

Plan and neither Guarantee Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 10 shares of common stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Guarantee Mutual which formulas have been approved by the Director.

(f) All Eligible Plan Policyholders participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(h) All of Guarantee Mutual's policyholder obligations remain in force and are not affected by the Conversion Plan.

### Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Guarantee Mutual" means Guarantee Mutual Insurance Company and any affiliate of Guarantee Mutual as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Guarantee Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Guarantee Mutual. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder who is eligible to vote and to receive consideration in a demutualization. Such policyholder is a policyholder of the mutual insurer on the day the plan of conversion is adopted by the board of directors of the insurer.

(d) The term "policy credit" means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

### Written Comments

The Department received three written comments with respect to the notice of proposed exemption. Two comments were submitted by Plan policyholders of Guarantee Mutual. Of the comments in this category, one was withdrawn. The third comment was submitted by Guarantee Mutual.

Following is a discussion of the Plan policyholder comment that was not withdrawn and the response made by Guarantee Mutual with respect to this comment. Also discussed is the comment that was submitted by Guarantee Mutual and the Department's response to that comment.

#### Plan Policyholder Comment

The commentator states that he is opposed to the conversion because he does not believe there are adequate safeguards to ensure that management of Guarantee Mutual will not use the demutualization process as an opportunity to further their personal interests. The commentator explains that owners of corporations are no better off than owners of a mutual company in terms of democratic rule over the company. The commentator further asserts that managers should not be permitted to convert or change organizational structures of companies until corporate democratic principles can be guaranteed. Therefore, the commentator does not recommend that the Department approve the proposed exemption.

In response, Guarantee Mutual states that the comment does not address the merits of the proposed transaction. Guarantee Mutual notes that before the Conversion Plan can proceed, it must be approved by the Director of the Nebraska Department of Insurance after a public hearing. According to Guarantee Mutual, the public hearing was held on April 13, 1995 and June 12, 1995 in Lincoln, Nebraska. Notice of the hearing was mailed to each Eligible Policyholder and published in the Omaha World-Herald, the Lincoln Journal-Star and the Omaha Daily Record.

Guarantee Mutual points out that the next step of the Conversion Plan is for the Director to approve such Plan and find that (a) the Conversion Plan is fair and equitable to policyholders, (b) the Conversion Plan does not deprive policyholders of property rights or due process of law and (c) the new stock insurer would meet the minimum requirements to be issued a certificate of authority by the Director to transact business in Nebraska and the continued operations of the new stock insurer

would not be hazardous to future policyholders and the public. Guarantee Mutual notes that the Director will continue to monitor the demutualization through the effective date of the conversion and, with respect to other matters, after the effective date. In addition, Guarantee Mutual points out that Nebraska law requires that two-thirds of voting Eligible Policyholders vote for the adoption of the Conversion Plan before the demutualization can occur.

With respect to the commentator, Guarantee Mutual explains that he, along with other Eligible Policyholders, was mailed a notice of the public hearing and has been afforded the opportunity to express his views to the Director either in writing or at the public hearing. Guarantee Mutual also explains that the commentator will be given the opportunity to vote for or against the Conversion Plan. Accordingly, Guarantee Mutual believes that the commentator is being offered all of the procedural safeguards inherent in the Nebraska conversion statute and that the comment should not affect the Department's granting of the exemption.

#### Guarantee Mutual's Comment

Guarantee Mutual's comment is intended to clarify information contained in a footnote to the Summary of Facts and Representations of the proposed exemption. In this regard, Footnote 16 of the Notice states, in pertinent part, that prior to the public hearing, Guarantee Mutual

\* \* \* will provide each Eligible Policyholder with a summary of the Conversion Plan, a notice of the public hearing and a more detailed policyholder information statement.

Guarantee Mutual notes, however, that the Director will first conduct the public hearing, and later, if the Director makes an initial determination to approve Guarantee Mutual's application, a policyholder vote will take place. Guarantee Mutual explains that Eligible Policyholders will receive the more detailed policyholder statement before the vote, but not before the hearing. Therefore, Guarantee Mutual requests that Footnote 16 be modified to read as follows:

Guarantee Mutual also represents that prior to the public hearing, it will provide each Eligible Policyholder with a summary of the Conversion Plan and a notice of the public hearing and that *prior to the policyholder meeting and vote*, it will provide each Eligible Policyholder with a more detailed policyholder information statement.

In addition, Guarantee Mutual requests certain modifications in