an offering circular, (iii) a frequently asked questions document and (iv) a proxy form and an order form (for electing the preferred form of payment) (collectively, the "Policyholder Informational Materials"). The Commissioner's staff has reviewed and commented extensively upon each of the documents comprising the Policyholder Informational Materials.

We have enclosed the following draft documents with this letter:

1. Cover letter to policyholders from president (**Exhibit A**);
2. Proxy Form and Order Form to be sent to Entitlement Policyholders (**Exhibit B**);
3. Offering Circular (**Exhibit C**).

The Policyholder Informational Materials will inform Policyholder's that the Board has recommended (i) that Eligible Policyholders vote in favor of the Plan and (ii) that Entitlement Policyholders elect Option #1 as the form of consideration in which they will receive their payment.

The Plan is required to be approved by a majority of a quorum of the Eligible Policyholders who vote at the Special Meeting in person or by proxy. See Cal. Ins. Code § 11536(c). A quorum shall consist of 5% of the Eligible Policyholders entitled to vote at the Special Meeting. See Cal. Ins. Code 11539. The Commissioner shall approve the Plan if he makes all of the following factual findings: (i) the Plan is "fair and equitable to the insurer and its policyholders," (ii) the Plan does not violate the law and (iii) will, after the Conversion, satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed. See Cal. Ins. Code 11538.

#### **4. Activities of the Associates**

The Policyholder Informational Materials will be the Entitlement Policyholders' primary source of information regarding the Plan. Nevertheless, the Policyholder Informational Materials will inform Entitlement Policyholders that they may call toll free number if they have any questions regarding the Plan. Following distribution of the Policyholder Informational Materials, certain employees of under the direct supervision of President (collectively, the "Associates"), will answer questions that are posed by Entitlement Policyholders regarding the Plan and will serve as conduits of public information regarding the

mechanics of the Plan, the Commissioner's hearing and the Special Meeting. The Associates will not perform traditional sales functions. None of these individuals will be provided, directly or indirectly, with any additional compensation related to any activities they perform in facilitating the Plan. No Associates will be hired for the purpose of communicating with Entitlement Policyholders regarding the Plan, but rather the Associates will be primarily responsible for handling their regular duties as an employee of the company.

Associates will be educated about the Plan and will be instructed in writing to refrain from the following: (i) using written materials other than the Policyholder Informational Materials (or any other materials prepared by \_\_\_\_\_ for use in connection with the Plan) or making any revisions to such materials; (ii) making any statements not derived from the Policyholder Informational Materials; (iii) offering any advice to Entitlement Policyholders concerning how to vote on the Plan or what option they should elect for their form of payment (other than reading the statements contained in the Policyholder Informational Materials stating that the Board recommends that Eligible Policyholders vote in favor of the Plan and that the Board recommends that Entitlement Policyholders elect Option #1 for receiving their payment); (iv) discussing the potential market value of the Common Stock or the Certificates of Contribution; (v) providing financial advice about, or recommending or soliciting purchases of, Common Stock or the Certificates of Contribution and (vi) discussing with Entitlement Policyholders their personal plans to invest or not to invest in the Common Stock or the Certificates of Contribution.

Associates will be instructed not to initiate any contacts with Entitlement Policyholders who reside outside of California (with the exception of mailing the Policyholder Informational Materials to such policyholders).

## ANALYSIS

For the reasons set forth below, we believe that confirmation of exemption or a no-action letter is appropriate because (i) registration of the Common Stock or the Certificates of Contribution to be issued in connection with the Conversion with the DOF is not required and also (ii) registration of \_\_\_\_\_ or the Associates as broker-dealers or agents with the DOF is not required with respect to the foregoing activities.

### A. Securities Exempt from Registration

We believe that registration of the Common Stock or the Certificates of Contribution is not required in your jurisdiction because the Conversion is similar to, and within the intent of, the transactions referred to in Idaho Code § 30-14-202(22)(b). This section exempts the following transactions from registration: "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash." The Conversion at issue is incident to a statutorily mandated class vote on the Plan with the voting class (*i.e.*, the Eligible Policyholders) being comprised of all of the policyholder/members who hold an ownership interest in

In addition, we note the highly regulated nature of the insurance industry and the Conversion process in particular under the CIC § 11537 *et seq.* Eligible Policyholders have the opportunity to appear and to be heard at the hearing to be held by the Commissioner regarding the Plan. All Eligible Policyholders will be provided written notice of the hearing. We believe that the public interest is adequately protected by the hearing that will be held pursuant to CIC § 11538(a).

Further, we emphasize that the Plan is subject to the prior approval of the Commissioner, following the hearing, only if the Commissioner has made a factual finding, *inter alia*, that the Plan "is fair and equitable to the insurer and its policyholders." *See* Cal. Ins. Code § 11538. This requirement serves adequately to protect the interests of any unsophisticated Entitlement Policyholders (*i.e.*, offerees) from an unfair or inequitable transaction. Moreover, the Commissioner's determination is subject to judicial review. *See* Cal. Ins. Code § 11543.1(b).

In the event that the DOF does not concur with our interpretation of Idaho Code § 30-14-202(22)(b), we also note that Section 306 of the Gramm-Leach Bliley Act, 15 U.S.C. § 6715 (the "GLB Act") provides, in relevant part, as follows:

no state may, by law, regulation, order, interpretation or otherwise . . . prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer . . . unless such State is the State of domicile of the insurer. 15 U.S.C. § 6715(3).

If [redacted] were required to register the Common Stock or the Certificates of Contribution with the DOF or to file a notice of exemption with the DOF, it would "significantly interfere with" and give Idaho the authority to "review, approve, or disapprove" the Conversion and the Plan in direct contravention of the provisions of the GLB Act forbidding such interference by non-domiciliary regulators. Thus, pursuant to Section 306 of the GLB Act, [redacted] should not be required to register or to file an exemption notice with the DOF in relation to the issuance of the Common Stock of the Certificates of Contribution.

**B. [redacted] and Associates Exempt from Registration as Broker-Dealers or Agents**

Section 306 of the GLB Act applies equally to the question of whether [redacted] or the Associates should be required to register with the DOF as broker-dealers or agents to conduct the activities described in this letter. Applying Idaho's registration requirements would significantly interfere with the ability of [redacted] to provide information regarding the Plan and the Conversion to Entitlement Policyholders. Furthermore, because, as a practical matter, compliance with broker-dealer or agent registration requirements would not be feasible in connection with this transaction, such a requirement would result in the Entitlement Policyholder located in your jurisdiction receiving cash equal to just 50% of his equity in [redacted] in consideration for his equity interest in the company.

In the event that the GLB Act were deemed to be inapplicable to the issuance of the Common Stock and the Certificates of Contribution, we respectfully submit that nevertheless could not possibly qualify as a "broker-dealer" within the meaning of Idaho Code § 30-14-102(4) because the statutory definition expressly excludes the issuer of the securities. In addition, could not constitute an "agent" within the meaning of Idaho Code § 30-14-102(2) because this definition applies only to a natural person.

Regarding the activities of the Associates, we believe that when they handle inquiries from Entitlement Policyholders regarding the Plan, they will not be "engaged in the business of effecting transactions in securities" for the purposes of Idaho Code § 30-14-102(4) or "effecting or attempting to effect purchases or sales of securities" within the meaning of Idaho Code § 30-14-102(2). The primary function of the Associates will be to help Entitlement Policyholders understand the Plan and the consequences of the Conversion, if needed. None of the Associates will be permitted to advise Entitlement Policyholders on how to vote on the Plan (other than conveying the factual information that the Board has recommended that (i) policyholders approve the Plan and (ii) elect Option #1 for payment). None of the Associates will receive any compensation in connection with their activities related to the Conversion. No Associates will be hired for the purpose of communicating with Entitlement Policyholders regarding the Plan, but rather they will primarily focus upon performing their regular duties as an employee of the company.

As described above, the Associates will receive specific written instructions from as to the permissible scope and content of their activities, and will, in fact, be directed to limit any discussion about the Plan and the Conversion to statements which can be found in, or derived from, the Policyholder Informational Materials. Moreover, Associates will be instructed not to initiate any contacts with Entitlement Policyholders who reside outside of California other than mailing the Policyholder Informational Materials to such policyholders. In effect, the Associates will be mere conduits of public information about the Plan and the Conversion between and Eligible Policyholders for purposes of a vote of corporate reorganization, and will not be "effecting" or "attempting to effect" any transactions in, purchases of or sales of securities.

Additionally, as set forth above, Idaho Code § 30-14-202(22)(b) exempts the following transactions from registration "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests or partly in such exchange and partly for cash." Thus, the Conversion is similar to, and within the intent of, the transactions referred to in Idaho Code § 30-14-202(22)(b) for the reasons articulated above and this should eliminate any potential need for broker-dealer or agent registration in connection therewith.

Finally, due to the highly regulated nature of the insurance industry, as evidenced by the requirements that must be met under CIC § 11537 *et seq.*, including approval of the Plan by the Commissioner, we respectfully suggest that such transactions are not the kind for which broker-dealer or agent registration is necessary or appropriate in order to protect investors. We believe, therefore, that the registration of the Associates with the DOF as broker-dealers or agents is not

Ms. Patricia R. Highley  
February 1, 2013  
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necessary or appropriate for the protection of investors and should not be required in order to effect the Conversion.

Accordingly, neither                    nor the Associates should be required to register with the DOF as a broker-dealer or an agent.

### CONCLUSION

Based upon all of the foregoing and pursuant to the authority granted to the DOF under IDAPA 12.01.08.003, we respectfully request the DOF's confirmation of exemption or its no-action position to the effect that: (i) registration of the Common Stock or Certificates of Contribution with the DOF is not required for the issuance of these securities in connection with the Conversion and (ii) registration of                    or the Associates as broker-dealers or agents with the DOF is not required, assuming the Conversion occurs in the manner described above.

Should you have any questions or require further information, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,