

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of Security Benefit Mutual     )     Docket No. 4103-DM  
Holding Company                                     )

**ORDER**

Now on this 18th day of May, 2010, the above-captioned matter comes before the Commissioner of Insurance of the State of Kansas (the "Commissioner") upon the filing of a Demutualization and Dissolution Plan (the "Plan") by Security Benefit Mutual Holding Company, a Kansas mutual holding company ("SBMHC"), and a "Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer" (the "Form A") by Guggenheim SBC Holdings, LLC, a Delaware limited liability company (the "Investor"), Sammons Enterprises, Inc., a Delaware corporation ("Sammons Enterprises"), and Guggenheim Capital, LLC, a Delaware limited liability company ("Guggenheim Capital") (collectively, the "Applicants"). The Plan and the Form A pertain to the demutualization and dissolution (the "Demutualization and Dissolution") of SBMHC and the acquisition (the "Acquisition") by the Applicants of Security Benefit Life Insurance Company ("SBL"), a Kansas stock insurance company wholly owned by Security Benefit Corporation ("SBC"), a Kansas corporation wholly owned by SBMHC, by means of the acquisition of all of the stock of SBC (collectively, the "Transaction"). The Plan and the Form A are contingent upon each other and both are subject to the Commissioner's approval.

The Applicants are represented by Mr. John C. Frieden and Mr. Eric I. Unrein of Frieden, Unrein, Forbes & Biggs, LLP, and Ms. Charlene McHugh of Sidley Austin, LLP. SBMHC, SBC and SBL are represented by Mr. John F. Guyot, their General Counsel, and Ms. Cynthia R. Shoss and Ms. Ellen M. Dunn of Dewey & LeBoeuf, LLP. The Kansas

Insurance Department (the “Department”) is represented by Mr. Zachary Anshutz, its Assistant General Counsel. Also appearing for the Department is Mr. Daniel Watkins of the Law Offices of Daniel Watkins and Mr. Robert Sullivan of Polsinelli Shughart PC (“Polsinelli Shughart”).

This Order shall be effective upon service and shall become final, subject to any conditions herein, upon the expiration of fifteen days from the date of service. Pursuant to the authority granted to the Commissioner under K.S.A. §§ 40-3301 *et seq.* (the “Insurance Holding Companies Act”) and K.S.A. §§ 40-4001 *et seq.* (the “Mutual Conversion Act”), and in accordance with the Kansas Administrative Procedure Act, K.S.A. §§ 77-501 *et seq.*, the Commissioner hereby asserts the following Declaration of Public Interest and Policy, Findings of Fact and Conclusions of Law and Order:

**DECLARATION OF PUBLIC INTEREST AND POLICY**

The Commissioner finds and declares that, in accordance with the Insurance Holding Companies Act and the Mutual Conversion Act, it is consistent with the public interest and the interest of policyholders and members of mutual holding companies to permit mutual holding companies to demutualize and dissolve, and control of their insurance subsidiaries to be acquired, in order to, among other reasons including those set forth in K.S.A. § 40-3301:

- (a) enhance the capital of such insurers to better assure that their obligations to policyholders will continue to be met;
- (b) improve the financial position of such insurers to allow them to mitigate any capital and regulatory concerns; and
- (c) better enable such insurers to respond to the changing conditions of the economic environment so that they continue to be able to operate and compete effectively.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Findings of Fact and Conclusions of Law stated herein are based upon the statements made in the Plan and the Form A and accompanying documents and testimony under oath, and provided to the Department pursuant to K.S.A. §§ 40-3301 and 40-3304 of the Insurance Holding Companies Act, §§ 40-4001 and 40-4003a(c)(5) of the Mutual Conversion Act, and K.A.R. § 40-1-28, including exhibits and testimony provided at or for the public comment meeting held by the Commissioner on April 28, 2010 (the “Public Comment Meeting”), and the public evidentiary hearing held by the Commissioner on May 5, 2010 (the “Evidentiary Hearing”).

1. The purpose of the filing of the Form A is to seek authority from the Commissioner for the Acquisition of SBL through the acquisition of SBC by the Applicants. The Applicants filed the Form A with the Department on March 11, 2010. The Form A was amended on April 29, 2010, by the filing with the Department of the First Amendment and Supplement to the Form A. The terms and conditions of the Acquisition are more fully set forth in the Form A, as amended, and the exhibits thereto.

2. The purpose of the filing of the Plan is to seek authority from the Commissioner for the Demutualization and Dissolution of SBMHC. The Board of Directors of SBMHC unanimously adopted the Plan on March 2, 2010, and SBMHC submitted the Plan to the Commissioner for comment on March 3, 2010. The Board of Directors of SBMHC approved an amended Plan reflecting the Commissioner’s comments on March 30, 2010, and submitted the amended Plan to the Commissioner for approval on March 31, 2010. The terms and conditions of the Plan are more fully set forth therein.

## I. PARTIES

### A. Security Benefit<sup>1</sup>

3. SBMHC is a Kansas mutual holding company headquartered in Topeka, Kansas. SBMHC is the direct parent of SBC, a Kansas corporation. SBC functions as an intermediate stock holding company.

4. SBC directly or indirectly owns all of the issued and outstanding capital stock or ownership interests of a number of operating companies, principally SBL; First Security Benefit Life Insurance and Annuity Company of New York, SBL's New York affiliate; se<sup>2</sup>, a Kansas corporation principally engaged in the business of providing third party administration services to other insurance companies with respect to their life and annuity policies; and Rydex Holdings, LLC ("Rydex"), Security Global Investors, LLC ("SGI"), and Security Investors, LLC ("SI"), which entities conduct the asset management businesses of SBC (together, including their subsidiaries, the "Asset Management Businesses").

5. SBL was formed in 1892 as a fraternal benefit society and was converted to a mutual life insurance and annuity company on January 2, 1950. SBMHC's current corporate structure was formed in conjunction with the conversion of SBL from a mutual insurance company to a stock insurance company in a mutual holding company structure in 1998. As a result of this conversion, SBC was formed as an intermediate stock holding company, wholly owned by SBMHC. SBL is wholly owned by SBC.

6. SBMHC, like all mutual holding companies, is not a stock company and has members rather than shareholders. SBMHC's members generally are the current policyholders of SBL. By statute, a mutual holding company must retain at least 51% of the

---

<sup>1</sup> Together, SBMHC, SBC, SBL, and their affiliates are referred to as "Security Benefit."

voting rights of the stock holding company, *i.e.*, SBC, which wholly owns the converted insurer, *i.e.*, SBL, after conversion to a mutual holding company structure with an intermediate holding company. Members are vested with certain limited rights (“Membership Interests”), such as the right to elect directors and to vote on major transactions and the right to receive consideration in the event of a demutualization and dissolution of the mutual holding company.

**B. The Applicants**

7. The Investor is a Delaware limited liability company formed in February 2010 in contemplation of the proposed Acquisition. The Investor’s sole member is a passive investor, Eldridge Investors, LLC. The Investor’s sole manager is Guggenheim Knights of Security, LLC (“Guggenheim Knights”).

8. Pursuant to the limited liability company agreement (the “LLC Agreement”) governing the Investor, Guggenheim Knights may be removed or discharged as manager only if a court of competent jurisdiction has issued a final decision, judgment or order that it has acted with actual fraud or in bad faith or was grossly negligent or engaged in willful misconduct, in each case with respect to the Investor. For so long as Guggenheim Knights is the manager of the Investor pursuant to such LLC Agreement, it will remain fully responsible for managing the business operations of the Investor.

9. Guggenheim Partners, LLC (“Guggenheim Partners”) is the 100% owner and sole managing member of Guggenheim Knights. As such, Guggenheim Partners will be fully responsible, indirectly, for controlling the management of the business operations of the Investor.

10. Guggenheim Partners is 100% owned by Guggenheim Capital, a privately-held diversified financial services firm headquartered in the United States.

Guggenheim Capital provides investment management products and services, investment advisory services, insurance and capital markets services, and has more than 1000 employees. Guggenheim Capital's strategy is to build and grow a highly valued global financial services firm. Guggenheim Capital has executed this strategy by acquiring and building new businesses and providing them with the resources to grow into profitable and valuable enterprises. The firm identifies and partners with business managers who are entrepreneurial, experts in their fields, and who have a proven track record of success in other ventures, and provides these businesses with branding and marketing support, core operating infrastructure services, and financial capital. Guggenheim Capital has offices in cities around the globe, including New York, Chicago, Los Angeles, Miami, Boston, Philadelphia, St. Louis, Houston, London, Dublin, Geneva, Hong Kong, Singapore, Mumbai, and Dubai.

11. Sammons Enterprises, a diversified holding company organized under the laws of Delaware, holds an ownership interest in Guggenheim Capital as an investment: Sammons is an indirect owner of SAGE Assets, Inc., which, as of January 31, 2010, owned 58,099,228 of the common units of (and 38.227% of the voting membership interests in) Guggenheim Capital. Among other companies, Sammons Enterprises indirectly owns Midland National Life Insurance Company, North American Company for Life and Health Insurance, SFG Reinsurance Company, and Guggenheim Life and Annuity Company.

## **II. THE TRANSACTION**

### **A. Background**

12. SBL's capital and surplus position deteriorated significantly in 2008 and 2009 as a result of, among other things, realized and unrealized losses on collateralized debt obligations and other investments. These losses, when combined with the impacts of

lower equity markets on revenues and reserve requirements, resulted in a decline of more than 50% in SBL's capital and surplus since the middle of 2008, and more than half of SBL's stated statutory surplus as of September 30, 2009, was in the form of surplus notes.

13. In addition, SBL's variable annuity separate account business experienced declines during the same period due to equity market volatility. Net income, determined both on a Generally Accepted Accounting Principles ("GAAP") basis and on a statutory accounting basis, also decreased in recent years, culminating in significant operating losses in 2008.

14. In February 2009, SBL's financial strength rating was downgraded by Standard & Poor's ("S&P") to BB from BBB+ due, in part, to SBL's decline in capital and surplus in 2008. Management of SBMHC, SBC, and SBL were concerned that SBL could be further downgraded if substantial capital was not raised to cushion against further possible financial adversities. SBMHC's Board of Directors determined that, if SBL did not receive a significant capital infusion, taking into account the then expected financial implications of regulatory requirements and in light of the then-expected financial condition of SBL and its affiliates, SBMHC would be unable to ensure that the Commissioner would not take regulatory action.

15. Prior to entering into the Transaction, the Board of Directors of SBMHC considered, and management pursued, a variety of strategic alternatives aimed at (i) assuring that SBL's obligations to its policyholders would continue to be met, (ii) raising significant amounts of new capital, (iii) increasing liquidity and risk-based capital at SBL and (iv) obtaining an investment grade financial strength rating from the rating agencies. Beginning in mid-2008, SBC worked with four investment banking firms, which collectively

and serially ran competitive processes that solicited bidders for various types of transaction structures, sales, and strategic combinations, each with the goal of stabilizing SBL, creating a capital cushion against possible future adverse developments, and possibly positioning Security Benefit to take advantage of opportunities due to market dislocations. Throughout these processes, more than sixty institutions were contacted, several more than once.

16. The SBMHC Board of Directors ultimately concluded that the Transaction is the most viable option and that it is in the best interests of SBMHC, SBL, SBL's policyholders, and SBMHC's members. The Board of Directors concluded that the Transaction will provide SBL with an improved financial condition that will allow SBL to mitigate current financial and regulatory concerns, and that the Transaction will therefore provide greater assurance that SBL will fulfill its obligations to policyholders.

**B. Structure and Purpose of the Transaction**

17. The Transaction is expected to (i) result in a total capital infusion of approximately \$350 million into SBL, (ii) substantially increase SBL's financial strength for policyholders, and (iii) significantly improve SBL's capital and liquidity.

18. On February 15, 2010, SBMHC, SBC, and the Investor entered into a purchase and sale agreement providing for the Acquisition (the "Purchase and Sale Agreement"). Section 7.01 of the Purchase and Sale Agreement sets forth the situations in which the parties may terminate the Transaction, and Section 7.02 of the Purchase and Sale Agreement sets forth some of the consequences of termination. In certain circumstances described in Section 7.02, the Investor may elect that SBC either (i) pay it an amount in cash equal to \$10 million as a termination fee or (ii) issue to the Investor penny warrants exercisable at any time for between 9.9% and 19.9% of SBC's outstanding shares of common

stock, subject to regulatory approval, which is also being sought at this time by the Applicants pursuant to the Form A, as amended.

19. On February 25, 2010, pursuant to a loan agreement (the “Loan Agreement”) and related agreements, the Investor loaned SBC \$175 million in exchange for a secured note (the “Secured Note”) and SBC contributed the proceeds as capital to SBL. The Secured Note has an aggregate principal amount of \$175 million and is secured by a first priority lien on all of the equity interests of each of SBC’s Asset Management Businesses, namely Rydex, SGI and SI, in addition to a first priority lien on the capital stock of se<sup>2</sup>. Each of Rydex, SGI, SI and se<sup>2</sup> guaranteed the Secured Note, and SGI, SI and se<sup>2</sup> secured those guarantees with a first priority lien on their respective assets. The loan to SBC and interest thereon will convert to equity at the closing of the Acquisition, at which time the Secured Note and all the guarantees and security interests that secure the Secured Note will immediately and automatically terminate.

20. An additional approximately \$205 million, less the Investor’s transaction expenses, will be contributed by the Investor to SBC upon the closing of the Transaction. These proceeds, after deduction by SBC to pay its and SBMHC’s transaction expenses, will be contributed as capital to SBL. The additional contribution to SBL will be approximately \$175 million. Accordingly, upon consummation of the Transaction, SBL will have received approximately \$350 million in additional capital.

21. Pursuant to SBMHC’s proposed Plan, SBMHC will demutualize and dissolve. Also, in connection with the Plan, SBMHC will sell to the Investor all of the outstanding stock of SBC. SBC will continue to own all of the stock of SBL and the other subsidiaries it currently owns.

22. Consummation of the Transaction will increase the capital and creditworthiness of SBL. It will not increase premiums or contributions, or diminish the benefits, values, guarantees of, or dividends on, existing policies. Policies eligible to receive dividends or excess interest will continue to be so eligible (although, as always, policy dividends and excess interest are not guaranteed and may vary from year to year).

23. In addition to improving the capital and creditworthiness of SBL, the Demutualization and Dissolution and subsequent Acquisition will provide eligible members of SBMHC with compensation, subject to the satisfaction of certain conditions, upon the extinguishment of their otherwise illiquid Membership Interests.

24. Upon the announcement of the Transaction on February 16, 2010, S&P improved the financial strength rating of SBL, first to BB, credit watch positive (from credit watch negative), and then on February 26, 2010, to BB+, credit watch positive following SBC's contribution of the \$175 million loan proceeds from the Investor to SBL as capital. S&P has indicated that it could upgrade SBL to as high as BBB+ upon the closing of the Transaction, but that it could lower SBL's ratings, most likely to BB-, if the Transaction is not completed.

25. If the Transaction is not consummated, SBL's liquidity, financial condition and business could be materially adversely affected. Among other things: SBL would not receive the approximately \$175 million of additional capital that the Transaction would provide; SBC would be obligated to repay the Investor the outstanding amount of principal and interest on the Secured Note; and SBL might (and in some circumstances likely would) need to write down the intercompany promissory notes and loan and pledge agreement between SBL, as lender, and SBC, as borrower, and increase reserves, which

would result in a reduction in admissible deferred tax assets, all of which would reduce SBL's capital. If the Transaction is not consummated, Security Benefit would attempt to enter into an alternative transaction that would provide SBL with the capital needed to manage its business, in addition to pursuing a Contingent Asset Management Purchase and Sale transaction (discussed in paragraph 36 below).

**C. Allocation of Member Consideration**

26. In connection with the Demutualization and Dissolution, all Membership Interests in SBMHC will be extinguished.

27. Member consideration distributable to eligible members will be in the form of cash or "policy credits," which operate as an increase in cash value, account value, dividend accumulations or benefit payments, as appropriate, depending on the policy.

28. Eligible members are owners of eligible SBL policies, as defined in the Plan, that were in force as of the close of business on March 2, 2010, the date as of which the SBMHC Board of Directors adopted the Plan.

29. The eligible members who will receive policy credits rather than cash are those who hold eligible policies that are tax-qualified contracts not held in trust and in force on the date the member consideration is distributed. Other eligible members will receive cash.

30. SBMHC and SBL have requested rulings from the Internal Revenue Service confirming that the crediting of policy credits will not result in adverse tax consequences for tax-qualified contracts (the "IRS Rulings"). SBMHC and SBL have applied to the Department of Labor for an exemption from the restrictions under the Employee Retirement Income Security Act ("ERISA") and certain sanctions with respect to the receipt of cash or policy credits by a member that has an employee benefit plan subject to

the financial responsibility provisions of ERISA (the “DOL Exemptions”). SBMHC and SBL do not need to receive the requested IRS Rulings and DOL Exemptions to complete the Transaction, but the member consideration as to members to whom the IRS Rulings and DOL Exemptions apply will be held in one or more escrow accounts and will not be released until the rulings and exemptions, as applicable, are received. To the extent that the IRS Rulings and/or DOL Exemptions are not received by December 31, 2010, the related amounts held in escrow will be released to SBL, and no member consideration will be payable to members to whom the IRS Rulings and DOL Exemptions not received would apply. However, the Plan grants the Commissioner the authority to extend the deadline for receiving IRS Rulings and DOL Exemptions beyond December 31, 2010.

31. As a group, the eligible members may receive consideration in an aggregate amount of up to \$20 million, less any outstanding claims against SBMHC in excess of \$500,000 that are deemed valid and are not otherwise paid or provided for (but in no case less than zero). If there are no such claims, the amount of consideration each eligible member may receive is estimated to be approximately \$100. The consideration payable to each eligible member will be the same, irrespective of the number and size of eligible policies or contracts owned.

32. SBMHC’s Board of Directors retained Houlihan Lokey Howard & Zukin Financial Advisors, Inc. (“Houlihan Lokey”), an international investment bank, to opine on the fairness of the aggregate member consideration. Houlihan Lokey opined that the member consideration to be received by the members, taken in the aggregate, is fair to the members from a financial point of view.

33. SBMHC's Board of Directors retained Milliman, Inc. ("Milliman"), an independent actuarial and consulting firm, to opine on the allocation of the member consideration among eligible members of SBMHC. Mr. Steven Schreiber, a principal and consulting actuary with Milliman, opined that, in light of SBL's financial situation, the allocation of member consideration is fair and equitable to the members of SBMHC and the allocation of only a fixed amount to each member is reasonable.

### **III. PROCEDURAL HISTORY**

#### **A. The Agreements, the Plan and the Form A**

34. In December 2009, the parties to the Transaction began negotiating its basic terms. The negotiations were monitored by the Department.

35. On December 23, 2009, SBMHC, SBC, and Guggenheim Partners entered into a non-binding letter agreement (the "Letter Agreement"), which set forth the principal terms of the Transaction.

36. As of February 15, 2010, SBMHC's Board of Directors approved the Purchase and Sale Agreement providing for the Acquisition. On the same date, SBMHC, SBC, SBL, the Asset Management Businesses, and the Investor entered into a Contingent Asset Management Purchase and Sale Agreement providing in the alternative for the acquisition of the Asset Management Businesses by the Investor under terms and conditions specified therein (the "Contingent Asset Management Purchase and Sale Agreement"), and SBMHC, SBC, Rydex, SGI, SI, and the Investor entered into a Contingent Interim Investment Management Agreement providing for the Investor to commence managing the Asset Management Businesses if approvals necessary for that, but not all approvals necessary for the Transaction, have been obtained (the "Contingent Interim Investment Management Agreement"). The Purchase and Sale Agreement, the Contingent Asset Management

Purchase and Sale Agreement, and the Contingent Interim Investment Management Agreement were later amended by an omnibus amendment, dated April 27, 2010 (the “Omnibus Amendment”).

37. SBC and the Investor entered into the Loan Agreement on February 15, 2010. The Loan Agreement was amended by a first amendment, dated February 23, 2010, and later by a second amendment, dated April 27, 2010.

38. The agreements identified in paragraphs 36 and 37 above superseded the Letter Agreement.

39. On March 2, 2010, SBMHC’s Board of Directors approved the Plan and submitted the Plan to the Commissioner for comment on March 3, 2010.

40. On March 30, 2010, SBMHC’s Board of Directors approved an amended and restated Plan, as of March 2, 2010, which reflected the Commissioner’s comments, and submitted the amended and restated Plan to the Commissioner for written approval on March 31, 2010.

41. On March 11, 2010, the Applicants filed their Form A with the Commissioner seeking approval to acquire control of SBL in accordance with K.S.A. § 40-3304. In the Form A, the Applicants also seek approval of the Acquisition through the exercise of penny warrants at the 19.9% level, in the event such warrants are issued. The Applicants subsequently filed an amended Form A with the Commissioner on April 29, 2010.

42. A team consisting of members of the Commissioner’s legal, financial and actuarial staff and independent special counsel and advisors (the “KID Testimonial Team”) was charged by the Commissioner to monitor, examine and consider the proposed

Transaction, and to review the Plan and the Form A. The KID Testimonial Team includes Mr. Larry Bruning—Chief Actuary; Mr. Kenneth Abitz—Director of Financial Surveillance Division; and Mr. Zachary Anshutz—Assistant General Counsel, all of the Department. It also includes Mr. Daniel Watkins; Polsinelli Shughart; and Keefe, Bruyette & Woods, Inc (“KBW”).

**B. Prehearing Procedure**

43. On March 19, 2010, the Department held a prehearing conference with the parties via telephone conference call.

44. On March 22, 2010, the Commissioner issued a Procedural and Scheduling Order governing the proceedings. The Procedural and Scheduling Order set forth, among other things, specific procedures relating to the Evidentiary Hearing, including the filing of testimony prior to the Evidentiary Hearing and the filing of petitions by persons seeking to intervene in the proceeding. The Procedural and Scheduling Order also established certain requirements with respect to the member vote to be held on the Plan.

45. Also on that date, the Commissioner issued an Agreed Order and Joint Plan for Public Access to facilitate public access by means of the Security Benefit website to various non-confidential documents filed with the Commissioner relating to the Plan and the Form A.

46. The Commissioner also issued a Public Comment Meeting Plan and Scheduling Order, which announced the public meeting to be held in Topeka, Kansas, for the purpose of informing the public and allowing the public to ask questions about, and comment upon, the Plan and the Form A. The order directed that notice of the Public Comment Meeting be provided to the public, along with notice of the Evidentiary Hearing, not less than twenty days in advance.

47. Pursuant to the Procedural and Scheduling Order, the Commissioner also issued a Notice of Public Comment Meeting and Evidentiary Hearing, detailing procedures relevant to the Public Comment Meeting and the Evidentiary Hearing. The notice informed the public, SBMHC members, and SBL policyholders that the Public Comment Meeting would be held on April 28, 2010, and that the Evidentiary Hearing would be held on May 5, 2010, both in Topeka, Kansas.

48. In addition, the Commissioner issued a Protective Order governing the designation and handling of confidential information filed with the Department or otherwise produced in connection with the proceedings.

49. On March 23, 2010, the Commissioner issued a Prehearing Order adopting and incorporating into the record the March 22, 2010 procedural orders and notices discussed above.

50. On April 21, 2010, in accordance with the Commissioner's Procedural and Scheduling Order, Security Benefit pre-filed the direct testimony of four witnesses: Mr. Howard Fricke (Chairman of the Board, President, and Chief Executive Officer of each of SBMHC, SBC and SBL), Mr. John Frye (Senior Vice President, Chief Financial Officer, and Treasurer of each of SBMHC, SBC, and SBL), Mr. Christopher Croft of Houlihan Lokey, and Mr. Steven Schreiber of Milliman.

51. On April 22, 2010, the Department pre-filed the direct testimony of Mr. Kenneth Abitz, Mr. Larry Bruning and Mr. James Sheehy (Principal in the Insurance Investment Banking Group of KBW).

52. The Investor pre-filed the direct testimony of Mr. Todd L. Boehly (authorized person for the Investor, Managing Partner in the Office of the Chief Executive

Officer of Guggenheim Partners and Chairman-designate of SBC) on April 22, 2010, and supplemented his testimony on April 23, 2010.

53. No petitions to intervene in the proceedings were filed with the Commissioner as of the April 26, 2010, deadline for petitions, as specified in the Procedural and Scheduling Order. Accordingly, no interveners sought or were granted permission to participate in the proceedings.

**C. Notice to Policyholders and the Public**

54. SBMHC provided its members as of March 2, 2010, who are the members eligible to vote on the Plan (the “Voting Members”), with a Member Information Booklet, which describes the Plan and includes a copy thereof (the “MIB”), in preparation for voting by members on the Plan. The KID Testimonial Team extensively reviewed and approved the MIB before SBMHC distributed the MIB to members. The MIB contains a copy of the Notice of the Public Comment Meeting and the Evidentiary Hearing, as well as other documents relevant to the Plan and the Transaction. Additionally, the MIB provides notice of a special meeting to be held on May 26, 2010, for eligible members to vote on the Plan (the “Member Meeting”). The MIB also describes certain risk factors or potential ramifications of the Plan and the Transaction or the failed consummation thereof.

55. The MIB was mailed to Voting Members not less than twenty days before the Public Comment Meeting and also, therefore, more than twenty days before the subsequent Evidentiary Hearing and the Member Meeting.

56. Pursuant to the Commissioner’s Procedural and Scheduling Order, Security Benefit also published Notice of the Public Comment Meeting and the Evidentiary Hearing, in a form approved by the Commissioner, in the national edition of *The Wall Street Journal* and in *The Topeka Capital Journal* not less than twenty days before the Public

Comment Meeting and also, therefore, more than twenty days before the subsequent Evidentiary Hearing.

57. On April 26, 2010, the Investor gave notice of the Evidentiary Hearing to SBL in compliance with K.S.A. § 40-3304(d)(2).

58. Security Benefit has posted documents relating to the Plan and the Form A on its website on an ongoing basis in accordance with the Commissioner's Agreed Order and Joint Plan for Public Access.

59. In accordance with Section 3.3 of the Plan, SBMHC provided notice to creditors of the proposed Demutualization and Dissolution of SBMHC and of the date on which creditors' claims against SBMHC would be barred, instructing creditors to file proofs of claim with the Department and SBMHC by that date, which was May 4, 2010. Security Benefit mailed notices to those persons known to SBMHC to have potential claims and published the notice to creditors, in a form approved by the Department, on a weekly basis for six weeks in the national edition of *The Wall Street Journal* and in *The Topeka Capital Journal*. One claim (the "Claim") against SBMHC, in the amount of \$7,942.36, was received, but the claimant failed to provide any proof of his claim.

**D. The Public Comment Meeting**

60. The Commissioner held the Public Comment Meeting on April 28, 2010, in Topeka, Kansas. The Public Comment Meeting included brief presentations by Security Benefit and the Investor. Statements, questions and comments from the public were invited by the Commissioner. None were offered. A transcript of the Public Comment Meeting is in the record.

**E. The Evidentiary Hearing**

61. The Commissioner held the Evidentiary Hearing on the Plan and the Form A on May 5, 2010, in Topeka, Kansas.

62. At the Evidentiary Hearing, representatives of the Investor, Security Benefit, and the KID Testimonial Team, including Messrs. Boehly, Fricke, Frye, Croft, Schreiber, Bruning, Sheehy and Abitz, adopted under oath and without change their pre-filed direct testimony.

63. Mr. Abitz testified, based upon his review of the materials submitted in relation to the Acquisition and the Form A, including the pre-filed testimony, that (a) after the change of control, SBL will be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is currently licensed; (b) the Applicants' financial condition is not such as might jeopardize SBL's financial stability or prejudice the policyholders; (c) the Investor has no plans or proposals to liquidate SBL, to sell its assets, or to consolidate or merge it with any other person, or to make any other material change in SBL's business or corporate structure or management; (d) the competence, experience, and integrity of those persons who will control SBL's operations are not such that it would be contrary to the interest of the policyholders of SBL and of the public to permit the Acquisition; and (e) the Acquisition is not likely to be hazardous or prejudicial to the insurance-buying public.

64. On behalf of the KID Testimonial Team, Messrs. Bruning, Sheehy and Abitz recommended approval of the Plan and the Acquisition to the Commissioner.

65. At the beginning of the Evidentiary Hearing, the Commissioner stated that she reserved the right to permit members of the public to comment. Two members of the public attended the Evidentiary Hearing via telephone, but did not offer any comments. One

member of the public attended in person, but did not offer any comments. Therefore, no public comments appear in the Evidentiary Hearing record.

66. In the Evidentiary Hearing, the Commissioner incorporated all evidence, including the stipulated exhibits, into the record, and announced that the record would remain open until Tuesday, May 11, 2010. A transcript of the Evidentiary Hearing is in the record.

#### **IV. CONCLUSIONS OF LAW**

67. The KID Testimonial Team inspected and reviewed the contents of the Form A and the exhibits admitted into evidence at the Evidentiary Hearing, and found that the filing of the Form A is in compliance with the provisions of the Insurance Holding Companies Act and K.A.R. § 40-1-28 and provides all of the information required under Kansas law to enable the Commissioner to render a decision on the Acquisition. The KID Testimonial Team concluded that the Acquisition meets all of the requirements of K.S.A. § 40-3304 (the “Acquisition Law”) of the Insurance Holding Companies Act, and recommended that the Acquisition be approved.

68. The KID Testimonial Team inspected and reviewed the Plan and the exhibits admitted into evidence at the Evidentiary Hearing, and found that all of the requirements for approval of the Plan have been met in compliance with K.S.A. §§ 40-4001 and 40-4003a(c)(5) of the Mutual Conversion Act to enable the Commissioner to render a decision on the Plan, and recommended that the Plan be approved. The KID Testimonial Team also determined that the Claim is not valid.

##### **A. The Acquisition**

69. The proposed Acquisition is subject to the approval of the Commissioner pursuant to the Insurance Holding Companies Act. The Commissioner's

review of the proposed Acquisition is governed by the Acquisition Law, which is part of the Insurance Holding Companies Act.

70. The Kansas Legislature has declared the public interest and policy underlying the Insurance Holding Companies Act. The Legislature's declaration of public interest and policy guides the Commissioner in interpreting and applying the Insurance Holding Companies Act and, more specifically, the Acquisition Law.

71. The Insurance Holding Companies Act and the Acquisition Law require any applicant seeking to acquire control of a domestic Kansas insurer to file with the Commissioner a Form A containing certain information. The Form A must be filed by the person or persons acquiring control in a statement made under oath and accompanied by a \$1,000 filing fee.

72. The Acquisition Law provides that the Commissioner must approve an application to acquire control of a Kansas insurer unless, after a public hearing conducted in accordance with the Kansas Administrative Procedure Act, the Commissioner finds that:

- (i) after the change of control, the insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (ii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
- (iii) plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

- (iv) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
- (v) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

73. The Form A submitted by the Investor included all the information required by K.S.A. § 40-3304(b) and K.A.R. § 40-1-28 and was submitted with the required filing fee.

74. The Commissioner conducted an Evidentiary Hearing on the proposed Acquisition in compliance with K.S.A. § 40-3304(d) and the Kansas Administrative Procedure Act.

75. The evidence establishes that after the change of control, SBL would be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed.

76. Nothing in the evidence establishes that the financial condition of the Applicants is such as might jeopardize the financial stability of SBL or prejudice the interests of SBL's policyholders.

77. The evidence establishes that the Applicants have no plans to liquidate SBL, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management that would be unfair and unreasonable to SBL's policyholders and not in the public interest.

78. The evidence establishes that the competence, experience, and integrity of those persons who would control the operation of SBL are such that it would be in the interest of SBL's policyholders and of the public to permit the Acquisition.

79. The evidence does not establish that the Acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

80. The Form A complies with the provisions of the Acquisition Law and K.A.R. § 40-1-28.

81. No grounds for disapproval of the Acquisition exist under K.S.A. § 40-3304(d)(1).

82. The evidence submitted supports approval of the proposed Acquisition by the Applicants of SBL through their acquisition of SBC. The evidence also supports approval of the warrant proposal.

83. The evidence establishes that all notices required by the Acquisition Law, and the Commissioner's procedural orders, have been administered in a suitable and timely manner.

84. The evidence establishes that approval of the Form A would be consistent with the public interest and policy.

**B. The Plan**

85. The Plan, which includes the Demutualization and the Dissolution of SBMHC, is subject to the approval of the Commissioner. The Kansas Legislature has acknowledged that it is not possible to anticipate all of the circumstances and considerations which may arise incident to a demutualization. Section 40-4001 of the Kansas Insurance Code (the "Code") accordingly grants the Commissioner broad authority in reviewing a demutualization and dissolution plan. The Code also affords the Commissioner discretion in

reviewing and approving the liquidation or dissolution of a mutual holding company. In particular, § 40-4003a(c)(5) of the Code provides:

[A] mutual holding company shall not dissolve, liquidate or wind-up and dissolve except through proceedings under article 36 of chapter 40 of the Kansas Statutes Annotated and amendments thereto for the liquidation or dissolution of the converted insurer *or as the commissioner of insurance may otherwise approve*. A mutual holding company may, however, convert to a stock corporation in accordance with the terms of this article and a plan of conversion approved by the commissioner of insurance to be fair and equitable after a hearing upon notice to the company's members[.] (Emphasis added.)

The Plan submitted by SBMHC to the Commissioner for approval is a demutualization and dissolution plan submitted pursuant to K.S.A. §§ 40-4001 and 40-4003a(c)(5).

86. Factors the Commissioner may consider in her review of the Plan may include, but are not limited to, the following:

- (i) whether the Plan is fair and equitable to SBMHC's members and to SBL's policyholders;
- (ii) whether the Plan complies with the provisions of the Code;
- (iii) whether the Plan unjustly enriches any director, officer, agent or employee of SBMHC or SBL; and
- (iv) whether, following the Demutualization and Dissolution, SBL will meet the minimum requirements to be issued a certificate of authority by the Commissioner to transact its business in Kansas and the continued operations of the SBL will not be hazardous to existing or future policyholders or the public.

87. In accordance with the terms of the Plan and as part of the Commissioner's review and consideration of the Plan and the Form A, the Commissioner conducted an Evidentiary Hearing on May 5, 2010, pursuant to the provisions of the Kansas

Administrative Procedure Act. Written notice of the Evidentiary Hearing was provided not less than twenty days prior to the hearing, as the Plan directs.

88. As the Plan contemplates, a special meeting of the members of SBMHC as of March 2, 2010 has been called by the Chairman of the Board of Directors of SBMHC for May 26, 2010, and timely notice provided, for the purpose of voting on the Plan. The Plan must be approved by two-thirds of the Voting Members voting in person or by proxy at the Member Meeting and any adjournments thereof, except that if a majority of all Voting Members vote in person or by proxy, then a favorable vote by a majority of those voting will constitute approval.

89. If the Plan is approved by the Commissioner and the Voting Members, SBMHC must file the approved Plan with the Commissioner.

90. The evidence establishes that the Plan is fair and equitable to SBMHC's members and SBL's policyholders.

91. No evidence has been produced that the Plan does not comply with the Code.

92. The evidence establishes that the Plan will not unjustly enrich any director, officer, agent or employee of the insurer. Specifically, no director, officer, agent or employee will receive any fees, commissions or any other consideration whatsoever other than their normal salary and compensation for in any manner aiding, promoting or assisting in the transactions contemplated by the Board of Directors except as set forth in the Plan, which must be approved by the Commissioner.

93. The evidence establishes that SBL would meet the minimum requirements to be issued a certificate of authority by the Commissioner to transact its

business in Kansas and that the continued operations of SBL would not be hazardous to existing or future policyholders or the public.

94. The Plan satisfies the criteria for approval, in accordance with K.S.A. §§ 40-4001 and 40-4003a(c)(5) and as set forth in the Plan.

95. The evidence submitted supports approval of the proposed Demutualization and Dissolution Plan of SBMHC.

96. The evidence submitted establishes that approval of the Plan would be consistent with the public interest and policy.

97. The evidence does not establish that the Claim is valid, and it therefore should be denied.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:**

98. Based on the foregoing, the Form A filed by the Applicants to acquire control of SBL in the manner set forth in the Form A is hereby APPROVED, and, under the circumstances described in Article 7 of the Purchase and Sale Agreement, the acquisition of control of SBL by the Investor through the exercise of Warrants up to the 19.9% level, in the event they are issued, is APPROVED.

99. Based on the foregoing, the Demutualization and Dissolution Plan of SBMHC is hereby APPROVED and the Claim is declared invalid.

100. The approvals are subject to the following condition:

The requisite number of eligible members of SBMHC will vote in favor of the Plan on May 26, 2010.

101. The Commissioner retains jurisdiction over this matter and over the parties for the purpose of entertaining such further order or orders as the Commissioner may deem proper, including but not limited to issuing orders at any time and from time to time

extending beyond December 31, 2010, the date by which the IRS Rulings and DOL Exemptions requested by SBMHC and SBL must be received.

**NOTICE OF RIGHTS**

An applicant is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If either applicant desires a hearing, it must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 A.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612.

This request must be filed within fifteen days from the date of service of this Order. If the applicant requests a hearing, the Department will notify them of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Order shall become final upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that either applicant files a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the KID is:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 A.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612.

**IT IS SO ORDERED THIS 18th DAY OF MAY, 2010, IN THE CITY OF TOPEKA,  
COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/S/\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance

\_\_\_\_\_/S/\_\_\_\_\_  
John W. Campbell  
General Counsel

Approved and Submitted by:

\_\_\_\_\_/S/\_\_\_\_\_  
Zachary Anshutz  
Assistant General Counsel