



1933 Act § 2(a)(1)  
1934 Act § 12(g)

ATTORNEYS AT LAW  
SUITE 5000  
150 EAST GILMAN STREET  
MADISON, WI 53703-1482  
POST OFFICE BOX 1497  
MADISON, WI 53701-1497  
608.257.5035 TEL  
608.258.4258 FAX  
WWW.FOLEY.COM

WRITER'S DIRECT LINE  
608.258.4218  
aross@foley.com EMAIL

CLIENT/MATTER NUMBER  
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VIA ELECTRONIC SUBMISSION

November 30, 2016

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Reorganization of American Family Mutual Insurance  
Company

Dear Sir/Madam:

We are counsel to the following affiliated companies in connection with a proposed Reorganization described in detail below:

- American Family Mutual Insurance Company, a mutual insurance company incorporated under the laws of Wisconsin ("AFMIC");
- AmFam Holdings, Inc., a business corporation to be incorporated under the laws of Wisconsin (the "Intermediate Stock Holding Company") for the purpose of holding the shares of AFMIC following the Reorganization;
- American Family Insurance Mutual Holding Company, a mutual insurance holding company to be organized under the laws of Wisconsin (the "Mutual Holding Company") for the purpose of holding the shares of the Intermediate Stock Holding Company;
- American Standard Insurance Company of Ohio, a stock insurance company incorporated under the laws of Ohio ("ASICO"), which is currently a wholly owned indirect subsidiary of AFMIC; and

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- American Family Insurance Company, a stock insurance company incorporated under the laws of Ohio (“AFIC”), which is currently a wholly owned indirect subsidiary of AFMIC.

AFMIC proposes to effect a conversion from a mutual insurance company to a stock insurance company (“Converted AFMIC”) under the provisions of Chapter 644 of the Wisconsin Statutes (the “MHC Act”), which provides for the restructuring of mutual insurance companies to stock insurance companies with a mutual insurance holding company as the ultimate parent (the “Reorganization”). We have attached a copy of the MHC Act as Exhibit A hereto.

## **I. Request**

We respectfully request confirmation that, based upon the facts and circumstances in this letter, the staff of the Division of Corporation Finance (the “Staff”) will not recommend that the Securities and Exchange Commission (the “SEC”) take any enforcement action in connection with the Reorganization, if we proceed with the Reorganization as described herein, including: (i) the extinguishment and replacement of the membership interests in AFMIC of the current policyholders of AFMIC as of the effective date of the Reorganization (the “Effective Date”) with membership interests in the Mutual Holding Company; (ii) the automatic grant of membership interests in the Mutual Holding Company to the current policyholders of ASICO and AFIC (the “Designated Subsidiaries”) as of the Effective Date; and (iii) after the Effective Date, the automatic grant of membership interests in the Mutual Holding Company to future policyholders of Converted AFMIC and the Designated Subsidiaries, in accordance with the provisions of the MHC Act and the Articles of Incorporation and Bylaws of the Mutual Holding Company, in each case without registration of the membership interests under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), based on our opinion expressed below that the membership interests in the Mutual Holding Company will not constitute “securities” as defined in Section 2(a)(1) of the Securities Act of 1933, as amended (the “Securities Act”) or Section 3(a)(10) of the Exchange Act.

## **II. Background**

AFMIC is a mutual insurance company incorporated under the laws of Wisconsin. AFMIC’s current structure as a mutual insurance company limits AFMIC’s ability to adapt quickly in a rapidly changing marketplace, including such considerations as:

- *AFMIC’s ability to pursue product and state expansion through subsidiary companies without diluting its mutuality.*

Due to state regulatory requirements, new products are often restricted from being sold by the same insurance company that is selling the current generation of products.

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Insurance companies that wish to continue to sell their current generation of products while at the same time offering alternative products therefore often form stock insurance company subsidiaries to sell the new products. The policyholders of these companies are not eligible for membership in the mutual insurance company parent.

- *AFMIC's ability to acquire and grow ancillary or non-insurance subsidiaries.*

State regulatory requirements limit the extent to which insurance companies can invest in ancillary and non-insurance subsidiaries. With a mutual insurance company as the ultimate parent, the entire enterprise is limited by these investment restrictions.

- *AFMIC's ability to pursue certain mergers and acquisitions.*

Mutual insurers cannot merge with or acquire other mutual insurers without one of the two entities ceasing to exist as a separate insurer. This prevents a mutual company from merging with or acquiring other mutual insurers in ways that allow for increased efficiencies while maintaining both organizations' goodwill and the value of their respective brands. Additionally, mutual insurers have limited options to raise capital for possible mergers and acquisitions, and cannot use stock as currency in acquisitions.

- *AFMIC's access to capital.*

Mutual insurance companies have no stock which can be sold to raise capital to grow the enterprise. The only way for mutual insurance companies to raise capital is through profitable operations over time, through the sale of "surplus notes," which is a relatively expensive form of financing due to regulatory restrictions on repayments to the purchasers of the notes, or through the sale of stock of a "downstream holding company" which, as stock issued by a subsidiary of the mutual insurance company parent, does not reflect the valuation of the mutual company.

The board of directors of AFMIC believes that the Reorganization will benefit AFMIC by: (i) giving AFMIC the opportunity to pursue product and state expansion through subsidiary companies without diluting its mutuality; (ii) enhancing AFMIC's ability to acquire and grow ancillary or non-insurance businesses; (iii) enhancing AFMIC's ability to pursue mergers with and acquisitions of other mutual insurance companies; and (iv) giving AFMIC enhanced access to capital and other forms of financing.

In AFMIC's present mutual form, a policyholder of AFMIC has rights both as an insured and as a member of AFMIC. As an insured, an AFMIC policyholder has contractual rights which entitle the insured to insurance coverage to the extent, in the amount, and on the terms

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specified in the insured's policy. The membership interests accompanying the insurance coverage consist generally of: (i) the right to vote at meetings of members, including the right to vote on the election of directors of AFMIC and the right to vote on any plan of conversion, voluntary dissolution, amendment of the Articles of Incorporation of AFMIC, or other matters that properly come before AFMIC's members; and (ii) the right to participate in any distributions of surplus of AFMIC in the event of a conversion of AFMIC to a stock corporation without the simultaneous formation of a mutual holding company (also known as a "demutualization") or a dissolution of AFMIC.

The terms of AFMIC insurance policies in force at the effective time of the Reorganization will not be changed by the Reorganization (except that such policies will thereafter be coupled with a membership interest in the Mutual Holding Company rather than a membership interest in AFMIC). Pursuant to AFMIC's Mutual Holding Company Plan, the legally operative document required under the MHC Act to effect a mutual holding company restructuring, a copy of which is attached hereto as Exhibit B (the "Plan"), AFMIC will restructure to a mutual holding company structure in accordance with the MHC Act. Upon consummation of the Plan, AFMIC will concurrently amend and restate its Articles of Incorporation and Bylaws to convert to a stock insurance company. The membership interests and contractual policyholder rights of AFMIC's policyholders will be separated; the membership interests of AFMIC's policyholders in AFMIC will be extinguished and such membership interests will be replaced by membership interests in the Mutual Holding Company. The contractual rights of AFMIC's policyholders will remain with Converted AFMIC. Converted AFMIC will continue to be obligated to perform all contractual obligations of AFMIC, including those under any AFMIC insurance policies. All of the shares of stock of Converted AFMIC will be issued to the Intermediate Stock Holding Company, and all of the shares of stock of the Intermediate Stock Holding Company will be issued to the Mutual Holding Company.

Additionally, pursuant to the Plan, the Articles of Incorporation of the Mutual Holding Company, attached hereto as Exhibit C, and the Bylaws of the Mutual Holding Company, attached hereto as Exhibit D, the policyholders of each Designated Subsidiary will also receive membership interests in the Mutual Holding Company. As of the Effective Date, the Articles of Incorporation and Bylaws of the Mutual Holding Company will provide that policyholders of ASICO and AFIC will become members of the Mutual Holding Company. As with the policyholders of AFMIC, the policyholders of the Designated Subsidiaries will retain their contractual policyholder rights *vis a vis* AFIC or ASICO, as the case may be, and member status in the Mutual Holding Company will be extended to such policyholders as a matter of law during such time as their policies remain in force.

Each of the Designated Subsidiaries is a current subsidiary of AFMIC and is a stock insurance corporation that offers American Family-branded insurance products in the same lines as

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those offered by AFMIC (i.e., personal lines, automobile, homeowners, farmowners, inland marine, personal and commercial umbrella, boat owners, fire and allied lines insurance), and sold through the same distribution channels as AFMIC's insurance products (i.e., American Family agents), but with new product designs that are branded as American Family's "Advance" property casualty product line, as contrasted with the older "Classic" property casualty product line offered by AFMIC.

In light of certain regulatory restrictions, AFMIC determined that the new Advance products should be issued by a company or companies other than AFMIC. AFIC and ASICO have been identified as the vehicles for issuing the new Advance property and casualty policies as these products are rolled out to each of the geographic markets in which American Family does business. Over time, it is anticipated that the number of persons insured under the Advance products will increase in relation to the number insured under the Classic products. The Advance products would have been issued by AFMIC, but for AFMIC's decision to continue offering its traditional Classic property and casualty products to existing policyholders after introducing the Advance products to the market, so that existing AFMIC customers have an ongoing choice between the two product designs.

American Family is therefore proposing to extend member benefits to the policyholders of AFIC and ASICO in order to continue its 90-year old tradition of extending mutual company member status to the purchasers of American Family-branded property casualty products sold through its American Family agents.

AFMIC has numerous other subsidiaries which engage in various businesses including a variety of property casualty insurance products sold under brand names other than American Family through direct-to-consumer distribution channels, life insurance, reinsurance, consumer loans, insurance brokerage and sales, and corporate venture capital. However, AFIC and ASICO are the only AFMIC subsidiaries which have been identified as the vehicles for future sales of the type of property casualty insurance products which have historically been associated with mutual company membership in AFMIC.

The extension of member status in the Mutual Holding Company to policyholders of AFIC and ASICO will give such policyholders the same voting rights as AFMIC policyholders. Each member will have one vote with respect to all matters which are subject to a vote of the members. However, as described in more detail in Section IV.B below, since the Mutual Holding Company will not be authorized to pay dividends, and in light of the provisions of the MHC Act limiting the distribution of proceeds to each member in the event of a demutualization or dissolution of the Mutual Holding Company to an amount equal to the amount of premiums paid to AFMIC by such member, policyholders of the Designated Subsidiaries will not be entitled to any distributions of cash, stock, or other property as a result of their member status in the Mutual Holding Company.

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The conversion of AFMIC from a mutual to a stock company under a mutual holding company structure will be completed when the Commissioner of Insurance for the State of Wisconsin (the “Wisconsin Commissioner”) issues a Certificate of Incorporation to the Mutual Holding Company and a new Certificate of Authority to Converted AFMIC.

### **III. MHC Act**

Restructuring to a mutual holding company structure in Wisconsin is accomplished by complying with the requirements prescribed by Wis. Stat. § 644.02, *et seq.*, of the MHC Act. Under these provisions of the MHC Act, a mutual insurance company is permitted to form a mutual holding company and convert to a stock insurance company that is a direct or indirect wholly-owned stock subsidiary of the mutual holding company. Wis. Stat. § 644.04(1). As a result of the Reorganization, the membership interests and contractual rights of the mutual insurance company’s policyholders are separated. The contractual rights of the mutual insurance company’s policyholders 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 holding company. By operation of law, the membership interests of the policyholders in the converting mutual insurance company are extinguished and replaced with membership interests in the mutual holding company. Wis. Stat. § 644.04(1)(b).

In addition, Wis. Stat. § 644.07(10)(d) authorizes the Articles of Incorporation and Bylaws of a mutual holding company to provide that a policyholder of any other insurance company that is or becomes a subsidiary of the mutual holding company may become a member of the mutual holding company, provided that no such person shall remain a mutual holding company member after such person ceases to be a policyholder of the subsidiary.

The MHC Act provides that a membership interest in a Wisconsin mutual holding company shall not constitute a security, as defined in Wis. Stat. § 551.102(28). *See* Wis. Stat. § 644.22. Further, the Wisconsin Uniform Securities Law specifically excludes a membership interest in a Wisconsin mutual holding company from the definition of a “security.” *See* Wis. Stat. § 551.102(28)(g). A membership interest in a mutual holding company is not transferable or alienable in any manner whatsoever apart from the insurance policy giving rise to the membership interest. Wis. Stat. § 644.07(10)(e). Moreover, upon cancellation or expiration of the policy or policies by virtue of which the policyholder’s membership in the mutual holding company is derived, the policyholder’s membership in the mutual holding company will automatically cease. Wis. Stat. § 644.07(10)(d). In other words, a membership interest in the mutual holding company remains in force only so long as the individual remains a policyholder of the converted stock insurance company, or a subsidiary of the mutual holding company to the extent the mutual holding company’s articles and bylaws provide for such subsidiaries’ policyholders’ membership in the mutual holding company in accordance with Wis. Stat. § 644.07(1)(d). When the converted stock

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insurance company, or a subsidiary of the mutual holding company which is so authorized by the mutual holding company's articles and bylaws, issues additional policies, the holders of such policies automatically receive membership interests in the mutual holding company. Each policyholder under an insurance policy that is issued by Converted AFMIC or one of the Designated Subsidiaries after the Effective Date will automatically become a member of the Mutual Holding Company upon issuance of such policy.

In accordance with the MHC Act, at least 51% of the issued and outstanding voting stock of the converted stock insurance company must be owned at all times, directly or indirectly, by the mutual holding company or an intermediate stock holding company controlled by the mutual holding company, and at least 51% of the issued and outstanding voting stock of any intermediate stock holding company must be owned at all times by the mutual holding company. Wis. Stat. § 644.04(3)(b).

Any restructuring undertaken pursuant to Wis. Stat. § 644.02 *et seq.* of the MHC Act is subject to the approval of the Wisconsin Commissioner. Before approving a restructuring, the Wisconsin Commissioner must conduct a public hearing at which policyholders and others may appear and be heard. The Wisconsin Commissioner shall approve the Plan unless he or she finds that it: (i) violates the law; (ii) is not fair and equitable to AFMIC's policyholders; or (iii) is contrary to the interests of policyholders or the public. Wis. Stat. § 644.07(7)(a). In considering the Plan, the Wisconsin Commissioner shall consider whether the Reorganization would be detrimental to (i) the safety and soundness of AFMIC; or (ii) the contractual rights and reasonable expectations of the policyholders. The Wisconsin Commissioner may take into consideration any conclusions and recommendations on the subject of the restructuring published by recognized organizations of professional insurance actuaries. Although the Wisconsin Commissioner may, by rule, establish standards applicable to a restructuring under the MHC Act (*See* Wis. Stat. § 644.07(7)(b)), no such rules or regulations have been promulgated to date.

The Wisconsin Commissioner will retain jurisdiction at all times over the Mutual Holding Company and the Intermediate Stock Holding Company, to assure that policyholders' interests are protected. Mutual holding companies are subject to an extensive regulatory scheme under Wisconsin law.

Mergers with or acquisitions of the Mutual Holding Company or Converted AFMIC and, because it is part of an insurance holding company system, mergers with and acquisitions of the Intermediate Stock Holding Company, will be subject to a level of regulation by the Wisconsin Commissioner that is substantially equivalent to the level of regulation applicable to AFMIC as a Wisconsin domestic mutual insurance company. The Mutual Holding Company and Converted AFMIC may not effect a consolidation or merger with any affiliated or unaffiliated company after the Reorganization without the approval of the Wisconsin Commissioner in accordance with Wis.

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Stat. §§ 644.27 and 611.73. Similarly, a transaction in which the assets of the Mutual Holding Company or the stock or assets of the Intermediate Stock Holding Company would be sold, whether structured as a merger, dissolution, liquidation, winding up, or otherwise, would be subject to prior approval by the Wisconsin Commissioner. Wis. Stat. § 611.72.

Likewise, a Wisconsin mutual holding company cannot convert to a stock corporation (“demutualize”), dissolve, liquidate, or wind-up without the approval of the Wisconsin Commissioner. Wis. Stat. §§ 644.25 and 644.28. In the event of a demutualization or a voluntary or involuntary dissolution, any surplus which remains after payment of the liabilities of the mutual holding company must be distributed to the members of the mutual holding company, subject to certain statutory requirements and restrictions as more particularly described in Section IV.B below, and any surplus remaining thereafter must be paid to the Wisconsin state treasury in accordance with Wis. Stat. §§ 644.25(2)(b)9, 644.28(5) and 645.72(4).

A mutual holding company may not pay dividends or otherwise make distributions to its members, other than upon dissolution, unless the articles of incorporation state that such distributions may be made. Wis. Stat. §§ 644.09(1) and 181.0202(g). The Articles of Incorporation of the Mutual Holding Company will not authorize the payment of dividends or any other distributions to its members. In addition, AFMIC has been advised by the Wisconsin Commissioner that, as a condition of approving the Plan, the Wisconsin Commissioner will require the Mutual Holding Company to consent to a binding Stipulation and Order (the “Stipulation and Order”) which will provide, among other things, that no dividends may be paid, nor any other distribution of income or profits may be made, by the Mutual Holding Company to its members absent the prior approval of the Wisconsin Commissioner.<sup>1</sup>

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<sup>1</sup> Additional regulatory restrictions will be consented to by the Mutual Holding Company pursuant to the Stipulation and Order including, without limitation, the following:

(i) The Mutual Holding Company must inform the Wisconsin Commissioner of any pledge of 10% or more of the voting stock of the Intermediate Stock Holding Company or Converted AFMIC as collateral;

(ii) The Mutual Holding Company will be subject to regulation as a member of an “Insurance Holding Company System” under ch. Ins 40, Wis. Adm. Code, which will subject the Mutual Holding Company to the requirement that certain transactions between Converted AFMIC and the Mutual Holding Company or any other affiliate in the holding company system may not be entered into unless notice has been given to the Wisconsin Commissioner in writing at least 30 days in advance and the Wisconsin Commissioner has not disapproved such transaction within that period (the Wisconsin Commissioner may disapprove any such transaction if it would be contrary to the interests of insureds or the public);

(iii) As a member of an Insurance Holding Company System, the Mutual Holding Company will be subject to the registration and reporting requirements under ch. Ins. 40, Wis. Admin. Code;

(iv) The Mutual Holding Company will be deemed to be an “insurer” for purposes of the authority of the Wisconsin Commissioner under Ch. 645, Wis. Stat. in connection with any rehabilitation or liquidation proceedings;

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A mutual holding company, formed pursuant to Wis. Stat. § 644.02 *et seq.* of the MHC Act, is not authorized to transact the business of insurance, but it is otherwise permitted to engage in business for any purpose, provided it holds as a subsidiary at least one stock insurance company converted from a mutual insurance company. Wis. Stat. § 644.03(2)(a). As a Wisconsin domestic mutual insurance company, AFMIC may engage, directly or through a subsidiary, in any lawful business, however, it is subject to certain limitations on the percentage of the total assets of the company that may be invested in non-insurance operations. Specifically: (i) no more than 10% of the mutual insurance company's assets may be invested in subsidiaries or direct operations that perform functions or provide services that are ancillary to its insurance operations; and (ii) no more than 10% of the mutual insurance company's assets or 50% of its capital in surplus, whichever is less, may be invested in subsidiaries or direct operations which are neither the business of insurance nor ancillary thereto. Wis. Stat. § 611.12(2)(c), § 610.21, and § 611.26. The volume caps on the percentage of total assets invested in non-insurance operations under Wis. Stat. § 611.26 do not apply to a mutual holding company organized under Wisconsin law.

In addition to the foregoing, a Wisconsin mutual holding company is governed by the following statutory requirements:

i. A mutual holding company may engage, directly or indirectly, in a business that is subject to regulation under another Wisconsin statute only if not prohibited by, and subject to all limitations of, the other statute. Wis. Stat. § 644.03(2)(b).

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(v) The Mutual Holding Company and its subsidiaries will be subject to the authority of the Wisconsin Commissioner for examinations and annual financial and enterprise risk reporting requirements;

(vi) Any changes to the articles of incorporation, bylaws, or capital structure of the Mutual Holding Company or the Intermediate Stock Holding Company must be reported to the Wisconsin Commissioner;

(vii) The Board of Directors of the Mutual Holding Company must meet the requirements applicable to Wisconsin domestic mutual insurance companies pursuant to §§ 611.51(2), (3), (5), and (8), Wis. Stat. with regard to the number and independence of directors;

(viii) All dividends declared by Converted AFMIC must be reported to the Wisconsin Commissioner at least 30 days prior to the payment date, and will be subject to prior approval of the Wisconsin Commissioner if they exceed certain size limits;

(ix) The Mutual Holding Company must notify the Wisconsin Commissioner at least 30 days prior to the proposed payment of any dividends or any other payments of income or profits to Mutual Holding Company members and may not pay dividends or make any other payments of income or profits to members without the Wisconsin Commissioner's approval (in any event, the Articles of Incorporation of the Mutual Holding Company do not permit the payment of dividends or other payments or distributions to its members); and

(x) The Intermediate Stock Holding Company and Converted AFMIC will be prohibited from conducting an initial sale of voting securities to a third party absent the prior approval of the Wisconsin Commissioner.

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ii. The proposed articles and bylaws of the mutual holding company must generally comply with the nonstock corporation laws of the State of Wisconsin. Wis. Stat. §§ 644.07(4)(a) and 644.09.

iii. The Wisconsin Commissioner may, by rule, require that any action taken by the board of a mutual holding company regarding compensation of directors and officers of the mutual holding company be reported to the Wisconsin Commissioner within 30 days after the action is taken. Wis. Stat. § 644.19(3).

iv. A mutual holding company may not be a party to a contract that has the effect of delegating to a person, to the substantial exclusion of the board, the authority to exercise any management control of the mutual holding company or of any of its major corporate functions. Wis. Stat. § 644.20.

v. A mutual holding company shall file such annual reports as may be prescribed by the Wisconsin Commissioner by rule. Wis. Stat. § 644.21.

Like AFMIC, the Mutual Holding Company will have no authorized, issued, or outstanding capital stock. The only means by which the Mutual Holding Company could issue capital stock would be for the Mutual Holding Company to undergo a demutualization; in which the Mutual Holding Company would be converted to a stock corporation, which would require advance approval by the Wisconsin Commissioner. There are no plans for the Mutual Holding Company to issue capital stock after the Reorganization.

The Intermediate Stock Holding Company is also subject to strict regulation of its issuance of voting stock. It is prohibited from issuing voting stock, other than the issuance of 100% of its outstanding stock to the Mutual Holding Company in the Reorganization, absent the prior approval of the Wisconsin Commissioner, after a public hearing in which the Wisconsin Commissioner must determine whether the proposed offer and sale of stock is fair and equitable to policyholders.

As described above, acquisitions of other companies and investments by the Mutual Holding Company and the Intermediate Stock Holding Company in subsidiaries or otherwise are not subject to the same regulations as are applicable to a mutual insurance company under Chapter 620 of the Wisconsin Statutes (which establishes certain restrictions on investments by insurance companies). However, investments by Converted AFMIC and its affiliated insurance companies will continue to be subject to these (or, for insurance subsidiaries domiciled in states other than Wisconsin, comparable) restrictions, and distributions from Converted AFMIC and its affiliated insurance companies to the Intermediate Stock Holding Company or the Mutual Holding Company will also be subject to strict regulation (Wis. Stat. § 617.22), such that substantially all of the assets

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and business of the overall enterprise will be protected by the same degree of regulation with regard to acquisitions and investments before and after the Reorganization.

The business of Converted AFMIC and all of its insurance company subsidiaries will be regulated by the Wisconsin Commissioner after the Reorganization to the same extent it was regulated prior to the Reorganization, including, without limitation, restrictions on mergers, acquisitions, investments, and business activities.

#### **IV. The Reorganization**

##### **A. The Plan of Conversion**

In accordance with the MHC Act, the board of directors of AFMIC unanimously approved the Plan on May 23, 2016, pursuant to which AFMIC intends to reorganize into a mutual insurance holding company structure by, among other things: (i) forming the Mutual Holding Company as a mutual insurance holding company; and (ii) amending and restating the Articles of Incorporation of AFMIC to convert AFMIC to a stock insurance company and authorize the issuance of capital stock. AFMIC subsequently submitted its proposed Plan and other required documents to the Wisconsin Commissioner in two filings on June 8, 2016 and July 1, 2016. These documents included (i) a notice of hearing, (ii) a notice of special meeting, (iii) a frequently asked questions document; (iv) a policyholder information statement; and (v) a form of proxy to be distributed in connection with a special meeting of the members of AFMIC, who will be asked to approve the Plan. A number of changes were made to the aforementioned documents at the request of the Wisconsin Commissioner, and they were subsequently approved by the AFMIC Board and the Wisconsin Commissioner for distribution to AFMIC's policyholders. The materials were mailed to policyholders over a period of several days commencing on October 11, 2016. The public hearing on the Plan was held on November 16, 2016 and the special meeting of members is scheduled to occur on December 7, 2016. The targeted effective date for the Reorganization is January 1, 2017.

Upon its Reorganization and conversion to a stock insurance company, AFMIC will continue its corporate existence as Converted AFMIC. All of the shares of stock of Converted AFMIC will be owned by the Intermediate Stock Holding Company which, in turn, will be a newly formed wholly-owned subsidiary of the Mutual Holding Company. The Mutual Holding Company will thereafter be required by Wisconsin law to hold, directly or indirectly, at least 51% of the voting securities of Converted AFMIC at all times.

Converted AFMIC will retain all the liabilities and obligations of AFMIC and continue to perform all of the contractual obligations of AFMIC, including those under any insurance policies.

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For the Staff's convenience, please refer to the structure charts attached hereto as Exhibit E-1 and Exhibit E-2 for a visual comparison of AFMIC's structure before and after the Reorganization.

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

Pursuant to the Plan, the Mutual Holding Company and the Intermediate Stock Holding Company will be organized under Wisconsin law. The business of the Mutual Holding Company and the Intermediate Stock Holding Company and the proposed Articles of Incorporation and Bylaws of the Mutual Holding Company, as a mutual insurance holding company, and the Intermediate Stock Holding Company, as a business corporation organized under Chapter 180 of the Wisconsin Statutes, differ in certain respects from those of AFMIC, as a mutual insurance company. The Mutual Holding Company will be formed for the purpose of engaging in any lawful activity for which mutual insurance holding companies may be organized under the MHC Act and to own at all times, directly or indirectly, at least fifty-one percent of the voting stock of Converted AFMIC, whereas AFMIC was formed for the purpose of insuring its members against any and all hazards which are or in the future may be authorized or permitted for a mutual insurance company under Wisconsin law. The Intermediate Stock Holding Company will be formed for any purpose permitted under Chapter 180 of the Wisconsin Statutes.

As indicated above, the public hearing conducted by the Wisconsin Commissioner to consider the plan was held on November 16, 2016. Policyholders were given due notice of the hearing and were entitled to attend the public hearing and to comment. If the Wisconsin Commissioner approves the Plan, he will issue an order to that effect. The Wisconsin Commissioner's staff has indicated that the Wisconsin Commissioner will, as a condition of approving the Plan, require that the Mutual Holding Company consent to the Stipulation and Order.

Following approval by the Wisconsin Commissioner, AFMIC will hold a special meeting of its members, scheduled for December 7, 2016, at which the members may vote in person or by proxy to approve the Reorganization. Approval of the Plan is subject to the affirmative vote of not less than three-fourths of the AFMIC policyholders present and voting at the special meeting in person or by proxy. Policyholders of the Designated Subsidiaries will not be entitled to vote on the Plan as they do not currently have any member status. The targeted Effective Date for the Reorganization, subject to obtaining all regulatory and policyholder approvals and the satisfaction of the conditions to consummation of the Plan, is on or around January 1, 2017.

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B. Effects of the Reorganization on Members and Policyholders

On the Effective Date of the Reorganization, the membership interests and the contract rights of AFMIC's policyholders will be separated. By operation of law and the Articles of Incorporation and Bylaws of the Mutual Holding Company, policyholders' membership interests in AFMIC will be extinguished and replaced with membership interests in the Mutual Holding Company. AFMIC policyholders' contractual rights will remain with AFMIC (which will become Converted AFMIC).

Additionally, as provided in the Articles of Incorporation and the Bylaws of the Mutual Holding Company, each policyholder of a Designated Subsidiary will automatically become a member of the Mutual Holding Company.

Section 5.1 of the Mutual Holding Company's Articles of Incorporation describes the individuals who will be granted membership in the Mutual Holding Company as: "(a) each person or entity who becomes a member in accordance with the Plan as of the Effective Date, and (b) each person or entity that becomes a member subsequent to the Effective Date by becoming an owner of one or more insurance policies that is issued, renewed, or assumed after the Effective Date by an insurance company that is designated as an American Family Member Company" (*i.e.*, AFMIC or a Designated Subsidiary).

As of the Effective Date, all current policyholders of the Designated Subsidiaries will become members of the Mutual Holding Company pursuant to the terms of the Plan. Section 2.8(b) of the Plan provides that each owner of one or more insurance policies "issued or assumed by AFIC or ASICO and in-force immediately prior to the Effective Date shall become a Member of [the Mutual Holding Company] as of the Effective Date without further act, and shall remain a Member so long as at least one (1) policy of insurance by virtue of which Member status in [the Mutual Holding Company] is derived remains in force."

Section 2.8(c) of the Plan and Section 5.1(b) of the Mutual Holding Company's Articles of Incorporation provide that persons or entities that become policyholders of an "American Family Member Company" after the Effective Date will automatically become members of the Mutual Holding Company. Pursuant to Article I of the Plan and Section 5.3 of the Mutual Holding Company's Articles of Incorporation, as of the Effective Date, the American Family Member Companies will be (i) Converted AFMIC, (ii) ASICO and (iii) AFIC.

Aside from the grant of membership interests described above, neither policyholders of AFMIC nor the Designated Subsidiaries before the Reorganization, nor members of the Mutual Holding Company after the Reorganization, will receive shares of stock, cash, policy credits, or consideration or payment of any other kind attributable to the Reorganization.

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Membership interests in AFMIC prior to the Reorganization are not transferable separately from the underlying policy. Members of the Mutual Holding Company likewise will not be able to transfer their membership interests in the Mutual Holding Company (or any right arising from such membership), except in conjunction with permitted transfers of the underlying policy through which the membership interest in the Mutual Holding Company was derived (the “Related Policy”). A membership interest in the Mutual Holding Company will automatically terminate upon the lapse or termination of the Related Policy, regardless of whether the Related Policy is issued by Converted AFMIC or a Designated Subsidiary. No member of the Mutual Holding Company will be personally liable, as a member, for the debts, liabilities, or obligations of the Mutual Holding Company or subject to assessments of any kind.

Pursuant to the Reorganization, the Mutual Holding Company will initially own all of the outstanding stock in the Intermediate Stock Holding Company and, indirectly, in Converted AFMIC, its subsidiary. Given this ownership structure, the Mutual Holding Company will have ultimate voting control of the Intermediate Stock Holding Company and its subsidiary, Converted AFMIC.

After the Reorganization, the rights of members of the Mutual Holding Company will include, as a matter of law:

- (1) the right to elect the board of directors of the Mutual Holding Company;
- (2) the right to vote on such other matters as may come before the members of the Mutual Holding Company;
- (3) the right to receive distributions of cash, stock, or other property in the event of a demutualization of the Mutual Holding Company, pro rata according to the amount of premiums paid by such member to AFMIC and/or Converted AFMIC within the five years preceding such demutualization as a percentage of all premiums received by AFMIC and Converted AFMIC during such five-year period, and subject to a cap equal to the aggregate amount paid by such member to AFMIC and/or Converted AFMIC during such five year period, together with interest at the legal rate (Wis. Stat. § 644); and
- (4) the right to receive distributions of the residual assets, if any, of the Mutual Holding Company, in the event of its dissolution, but only up to the amount of cash or other assets such member would have been entitled to receive upon a dissolution of AFMIC had the Reorganization not occurred. Wis. Stat. § 644.28(5).

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*Note that members deriving their member status by virtue of being policyholders of AFIC or ASICO will not be entitled to any distributions described in IV.B(3) or (4).*

The Articles of Incorporation of the Mutual Holding Company will not authorize the Mutual Holding Company to pay dividends or make other distributions or payments of income or profits to its members. In addition, the Mutual Holding Company will enter into a stipulation with the Wisconsin Commissioner providing that the Mutual Holding Company will not be permitted to pay dividends or make other distributions or payments of income or profits to its members absent the Wisconsin Commissioner's prior written consent.

As a result of the restrictions noted above regarding distributions to members of the Mutual Holding Company, no member of the Mutual Holding Company will be entitled to a distribution of any greater amount than such member could have received had the Reorganization not occurred. Persons who become members because they are policyholders of AFIC or ASICO will not be entitled to any distributions of cash, stock, or other things of value as a result of their member status. Their member rights will consist solely of the right to vote in the election of directors of the Mutual Holding Company and other matters submitted to a vote of the members.

The Articles of Incorporation of the Mutual Holding Company will provide that a member shall have only one vote, regardless of the number of policies or contracts of insurance held by that member. Members will be entitled to vote on the same matters as would have been subject to a vote of members of AFMIC, including election of directors of the Mutual Holding Company, amendment of the Articles of Incorporation of the Mutual Holding Company (the requisite vote will be two-thirds, rather than three-fourths, of members present and voting in person or by proxy at a meeting of members), and demutualization or dissolution of the Mutual Holding Company. Members of the Mutual Holding Company will not have the right to elect the board of directors of the Intermediate Stock Holding Company or Converted AFMIC, to approve or disapprove changes in their Articles of Incorporation or to vote at their shareholder meetings. The board of directors of the Mutual Holding Company, representing the interests of its members, will exercise voting control over the election of directors of the Intermediate Stock Holding Company, and thereby, indirectly, over Converted AFMIC and its subsidiaries and over other matters pertaining to the governance of those companies.

## **V. Summary of the Reorganization**

The terms of the Reorganization can be summarized as follows: (1) the Reorganization will be undertaken in accordance with the MHC Act, which permits the restructuring of a mutual insurance company to a stock insurance company, directly or indirectly owned by a mutual insurance holding company; (2) the voting rights of members of the Mutual Holding Company after the Reorganization, including those arising from Related Policies issued by AFMIC

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or a Designated Subsidiary, will be substantially the same as the voting rights of AFMIC's policyholders prior to the Reorganization; (3) on and after the Effective Date, persons who hold or subsequently acquire policies of Converted AFMIC or a Designated Subsidiary will automatically become members of the Mutual Holding Company; (4) the Reorganization is subject to the approval of three-fourths of the votes cast by the members of AFMIC; (5) the Reorganization is subject to the approval of the Wisconsin Commissioner, who must first conduct a public hearing on the Plan of which the eligible AFMIC members had notice and which such members and others are entitled to attend; (6) the Wisconsin Commissioner will approve the Plan unless the Wisconsin Commissioner finds that it: (i) violates the law; (ii) is not fair and equitable to AFMIC's policyholders; or (iii) is contrary to the interests of AFMIC's policyholders or the public; (7) the Mutual Holding Company will be subject to regulation by the Wisconsin Commissioner; and (8) the Mutual Holding Company will not make any distributions to its members except upon demutualization or dissolution, either of which would be subject to the prior approval of the Wisconsin Commissioner, and in those events, persons who are members by virtue of their policyholder status with a Designated Subsidiary would not be entitled to any distributions as a result of such member status.

## **VI. Section 2(a)(1) of the Securities Act of 1933**

Based upon the foregoing facts and the analysis set forth herein, it is our opinion that the grant of membership interests in the Mutual Holding Company to AFMIC's policyholders and policyholders of the Designated Subsidiaries in connection with the Reorganization, whether arising on the Effective Date of the Reorganization in accordance with the Plan, or arising from time to time by virtue of the issuance of an insurance policy by Converted AFMIC or a Designated Subsidiary, would not constitute the offer or sale of a "security" under Section 2(a)(1) of the Securities Act.

### **A. Definition of a "Security" Under Section 2(a)(1) of the Securities Act**

Applying the test developed in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) ("Howey"), and its progeny, it is our opinion that neither the grant of membership interests in the Mutual Holding Company to existing members of AFMIC and existing policyholders of the Designated Subsidiaries in connection with the Reorganization, nor the grant of membership interests in the Mutual Holding Company from time to time after the Reorganization to future policyholders of Converted AFMIC or a Designated Subsidiary, would constitute the offer or sale of a "security" as that term is defined in Section 2(a)(1) of the Securities Act.

The Staff has previously taken no-action positions on numerous occasions in the context of reorganization transactions similar to that contemplated by AFMIC, including reorganizations undertaken pursuant to the MHC Act, which has not been modified since the date the Staff took such a no-action position. *See, e.g.*, Federal Life Insurance Company (Mutual) (publicly available August 31, 2015); Blue Cross and Blue Shield of Florida, Inc. (publicly available

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September 9, 2013); American Mutual Insurance Company (publicly available May 13, 2009); Pan-American Life Insurance Company (publicly available December 28, 2006); Fidelity Life Association (publicly available October 18, 2006); Employers Insurance Company of Nevada, A Mutual Company (publicly available December 2, 2004); Millers Mutual Insurance Association (publicly available February 20, 2003); Milwaukee Mutual Insurance Company (publicly available January 30, 2003); Maine Mutual Fire Insurance (publicly available November 15, 2001); First Nonprofit Mutual Insurance Company (publicly available October 24, 2001); The Baltimore Life Insurance Company (publicly available December 11, 2000); 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 (publicly available August 25, 1999); 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 18, 1998); Principal Mutual Life Insurance Company (publicly available June 8, 1998); The Ohio National Life Insurance Company (publicly available June 5, 1998); Security Benefit Life Insurance Company (publicly available June 3, 1998); The Minnesota Mutual Life Insurance Company (publicly available May 21, 1998); Provident Mutual Life Insurance Company (publicly available April 7, 1998); FCCI Mutual Insurance Company (publicly available March 30, 1998); Ameritas Life Insurance Corporation (publicly available December 8, 1997); Acacia Mutual Life Insurance Company (publicly available June 27, 1997); Pacific Mutual Life Insurance Company (publicly available April 17, 1997); General American Life Insurance Company (publicly available February 20, 1997); and American Mutual Life Insurance Company (publicly available June 13, 1996). The MHC Act, which has not changed in the interim, was the applicable regulation for the Staff's no-action letter to Milwaukee Mutual Insurance Company (publicly available January 30, 2003) (the "MMIC No Action Letter").

The Reorganization differs from past reorganization transactions with respect to which the Staff has taken no-action positions, in that policyholders of the Designated Subsidiaries, in addition to members of AFMIC, will be granted membership interests in the Mutual Holding Company. However, as discussed below, it is our opinion that this aspect of the Reorganization does not alter the analysis of whether any membership interests of the Mutual Holding Company are securities under Section 2(a)(1) of the Securities Act. We believe the analysis set forth below applies to the membership interests granted to policyholders of the Designated Subsidiaries as well as those granted to policyholders of AFMIC/Converted AFMIC. Indeed, for the reasons discussed below, we believe that the legal support for the proposition that the membership interests granted to policyholders of the Designated Subsidiaries is even stronger than it is for the policyholders of AFMIC--for which there is legal support equivalent to the legal support which formed the basis for the MMIC No Action Letter and substantially equivalent to the legal support for each of the other no-action letters identified above.

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Section 2(a)(1) of the Securities Act, as amended, defines a “security” as including:

any note, stock, treasury stock, security feature, security-based swap, 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 that are subject to registration under federal securities laws. Section 3(a)(8) of the Securities Act appears to support the view that registration is not necessary to protect policyholders in these circumstances. Section 3(a)(8) of the Securities Act exempts insurance policies from the registration requirements of the Securities 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 [Securities] Act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the [Securities] Act.” H.R. Rep. No. 73-85, at 15 (1933).

The fact that more than one company is 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 Related Policy is purchased), this interest does not constitute a security. *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 559 (1979).

**B. 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

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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 (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.<sup>2</sup> All elements of the *Howey* test must be met before an investment is deemed to constitute an “investment contract” and, therefore, a “security.” We understand that the SEC has stated that the second item, “in a common enterprise,” is not a separate element of the *Howey* test.<sup>3</sup> The grant of membership interests in the Mutual Holding Company does not meet the first and third elements of the *Howey* test.

1. Investment

The first criterion under the *Howey* test, an investment, is not satisfied because the Reorganization does not require AFMIC policyholders, Converted AFMIC policyholders, or Designated Subsidiary policyholders to pay cash or any other property to acquire their membership interests in the Mutual Holding Company. An investment is characterized by “an exchange for value,” most often a monetary contribution. See *Useton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564, 574-75 (10th Cir. 1991). The membership interests are not issued upon a simple monetary contribution; instead, membership interests automatically accompany, by operation of law and the Articles of Incorporation of the Mutual Holding Company, the ownership of a Related Policy. The money paid by AFMIC, Converted AFMIC or Designated Subsidiary 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 Mutual Holding Company. Indeed, at the time of issuance of the Related 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 selling efforts of Converted AFMIC and each of the Designated Subsidiaries will focus on insurance coverages. Additionally, current members have been and prospective members must be qualified and accepted as insureds by AFMIC and Converted AFMIC, respectively, or a Designated Subsidiary. Such qualification is an independent requirement that must be satisfied on the basis of objective

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<sup>2</sup> 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 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).

<sup>3</sup> See *In re Anthony H. Barkate*, Exchange Act Release No. 34-49542, 82 S.E.C. Docket 2130 at n.13 (April 8, 2004).

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insurance underwriting criteria. Finally, there is no basis for the current or prospective members to regard the membership interests in AFMIC, Converted AFMIC or a Designated Subsidiary as investments because the membership interests are and will be non-transferable.

## 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 Wisconsin 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 AFMIC’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, “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 Mutual Holding Company 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 Wisconsin Commissioner in the context of a demutualization or dissolution. (Even in such an event, the policyholders of the Designated Subsidiaries have no expectation of receiving any distributions.) A policyholder’s expectation of accretion in value of his/her insurance policy depends solely upon the terms of the insurance contract itself. Furthermore, there is no potential to realize profit by transferring the membership interest to a third party because the membership rights are not assignable. AFMIC has no plans or intentions for the Mutual Holding Company to demutualize or dissolve.

The fact that the Mutual Holding Company is not subject to the limitations under Section 611.26(4), Wis. Stat. on engaging directly or indirectly in business other than insurance, including the limitations on the amount invested in non-insurance businesses as a percentage of total assets, does not affect this analysis. Members of the Mutual Holding Company will have no expectation of sharing in any profits generated by the Mutual Holding Company and its subsidiaries, whether those profits may derive from an insurance business or a non-insurance business, because, among other factors:

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(i) The Mutual Holding Company will not be permitted to pay dividends or make any other payment of income or profits to members (except in the event of dissolution or demutualization, and then only with the prior consent of the Wisconsin Commissioner and subject to a cap equal to the amount of premiums paid to AFMIC/Converted AFMIC with interest at the legal rate, without regard to the value of the underlying enterprise);

(ii) the members of the Mutual Holding Company will not be able to sell, redeem, or otherwise receive value by transferring or otherwise disposing of their membership interests; and

(iii) Converted AFMIC will be able to cancel a member's interest in the Mutual Holding Company without consideration by canceling or not renewing the member's policy or policies issued by Converted AFMIC, AFIC, and/or ASICO.

The fact that investments by the Mutual Holding Company will not be subject to the same restrictions on the amount invested in non-insurance operations as apply to AFMIC, is therefore not relevant to the question of whether the Mutual Holding Company members will have an expectation of profit. The Staff has taken a no-action position in other mutual holding company reorganizations in which the mutual holding company was similarly not subject to the limitations on investments or limitations on the conduct of non-insurance activities that applied to the mutual insurance company being converted in the reorganization. See Blue Cross and Blue Shield of Florida, Inc. (publicly available September 9, 2013) and Milwaukee Mutual Insurance Company (publicly available January 30, 2003).

In sum, the inability to receive dividends or other distributions of profits (except in limited circumstances such as a dissolution) or to sell a 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).

C. Membership Interests are Not Securities Under *Reves*

In *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Court discussed four factors that are "the same factors that 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 that 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 that might reduce the risks associated with the interest alleged to constitute a security and "thereby rendering application of the Securities Acts unnecessary." *Id.* at 66-67. Under the four

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criteria set forth in *Reves* for determining whether an instrument is a security, a membership interest in the Mutual Holding Company will not constitute a security.

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 Related Policy with an expectation of receiving a profit on account of the related membership interest. Further, the purpose of the sellers of the insurance policies in collecting insurance premiums upon issuance of Related Policies is not to raise money for the general use of a business enterprise or to finance investments, but rather to charge an adequate amount of premium to pay policy claims made under the Related Policies and the costs of administering those claims.

As to the second factor, the membership interests cannot be freely traded or transferred apart from the accompanying Related Policy; they terminate upon lapse or surrender of the Related Policy, and they 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 Policies, which traditionally are not regarded as securities. Also as noted earlier, the membership interests will not be marketed to the general public as interests that would give rise to a profit expectancy. Sales efforts with respect to the Related Policies will focus on the insurance coverage. The potential for the Mutual Holding Company to invest in non-insurance business operations without being subject to the same volume limitations that currently apply to AFMIC will not alter the fact that sales of the Related Policies will focus on the purchase of insurance coverage, without any mention of a profit expectancy, whether arising out of such non-insurance business operations or otherwise, or other investment motivation. Furthermore, no certificates will be issued with respect to the membership interests. Finally, the membership interests are not recognized as securities under Wisconsin law.

As to the fourth factor, since the Mutual Holding Company will be subject to extensive regulation by the Wisconsin Commissioner, this factor also supports the conclusion that the membership interests in the Mutual Holding Company would not constitute securities. Notwithstanding the fact that the Mutual Holding Company will not be subject to certain restrictions on investments in non-insurance operations which are applicable to the mutual insurance company, the Mutual Holding Company will be governed by a comprehensive regulatory scheme which will substantially reduce the risks associated with the membership interests in the Mutual Holding

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Company, substantially comparable to the regulatory requirements imposed on a Wisconsin domestic insurer, as detailed in Section III above. Some of the regulatory restrictions which will serve to reduce the risks associated with the membership interests in the Mutual Holding Company include the following: (i) the Mutual Holding Company's Articles of Incorporation and Bylaws must be approved by the Wisconsin Commissioner; (ii) the Wisconsin Commissioner has held a public hearing at which policyholders and other interested parties were permitted to attend and be heard; (iii) as a condition to approving the Reorganization, the Wisconsin Commissioner must consider whether the Reorganization would be detrimental to the safety and soundness of AFMIC or the contractual rights and reasonable expectations of the policyholders, and must conclude that the Reorganization (including the grant of membership interests in the Mutual Holding Company to policyholders of both AFMIC and the Designated Subsidiaries) is fair and equitable to AFMIC and its policyholders and is not contrary to the interests of such policyholders or the public; (iv) following the Reorganization, the Wisconsin Commissioner will retain jurisdiction over the Mutual Holding Company; (v) the Mutual Holding Company may not enter into a merger, be acquired, demutualize or dissolve without the approval of the Wisconsin Commissioner or a court; (vi) Converted AFMIC and the Intermediate Stock Holding Company will be prohibited from issuing voting securities to a third party absent the prior approval of the Wisconsin Commissioner; and (vii) the payment of dividends or other distributions from Converted AFMIC to the Mutual Holding Company or the Intermediate Stock Holding Company will be restricted. Further, substantially all of the assets and business indirectly held and conducted by the Mutual Holding Company through its insurance company subsidiaries will remain subject to restrictions on acquisitions and investments which are the same as those applicable to AFMIC.

We believe that the regulations to which the Mutual Holding Company will be subject pursuant to the Wisconsin Statutes and the Stipulation and Order will satisfy the fourth factor under *Reves*, in that the Mutual Holding Company will be subject to an extensive regulatory scheme that will reduce the risks associated with the membership interests in the Mutual Holding Company. The Staff has previously taken a no-action position with respect to other mutual insurance holding company reorganizations in which the mutual insurance holding company was subject to a regulatory scheme that did not restrict investments by the mutual insurance holding company in the same manner as the regulations applicable to the mutual insurance company. See Blue Cross and Blue Shield of Florida, Inc. (first available to the public on September 9, 2013). In the MMIC No Action Letter, the Staff took a no-action position on the reorganization of Milwaukee Mutual Insurance Company under the same statutorily-imposed regulatory scheme as will apply to the Reorganization of AFMIC, noting that the mutual holding company would be subject to oversight by the Wisconsin Commissioner comparable to the oversight governing the converted mutual insurance company and its members.

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D. Intermediate Stock Holding Company

One of the primary purposes of the Reorganization is to enhance financial flexibility, thereby providing an avenue for expansion of operations of the American Family group of companies. The Reorganization contemplates the formation of an Intermediate Stock Holding Company to hold the stock of Converted AFMIC. We do not view the added flexibility resulting from the Reorganization, by itself or together with any other aspect of the Reorganization, including the formation of the Intermediate Stock Holding Company, as creating an expectation of profit because the members of the Mutual Holding Company do not share in the profits of the Mutual Holding Company, the Intermediate Stock Holding Company, or Converted AFMIC. There are no current plans to offer shares of the Intermediate Stock Holding Company or any subsidiary to the public, to other investors or in connection with acquisitions, although such activities may be undertaken in the future. Any determination to offer shares in the future would depend on numerous factors, including the then-current needs for additional capital to facilitate growth, relevant equity market conditions, the financial and business performance and prospects of Converted AFMIC, and compliance with regulatory requirements and approvals under Wisconsin law, including the receipt of prior approval of any initial sale of voting shares by the Wisconsin Commissioner and the members of the Mutual Holding Company. *See Wis. Stat. § 644.15.*

We note that, in accordance with the MHC Act, the Mutual Holding Company is required at all times to retain ownership of at least 51% of the outstanding voting shares of the Intermediate Stock Holding Company, which must at all times retain ownership of at least 51% of the outstanding voting shares of Converted AFMIC. *See Wis. Stat. § 644.04(3)(b).* The Intermediate Stock Holding Company, as a subsidiary of the Mutual Holding Company, will remain subject to oversight by the Wisconsin Commissioner.

Based on the foregoing, we do not believe that the formation of the Intermediate Stock Holding Company impacts the analysis of *Howey* or *Reves* described above as to whether the membership interests are securities under Section 2(a)(1) of the Securities Act.

E. Membership Interests Granted to Policyholders of Designated Subsidiaries

As discussed above, though granting additional membership interests in the Mutual Holding Company to the policyholders of Designated Subsidiaries is a unique element of the Reorganization that has not been considered by the Staff in its previous no-action positions, we do not believe this should alter the Staff's conclusions with respect to the securities law analysis in these circumstances. The membership interests in the Mutual Holding Company granted to policyholders of ASICO and AFIC on or after the Effective Date will in each case carry the same rights and attributes as the membership interests granted to existing policyholders of AFMIC on the Effective Date and future policyholders of Converted AFMIC thereafter, except that, in the case of

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membership interests granted to policyholders of a Designated Subsidiary, there will be no entitlement to receive distributions as a result of such member status<sup>4</sup>. In particular, membership interests in the Mutual Holding Company which are granted to policyholders of a Designated Subsidiary, whether on the Effective Date or thereafter, shall have the following attributes:

- Voting rights identical to other members of the Mutual Holding Company (the right to elect the board of directors of the Mutual Holding Company and the right to vote on such other matters that may come before the Mutual Holding Company members at annual or special meetings of the members);
- As with the Mutual Holding Company membership interests granted to policyholders of AFMIC and Converted AFMIC, the membership interests granted to policyholders of the Designated Subsidiaries will automatically be tied to ownership of a Related Policy and will automatically terminate upon lapse or surrender of the Related Policy;
- As with the Mutual Holding Company membership interests granted to policyholders of AFMIC and Converted AFMIC, the membership interests granted to policyholders of the Designated Subsidiaries cannot be freely traded or transferred apart from the accompanying Related Policy and such membership interests cannot be pledged or encumbered; and
- The membership interests will be subject to the same level of regulation by the Wisconsin Commissioner as the Mutual Holding Company membership interests granted to policyholders of AFMIC. For example, the Mutual Holding Company's Articles of Incorporation, which authorize the grant of membership interests in the Mutual Holding Company to policyholders of the Designated Subsidiaries on and after the Effective Date, will be approved by the Wisconsin

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<sup>4</sup> The right to receive distributions of stock, cash, or other property in the event of a demutualization of the Mutual Holding Company, is pro rata according to the amount of premiums paid by such member to AFMIC or Converted AFMIC within the five years preceding such demutualization, and subject to a cap equal to the aggregate amount paid by such member to AFMIC or Converted AFMIC during such five year period, together with interest at the legal rate. The right to receive distributions of the residual assets, if any, of the Mutual Holding Company, in the event of its dissolution, but limited to the maximum amount of distributions to which such policyholder would have been entitled had the Reorganization not occurred. Note that, in practical effect, this means that policyholders of a Designated Subsidiary will not receive any economic rights as a result of their status as policyholders of a Designated Subsidiary and the attendant member status in the Mutual Holding Company.

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Commissioner; the Wisconsin Commissioner will hold a public hearing at which policyholders and other interested parties are permitted to attend and where the Wisconsin Commissioner must conclude that the Reorganization, including the grants of membership interests in the Mutual Holding Company to policyholders of the Designated Subsidiaries, is fair and equitable to AFMIC and its policyholders and is not contrary to the interests of such policyholders or the public; following the Reorganization, the Wisconsin Commissioner will retain jurisdiction over the Mutual Holding Company; and the Mutual Holding Company may not enter into a merger, be acquired, demutualize or dissolve without the approval of the Wisconsin Commissioner or a court.

Based on the foregoing, it is our opinion that the issuance of membership interests in the Mutual Holding Company to policyholders of the Designated Subsidiaries does not impact the analysis of *Howey* or *Reves* described above, nor alter our opinion that the membership interests of the Mutual Holding Company are not securities under Section 2(a)(1) of the Securities Act.

#### **VII. Registration Pursuant to the Exchange Act**

To be subject to registration pursuant to Section 12(g) of the Exchange Act, a person must issue “securities.” The definition of “security” in Section 3(a)(10) of the Exchange Act is in all pertinent respects identical to the definition of that term in Section 2(a)(1) of the Securities Act. *See Landreth Timber Co.*, 471 U.S. at 686 n.1 (1982). Consequently, in accordance with the discussion of the Securities Act above, we are of the opinion that the mutual holding company membership interests are not securities. Accordingly, it is our opinion that the Mutual Holding Company will not be subject to the registration requirements of Section 12(g) of the Exchange Act.

#### **VIII. Conclusion**

In consideration of the foregoing facts and our conclusions with respect to the application of the Securities Act and the Exchange Act, we request that the Staff advise us as to whether it would recommend to the SEC that no action be taken if the Reorganization and issuance of membership interests in the Mutual Holding Company proceed as described above, without compliance with the registration requirements under the Exchange Act, consistent with our opinion that such membership interests do not constitute “securities” as defined in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.

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FOLEY & LARDNER LLP

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Because of the importance of the Reorganization to AFMIC, 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 (608) 258-4218.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anne E. Ross', followed by a horizontal line extending to the right.

Anne E. Ross  
Foley & Lardner LLP  
150 East Gilman Street, Suite 5000  
Madison, Wisconsin 53703-1482  
Phone: 608.258.4218  
Facsimile: 608.258.4258  
Email: [aross@foley.com](mailto:aross@foley.com)

Enclosures

**EXHIBIT A**

**MHC ACT**

## CHAPTER 644

## DOMESTIC MUTUAL INSURANCE HOLDING COMPANIES

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**Cross-reference:** See definitions in ss 600.03, 610.01 and 628.02

**Cross-reference:** See also ch. Ins 40, Wis. adm. code

## SUBCHAPTER I

## GENERAL PROVISIONS

**644.02 Definitions.** (1) In this chapter, unless the context otherwise requires:

(a) “Board” means the board of directors or board of trustees, as the case may be, of the converting insurance company.

(b) “Converted insurance company” means an insurance company that converted under this chapter from a mutual insurance company to a stock insurance company, or from a service insurance corporation to a mutual insurance company and then to a stock insurance company, and formed a mutual holding company.

(c) “Converted life insurance company” means a life insurance company that converted under this chapter from a mutual life insurance company to a stock insurance company and formed a mutual holding company.

(d) “Converting insurance company” means a domestic mutual insurance company or a domestic service insurance corporation undergoing restructuring under this chapter.

(e) “Dividend plan” means a plan to provide reasonable assurances as to the policyholder dividend scales of the participating individual policies and contracts of a converted insurance company in the life insurance business in force on the date specified in the dividend plan for which the insurer had an experience-based dividend scale payable in the year of the plan by creating any of the following:

1. Covenants of the converted insurance company or the mutual holding company, or both.

2. One or more closed blocks. Assets of the converted insurance company shall be allocated to the closed block in an amount that produces cash flows, together with anticipated revenues from the closed block business, expected to be sufficient to support the closed block business, including provision for payment of claims and those expenses and taxes specified in the dividend plan, and provision for continuation of the dividend scales in effect on the effective date of the restructuring under this chapter if the experience underlying such dividend scales continues. Any plan under this subdivision may provide for conditions under which the converted insurance company may cease to maintain any closed block and for the allocation of assets to that closed block.

3. A combination of subds. 1. and 2. or any other means of providing reasonable assurances that the commissioner approves.

(f) “Dividend scales” means the equitable apportionment of divisible surplus by the board.

(g) “Divisible surplus” means the annual distribution described in s. 632.62 (4) (b) as a payment made to policyholders as determined by the board.

(h) “Intermediate stock holding company” means a corporation that satisfies all of the following:

1. The corporation was incorporated under ch. 180.

2. At least 51 percent of the corporation’s voting stock is held directly or indirectly by a mutual holding company.

3. The corporation holds directly or indirectly at least 51 percent of the voting stock of a converted insurance company.

(i) “Member” means any of the following:

1. For a converting mutual insurance company, a policyholder who, by the records of the converting insurance company and by its articles of incorporation and bylaws, is a holder of a membership interest in the converting insurance company.

2. For a converting service insurance corporation, a policyholder shown on the books and records of the converting insurance company on the effective date of the restructuring.

(j) “Membership interests” means the voting rights of a member arising under the statutes and the articles of incorporation and bylaws of the converting insurance company, including the right to vote for the board and the right to vote on any plan of conversion, voluntary dissolution or amendment of the articles of incorporation. On and after the effective date of the restructuring, “membership interests” means the voting rights of a member arising under the statutes and the articles of incorporation and bylaws of the mutual holding company, including the right to vote for the board and the right to vote on any plan of conversion, voluntary dissolution or amendment of the articles of incorporation. “Membership interests” does not include members’ rights in surplus, if any.

(k) “Mutual holding company” means a mutual insurance holding company.

(L) “Policyholder” means the person identified in the records of the converting insurance company or the converted insurance company under s. 611.51 (9) (c).

(m) “Rights in surplus” means any rights of a member arising under the converting insurance company’s articles of incorporation or ch. 611 to a return of the surplus in respect of policies or contracts of the converting insurance company that may exist with regard to the surplus not apportioned or declared by its board as divisible surplus, including rights of members to a distribution of such surplus in dissolution or conversion proceedings under ch. 611. On and after the effective date of the restructuring, “rights

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Updated 13–14 Wis. Stats. 2

in surplus” means any rights of a member of the mutual holding company arising under its articles of incorporation or this chapter to the net worth of the mutual holding company, including rights of members of the mutual holding company to a distribution of any portion of the net worth of the mutual holding company in conversion proceedings under s. 644.25 or dissolution proceedings under s. 644.28 or 644.29. “Rights in surplus” shall not include any right to divisible surplus expressly conferred solely by the terms of an insurance policy or annuity contract.

(n) “Voting stock” means stock of any class or any ownership interest having voting power for the election of directors, trustees or management. All references to a specified percentage of voting stock shall mean stock having the specified percentage of the voting power for the election of directors, trustees or management, including stock having such power only by reason of the happening of a contingency.

(2) Except when inconsistent with the definitions given in this chapter, the definitions of ss. 600.03 and 610.01 apply to this chapter. In the provisions of chs. 181 and 611 that are made applicable to this chapter or incorporated into this chapter by reference, all of the following apply:

- (a) “Corporation” includes a mutual holding company formed under this chapter.
- (b) “Department” means the commissioner.
- (c) “Mutual” includes a mutual holding company.
- (d) “Nonassessable mutual” includes a mutual holding company.
- (e) “Policyholder” includes a member.
- (f) “This chapter” includes this chapter.

History: 1997 a 227

**644.03 Scope and purposes.** (1) **SCOPE** This chapter applies to all mutual insurance holding companies organized under the laws of this state.

(2) **PURPOSES** (a) The purposes of this chapter are to provide complete, self-contained procedures for the formation of mutual insurance holding companies. Subject to par. (b), a corporation organized as a mutual insurance holding company under this chapter may be organized for any lawful purpose and shall hold directly or indirectly as a subsidiary at least one stock insurance company converted from a mutual insurance company or from a service insurance corporation that converted to a mutual insurance company. A mutual holding company is not an insurer.

(b) A corporation organized as a mutual insurance holding company under this chapter may engage, directly or indirectly, in a business that is subject to regulation under another statute of this state only if not prohibited by, and subject to all limitations of, the other statute.

History: 1997 a 227

**644.04 Restructuring.** (1) On the effective date of a restructuring under this chapter, all of the following shall occur:

- (a) The converting insurance company shall become a domestic stock insurance company.
- (b) All membership interests and rights in surplus of the converting insurance company shall be extinguished and the members of the converting insurance company shall become members of the mutual holding company in accordance with this chapter and the articles of incorporation and bylaws of the mutual holding company.
- (c) All shares of the voting stock of the converting insurance company shall be acquired and retained by the mutual holding company or, if created, an intermediate stock holding company.
- (d) All of the shares of voting stock of any intermediate stock holding company shall be acquired and retained by the mutual holding company.

(2) Any intermediate stock holding company created at the time of the restructuring to hold the stock of the converting insurance company shall be incorporated under ch. 180 and may engage in any business or activity permitted by ch. 180.

(3) The converted insurance company, subject to s. 611.33, and any intermediate stock holding company may thereafter issue to 3rd parties debt securities, stock other than voting stock and, subject to s. 644.15, voting stock, so long as all of the following are true:

(a) No shares of stock representing more than 49 percent of the voting power of all issued and outstanding voting stock of either the converted insurance company or the intermediate stock holding company, if any, are issued to 3rd parties.

(b) At least 51 percent of the voting stock of the converted insurance company is at all times owned by the mutual holding company or by the intermediate stock holding company, at least 51 percent of whose voting stock is held by the mutual holding company, and such 51 percent interests in the converted insurance company and any intermediate stock holding company are not conveyed, transferred, assigned, pledged, subjected to a security interest or lien, placed in a voting trust, encumbered or otherwise hypothecated or alienated by the mutual holding company or by the intermediate stock holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, placement in a voting trust, encumbrance, or hypothecation or alienation of, in or on the 51 percent of the voting shares of the converted insurance company or the intermediate stock holding company in violation of this paragraph shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, placement in a voting trust, encumbrance, hypothecation or alienation as to the shares necessary to constitute 51 percent of such voting stock.

(4) For purposes of the calculations under this section and under s. 644.13, any issued and outstanding securities of the converted insurance company or any intermediate stock holding company that are convertible into voting stock are considered to be issued and outstanding voting stock.

History: 1997 a 227; 1999 a 30

**644.05 General corporate powers and procedures.**

(1) **POWERS** Subject to s. 644.19 (2) and (3), s. 181.0302 (intro.), (1) to (15), (18) and (19) applies to mutual holding companies.

(2) **EFFECT OF UNAUTHORIZED CORPORATE ACTS** Section 181.0304 applies to mutual holding companies, except that, for purposes of this subsection, “attorney general” used in s. 181.0304 (3) means “commissioner”.

(4) **WAIVER OF NOTICE AND INFORMAL ACTION BY MEMBERS OR DIRECTORS** Sections 181.0704, 181.0706, 181.0821 and 181.0823 apply to mutual holding companies. For purposes of this subsection, “board” used in s. 181.0821 includes “committee of the board of a mutual holding company”.

History: 1997 a 227; 1999 a 30

**644.06 Registered agent for service of process.** Sections 601.715, 601.72 (1) (a), (2) and (3) to (5) and 601.73 apply to mutual holding companies, except that, for purposes of this chapter, “authorized insurer” used in s. 601.715 means mutual holding company and “insurer” used in s. 601.72 (1) (a) and (2) means mutual holding company.

History: 1997 a 227

## SUBCHAPTER II

## MUTUAL INSURANCE HOLDING COMPANIES

**644.07 Restructuring procedures.** (1) **FORMATION OF MUTUAL HOLDING COMPANY** (a) 1. A domestic mutual insurance company organized under ch. 611 may restructure by forming a mutual holding company in accordance with this section.

2. A domestic service insurance corporation organized under ch. 613 may restructure by simultaneously converting to a mutual

insurance company that is subject to ch. 611 and forming a mutual holding company in accordance with this section.

(b) The mutual holding company may use the word “mutual” in its name. The restructuring shall continue the corporate existence of the converting insurance company as a stock insurance company subsidiary of the mutual holding company or as a stock insurance company subsidiary of an intermediate stock holding company that is a subsidiary of the mutual holding company. The converted insurance company may continue to use the word “mutual” in its name if the name includes the abbreviation “SI” for stock insurer, or the words “stock insurer”.

(2) RESOLUTION OF THE BOARD The board shall pass a resolution to the effect that restructuring is fair and equitable to policyholders. The resolution shall specify the reasons for and the purposes of the proposed restructuring, and explain the manner in which the restructuring is expected to benefit policyholders.

(3) ADOPTION OF PLAN The board shall adopt a mutual holding company plan. The mutual holding company plan shall set forth the reasons for and the purposes of the proposed restructuring, explain how the restructuring is expected to benefit policyholders and provide for amending the converting insurance company’s articles of incorporation to give effect to the restructuring from a mutual, nonstock corporation into a stock corporation.

(4) SUBMISSION OF PLAN The board shall submit the mutual holding company plan to the commissioner for approval, together with all of the following:

(a) The proposed articles and bylaws of the mutual holding company, which shall comply with s. 644.09, of the converted insurance company, which shall comply with s. 611.12, and of any intermediate stock holding company.

(b) So much of the following information pertaining to the mutual holding company as the commissioner reasonably requires:

1. The names and, for the preceding 10 years, all addresses and all occupations of all proposed directors and officers.
2. All agreements relating to the mutual holding company to which any proposed director or officer is a party.
3. The amount and sources of the funds available for organization expenses and initial operating expenses.
4. The proposed compensation of directors and officers.
5. The proposed capital.
6. A business plan of the mutual holding company for the first 5 years of operation.

(c) Such other relevant documents or information as the commissioner reasonably requires.

(5) PLAN CONTENTS (a) The plan shall include all of the following:

1. A description of any plans for the initial sale of voting stock to 3rd parties by the converted insurance company or any intermediate stock holding company, or a statement that the converted insurance company or intermediate stock holding company has no current plans for the sale of voting stock.

2. A description of any plans for the transfer of assets and assumption of obligations, including any one or more subsidiaries of the converting insurance company, to the mutual holding company or to the intermediate stock holding company.

(b) 1. A plan for the initial sale of voting stock shall be adequately described under par. (a) 1. if it contains all of the following:

- a. A statement of intent to conduct an initial sale of voting stock of the converted insurance company or of any intermediate stock holding company within a specified time after the effective date of the restructuring.
- b. A description of the maximum percentage of the stock to be sold.
- c. A description of the process to be used in offering the stock and setting the initial sale price for the stock.

d. A description of the rights of members to subscribe to the stock offering if the initial sale of voting stock by the converted insurance company or any intermediate stock holding company involves an initial public offering.

e. Such other information as may be prescribed by the commissioner.

2. No plan for the initial sale of voting stock that is approved by policyholders as part of the approval of a mutual holding company conversion plan under sub. (8) or by members as part of an approval under s. 644.15 shall be effective for more than the specified time under subd. 1. a. after the effective date of the restructuring or the date on which the plan is approved by members under s. 644.15 (1), whichever is applicable.

(5m) ADDITIONAL PLAN CONTENTS FOR SERVICE INSURANCE CORPORATIONS If the converting insurance company is a service insurance corporation, in addition to satisfying the requirements under sub. (5), the plan shall state all of the following:

(a) That those persons who are policyholders of the converting service insurance corporation on the date of the resolution under sub. (2) and who remain policyholders on the record date established by the board for the vote under sub. (8) shall have the right to vote on the plan under sub. (8).

(b) That the members of the mutual holding company shall be those persons who are policyholders of the converting service insurance corporation on the effective date of the restructuring, and that thereafter membership shall be as provided in sub. (10) (d).

(c) Any other conditions that the commissioner may require relating to the company’s conversion from a service insurance corporation to a mutual holding company.

(6) HEARING (a) The commissioner or a hearing examiner designated by the commissioner shall hold a hearing after receipt of a mutual holding company plan.

(b) 1. Notice of the hearing shall be mailed by the converting insurance company not more than 60 days and not less than 10 days before the scheduled date of the hearing to the last-known address of each person who was a policyholder of the converting insurance company on the date of the resolution under sub. (2), together with a copy of the mutual holding company plan, or a copy of a summary of the plan if the commissioner approves the summary, and any comment that the commissioner considers necessary for the adequate information of policyholders. Failure to mail notice to a policyholder does not invalidate a proceeding under this subsection if the commissioner determines that the converting insurance company has substantially complied with this subdivision and has attempted in good faith to mail notice to all policyholders entitled to notice.

2. The notice, the plan or a summary of the plan and any comments under subd. 1. shall also be mailed by the converting insurance company not more than 60 days and not less than 10 days before the scheduled date of the hearing to the commissioner of every jurisdiction in which the converting insurance company is authorized to do any business.

(c) In accordance with such hearing procedures as the commissioner or the designated hearing examiner may prescribe, any policyholder under par. (b) 1. and any commissioner under par. (b) 2. may present written or oral statements at the hearing and may present written statements within a period after the hearing specified by the commissioner or the hearing examiner. The commissioner shall take statements presented under this paragraph into consideration in making the determination under sub. (7).

(7) APPROVAL BY COMMISSIONER (a) The commissioner shall approve the mutual holding company plan unless he or she finds that the plan violates the law, is not fair and equitable to policyholders or is contrary to the interests of policyholders or the public.

(b) In considering the plan, the commissioner shall consider whether the restructuring would be detrimental to the safety and soundness of the converting insurance company or the contractual

**644.07 DOMESTIC MUTUAL INSURANCE HOLDING COMPANIES**

Updated 13–14 Wis. Stats. 4

rights and reasonable expectations of the persons who are policyholders on the effective date of the restructuring. The commissioner may take into consideration any conclusions and recommendations on the subject of restructuring published by recognized organizations of professional insurance actuaries. The commissioner may by rule establish standards applicable to a restructuring under this chapter.

**(8) APPROVAL BY POLICYHOLDERS** After approval under sub. (7), the mutual holding company plan shall be submitted at any regular or special meeting of policyholders to a vote of the persons who were policyholders of the converting insurance company on the date of the resolution under sub. (2), and who remain policyholders on the record date established for the vote by the board. Voting shall be in accordance with the articles or bylaws of the converting insurance company, but in no event shall there be less than 20 days' advance notice of any meeting for a vote on approval of a mutual holding company plan, and in no event shall the required vote to approve the plan be less than a majority of those policyholders voting. Notice of such meeting shall be sent to the last-known address of each such policyholder and may be included with any notice sent under sub. (6) (b) 1. Only proxies specifically related to the mutual holding company plan may be used for a vote on approval under this subsection.

**(9) AMENDMENT OR WITHDRAWAL** At any time before the effective date of the restructuring, the converting insurance company may, by resolution of its board, amend the mutual holding company plan or withdraw the mutual holding company plan. The commissioner shall determine whether any amendment made after the public hearing under sub. (6) changes the mutual holding company plan in a manner that is materially disadvantageous to any of the policyholders of the converting insurance company and, in such case, may require a further public hearing on the plan as amended. If an amendment that the commissioner determines is materially disadvantageous to any of the policyholders is made after the plan has been approved by the policyholders, the plan as amended shall be submitted for reconsideration by the policyholders.

**(10) EFFECT OF RESTRUCTURING** (a) *Continuation of insurance corporation and commencement of existence of mutual holding company.* If the policyholders approve the mutual holding company plan under sub. (8), the commissioner shall issue a new certificate of authority to the converting insurance company and a certificate of incorporation to the mutual holding company. Upon issuance of the certificate of incorporation, the legal existence of the mutual holding company shall begin, its articles and bylaws shall become effective and its proposed directors and officers shall take office. The issuance of the certificate of incorporation shall be conclusive evidence of compliance with this section. On the effective date of the restructuring, the converting insurance company shall at once become a stock corporation and is no longer a mutual. The converted insurance company shall be considered to have been organized at the time that the converting insurance company was organized. Except as otherwise provided in the plan, the trustees, directors, officers, agents and employees of the converting insurance company shall continue in like capacity with the converted insurance company.

(b) *Continuation of rights and obligations.* The restructuring of the converting insurance company into a stock insurance company subsidiary of a mutual holding company or an intermediate stock holding company shall in no way annul, modify or change any of such insurer's existing suits, rights, contracts or liabilities, except with respect to the membership interests and rights in surplus, if any, in such insurer that are extinguished as provided in s. 644.04, and the corporate existence of the converting insurance company shall be continued in all respects. The converted insurance company, after restructuring, shall exercise all of the rights and powers and perform all of the duties conferred or imposed by law upon insurers writing the classes of insurance written by the converting insurance company before the effective date of the

restructuring, and shall retain the rights and contracts existing prior to restructuring, except with respect to the membership interests and rights in surplus that were extinguished.

(c) *Effective date.* The date upon which the commissioner issues the certificate of authority to the converted insurance company shall be the effective date of the restructuring unless a later time is designated in the mutual holding company plan.

(d) *Effect on policyholders.* A policyholder who has a membership interest in the converting insurance company on the effective date of the restructuring shall become a member of the mutual holding company. Policyholders of policies or contracts that are issued by a converted insurance company after the effective date of its conversion under this section shall become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company and the applicable provisions of this chapter immediately upon issuance of the policy. The articles and bylaws of the mutual holding company may provide that a policyholder of any other insurance company that is or becomes a subsidiary of the mutual holding company may become a member of the mutual holding company. In no event shall a person remain a member after he or she ceases to be a policyholder.

(e) *Nontransferability of membership interests.* No member of a mutual holding company may transfer such member's membership interests in the mutual holding company or any right arising from such membership interests apart from the policy that gives rise to the membership interest.

(f) *Liability of member.* A member of a mutual holding company is not, by virtue of being a member, personally liable for the acts, debts, liabilities or obligations of the mutual holding company.

**(10m) EFFECT ON SERVICE INSURANCE CORPORATION OF DISAPPROVAL OF PLAN** Notwithstanding sub. (1) (a) 2. and s. 644.02 (1) (b), if the converting insurance company is a service insurance corporation, and the commissioner disapproves the mutual holding company plan under sub. (7) or the policyholders disapprove the mutual holding company plan under sub. (8), the converting insurance company shall remain a service insurance corporation subject to ch. 613.

**(11) EXPENSES** The converting insurance company may not pay compensation of any kind to any person in connection with the mutual holding company plan other than regular salaries to the company's personnel. This subsection does not prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, financial advisers, actuaries or other consultants for services performed in the independent practice of their professions. All expenses of the restructuring, including the expenses incurred by the commissioner and the prorated salaries of any involved office staff members of the office of the commissioner of insurance, shall be borne by the converting insurance company.

History: 1997 a 227

**644.08 Reservation of corporate name.** Sections 181.0402 and 181.0403 (2), (3) and (3m) apply to mutual holding companies.

History: 1997 a 227; 1999 a 30

**644.09 Articles, amendments, bylaws and principal officers.** (1) **ARTICLES** Section 181.0202 applies to the articles of a mutual holding company, except that all of the following apply:

(a) The name of the mutual holding company shall include the word "mutual" and shall comply with s. 181.0401 (2) to (4).

(b) The articles shall include provisions for mutual bonds, if any are to be authorized, which shall conform to s. 611.33 (2).

(c) The purposes of the mutual holding company shall be limited to those permitted in this chapter.

(d) Subject to s. 644.07 (10) (d), the articles may specify those classes of persons who may be members of the mutual holding

company or may prescribe the procedure for establishing or removing restrictions on the classes of persons who may be members of the mutual holding company.

(2) **AMENDMENT OF ARTICLES** A mutual holding company may amend its articles in the manner provided in ss. 181.1001, 181.1002 (1), 181.1003, 181.1005 and 181.1006, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner. The articles may be amended in any desired respect, including substantial changes of its original purposes, except that no amendment may be made that is contrary to sub. (1). In addition to the requirements of s. 181.1005, the articles of amendment of a mutual holding company shall, if mail voting is used, state the number of members voting by mail and the number of such members voting for and against the amendment. No amendment may become effective until the articles of amendment have been filed with the commissioner. No amendment shall affect any existing cause of action in favor of or against such mutual holding company, any civil, criminal, administrative or investigatory proceeding to which the mutual holding company is a party or the existing rights of persons other than members. In the event that the corporate name is changed by amendment, no suit brought by or against such mutual holding company under its former name shall abate for that reason.

(3) **BYLAWS** The bylaws of a mutual holding company shall comply with this chapter. A copy of the bylaws and any amendments to the bylaws shall be filed with the commissioner within 60 days after adoption. Subject to this subsection, ss. 181.0206, 181.0207 and 181.1021 apply to mutual holding companies.

(4) **PRINCIPAL OFFICERS** Sections 181.0840 and 181.0841 apply to mutual holding companies.

**History:** 1997 a 227; 1999 a 30

**644.10 Acquisition, merger or consolidation as part of the plan.** (1) The converting insurance company may propose to acquire, or to merge or consolidate with, one or more domestic or foreign insurers, or both, as part of a mutual holding company plan under s. 644.07. The commissioner shall approve the acquisition, merger or consolidation as part of the mutual holding company plan and shall approve the continued corporate existence of any domestic insurer that is a party to the plan under this section as a subsidiary of the mutual holding company or any intermediate stock holding company, if any of the following applies:

(a) In the case of a domestic stock corporation, no grounds for disapproval exist under s. 611.72 (3) (am).

(b) In the case of a domestic mutual, no grounds for disapproval exist under s. 611.73 (3) (a) and the domestic mutual has complied with s. 644.07 (2) to (8). The converting insurance company and any domestic mutual that the converting insurance company proposes to acquire, or merge or consolidate with, may adopt one plan. The commissioner may combine the hearings required under s. 644.07 (6) for the converting insurance company and any domestic mutual that is the subject of the acquisition by, or merger or consolidation with, the converting insurance company. Section 644.07 (9), (10) (b) to (f), and (11) applies to a domestic mutual acquired by, merged into, or consolidated with a converting insurance company under this section.

(2) Any foreign insurer acquired under a plan under this section may remain a foreign company after such acquisition and may be admitted to do business in this state if it meets the applicable requirements of ch. 618.

**History:** 1997 a 227; 2013 a 279

**644.11 Restructuring of domestic or foreign mutual with existing domestic mutual holding company.**

(1) **DEFINITION** In this section, “existing domestic mutual holding company” means a mutual holding company formed under this chapter.

(2) **DOMESTIC MUTUAL REORGANIZATION** (a) *Merger with existing domestic mutual holding company.* A domestic mutual insurance company organized under ch. 611 may restructure by merging its policyholders’ membership interests into an existing domestic mutual holding company in accordance with this section and any rules promulgated by the commissioner. The restructuring shall continue the corporate existence of the converting insurance company as a stock insurance company subsidiary of the existing domestic mutual holding company or as a stock insurance company subsidiary of an intermediate stock holding company.

(b) *Procedures applicable to converting insurance company.* Sections 644.04 (3) and (4) and 644.07 (2) to (6), (8), (9), (10) (b) to (f), (10m) and (11) apply to a domestic mutual insurance company restructuring under this subsection.

(c) *Procedures applicable to existing domestic mutual holding company.* 1. The board of the existing domestic mutual holding company into which the converting insurance company’s policyholders’ membership interests are proposed to be merged under this subsection shall adopt a resolution approving the proposed plan of merger and directing that it be submitted to the commissioner for approval and to its members for a vote at a regular or special meeting. The existing domestic mutual holding company shall provide written notice of the meeting to each member in the manner provided under s. 644.07 (8) for notice to policyholders of a meeting for a vote on approval of a mutual holding company plan.

2. The commissioner may hold a hearing on the plan of merger prior to the meeting at which a vote of the members will be taken. A hearing under this subdivision may be combined with the hearing required under par. (b). The existing domestic mutual holding company shall provide written notice of the hearing to each member in the manner provided under s. 644.07 (6) (b) 1. for notice to policyholders of the hearing under s. 644.07 (6).

3. The commissioner shall approve the proposed plan of merger unless he or she finds that the plan is not fair and equitable to members or is contrary to the interests of members.

4. The proposed plan of merger shall be approved by the members of the existing domestic mutual holding company upon the affirmative vote of not less than a majority of those members voting in person or by proxy at the meeting required under subd. 1.

(d) *Commissioner issues new certificate of authority if approved.* If under par. (b) the policyholders of the converting insurance company approve the plan of restructuring and under par. (c) the members of the existing domestic mutual holding company approve the plan of merger, the commissioner shall issue a new certificate of authority to the converting insurance company. The issuance of the certificate of authority shall be conclusive evidence of compliance with this subsection.

(e) *Effect of restructuring.* On the effective date of the restructuring described in this subsection, all of the following shall occur:

1. The converting insurance company shall at once become a stock corporation organized and operating under ch. 611 and is no longer a mutual.

2. All membership interests and rights in surplus of the converting insurance company shall be extinguished and the members of the converting insurance company shall become members of the existing domestic mutual holding company in accordance with this chapter and the articles of incorporation and bylaws of the existing domestic mutual holding company.

3. All shares of the voting stock of the converting insurance company shall be acquired and retained by the existing domestic mutual holding company or any intermediate stock holding company, 51 percent or more of whose voting stock is owned by the existing domestic mutual holding company.

**644.11 DOMESTIC MUTUAL INSURANCE HOLDING COMPANIES**

Updated 13–14 Wis. Stats. 6

4. The converted insurance company shall be considered to have been organized at the time that the converting insurance company was organized.

5. Except as otherwise provided in the plan, the trustees, directors, officers, agents and employees of the converting insurance company shall continue in like capacity with the converted insurance company.

**(3) FOREIGN MUTUAL REORGANIZATION** A foreign mutual insurance company organized under the laws of any other state that, if a domestic corporation, would be organized under ch. 611 may restructure by merging its policyholders' membership interests into an existing domestic mutual holding company in accordance with rules promulgated by the commissioner and in compliance with the requirements of any other law or regulation that is applicable to the foreign mutual. The restructuring shall continue the corporate existence of the converting insurance company as a foreign stock insurance company subsidiary of the existing domestic mutual holding company or as a foreign stock insurance company subsidiary of an intermediate stock holding company. The restructuring foreign mutual insurance company may remain a foreign insurer after the restructuring and may be admitted to do business in this state if it meets the applicable requirements of ch. 618. A foreign mutual insurance company that is a party to the restructuring may at the same time redomesticate to this state by complying with the applicable requirements of this state and its state of domicile.

History: 1997 a 227

**644.12 Transfers of a mutual holding company's place of domicile to this state.** **(1)** A mutual holding company that is domiciled in another state and that desires to become a domestic mutual holding company may submit to the commissioner an application for a certificate of incorporation. The application shall comply with rules promulgated under sub. (2) and shall include or have attached any other relevant documents or information that the commissioner reasonably requires. Upon review of the application, the commissioner may issue a certificate of incorporation if the commissioner determines that all the following are satisfied:

(a) The applicant is in compliance with the provisions of this chapter that apply to domestic mutual holding companies.

(b) The directors and officers of the applicant are trustworthy and competent and collectively have the competence and experience to engage in the business proposed.

(c) The applicant's insurance company subsidiary that converted from a mutual has become a domestic insurer under s. 611.223.

**(2)** The commissioner shall by rule specify the required contents and form of an application under sub. (1). In determining the required contents, the commissioner shall consider the information and documents that will permit the commissioner to determine whether the requirements of sub. (1) (a) to (c) are satisfied.

History: 1997 a 227

**644.13 Restrictions on ownership.** **(1)** In this section:

(a) "Beneficial ownership", with respect to any voting stock, has the same meaning as provided by the rules administering section 16 of the Securities Exchange Act of 1934.

(b) "Offer" means any of the following:

1. An offer to buy or acquire voting stock, or an interest in voting stock, for value.

2. A solicitation of an offer to sell voting stock, or an interest in voting stock, for value.

3. A tender offer for voting stock, or an interest in voting stock, for value.

4. A request or invitation for tenders of voting stock, or an interest in voting stock, for value.

**(2)** (a) Before the date that is one year after the initial sale to 3rd parties in a public offering of voting stock of the converted

insurance company or any intermediate stock holding company, the directors, officers and other members of management of the mutual holding company, any intermediate stock holding company and the converted insurance company are prohibited from acquiring or offering to acquire, in any manner, the legal or beneficial ownership of any class of voting stock of the converted insurance company or intermediate stock holding company, except that this paragraph shall not in any way limit the rights of the directors, officers or other members of management to exercise subscription rights generally accorded to members of the mutual holding company.

(b) Except as otherwise provided by the commissioner by rule, beginning on the date that is one year after the initial sale to 3rd parties of voting stock of the converted insurance company or any intermediate stock holding company, the directors, officers and other members of management of the mutual holding company, any intermediate stock holding company and the converted insurance company may not do any of the following:

1. Acting individually, directly or indirectly acquire or offer to acquire, in any manner, the legal or beneficial ownership of more than 5 percent of any class of voting stock of the converted insurance company or intermediate stock holding company.

2. In the aggregate, directly or indirectly acquire or offer to acquire, in any manner, the legal or beneficial ownership of more than 10 percent of any class of voting stock of the converted insurance company or intermediate stock holding company.

**(3)** (a) In the event of any violation of sub. (2), or of any action which, if consummated, might constitute such a violation, all voting stock of any intermediate stock holding company or the converted insurance company that is acquired by any person in excess of the maximum amount permitted to be acquired by such person under sub. (2) shall be considered to be nonvoting stock of any such intermediate stock holding company or converted insurance company, as the case may be.

(b) In addition to the result specified in par. (a), the violation or action is subject to the enforcement procedures under s. 601.64.

History: 1997 a 227

**644.14 Member rights.** **(1) COMMUNICATION TO MEMBERS; MEMBER VOTING** Subject to this section, ss. 611.41, 611.42 (1), (1e), (1m), (2), (3), (4) (a) and (5), 611.43 and 611.53 (2) apply to mutual holding companies.

**(2) NOTICE OF REGULAR MEETINGS AND ELECTIONS** Notice of the time and place of regular meetings or elections may be given to a member by printing such time and place conspicuously on each policy under which the member derives a membership interest, or in such other reasonable manner as the commissioner approves or requires.

History: 1997 a 227; 1999 a 30

**644.15 Sale of voting stock; subscription rights; dividends.** **(1)** (a) No solicitation for the initial sale to 3rd parties of the voting stock of the converted insurance company or any intermediate stock holding company may be made without the approval of the commissioner under s. 611.31 (2) and without the approval of the commissioner and the members of the mutual holding company as follows:

1. If the mutual holding company plan includes a plan for the initial sale of voting stock, such approval shall be given at the time that the mutual holding company plan is approved under s. 644.07 (7) and (8).

2. If the mutual holding company plan does not include a plan for the initial sale of voting stock of the converted insurance company or any intermediate stock holding company, the board of the converted insurance company or any intermediate stock holding company, following the procedures under s. 644.07 (2) to (8), may adopt a plan for the initial sale of voting stock to 3rd parties at any future date.

(b) Prior to every issue of voting stock of the converted insurance company and any intermediate stock holding company, the

commissioner, in addition to the approval required under s. 611.31 (2), shall approve the price of the stock, or the procedure for setting and determining the price of the stock, as fair and equitable to the company issuing the stock.

(2) No initial public offering of voting stock of the converted insurance company or any intermediate stock holding company may be conducted unless the persons who were members of the mutual holding company at the time such offering was approved by resolution of the board are afforded subscription rights in conjunction with the stock offering.

(3) If the converted insurance company is a life insurance company, before any approval for the initial sale of voting stock is granted the commissioner shall find the dividend plan fair and equitable to policyholders.

(4) Dividends and other distributions to the shareholders of the converted insurance company or any intermediate stock holding company of a converted insurance company may not be made except in compliance with ss. 617.22 and 617.225.

History: 1997 a 227

#### **644.16 Board of directors, committees and records.**

(1) **BOARD OF DIRECTORS** Subject to this section, ss. 181.0801 (1) and (2), 181.0802, 181.0811, 611.51 (2), (3), (5) and (8) and 611.53 (1) and (3) apply to mutual holding companies. Section 181.0824 applies to the board of a mutual holding company except as modified by s. 611.10. The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility to do so, except to the extent authorized by ss. 181.0825 and 181.0841.

(2) **COMMITTEES OF DIRECTORS** Section 181.0825 applies to mutual holding companies.

(3) **RECORDS** (a) Section 611.51 (9) (am) and (b) applies to mutual holding companies.

(b) Any provision of this chapter or of the articles or bylaws of a mutual holding company that requires the keeping of records concerning the names and addresses of members entitled to vote shall be considered complied with by the keeping of a record of the names of policyholders of, and the names and addresses of insureds or persons paying premiums on the policies of, the converted insurance company. Any provision of this chapter or of the articles or bylaws of a mutual holding company that requires the mailing or sending of notices, reports, proposals, ballots or other materials to a member shall be considered complied with if such mailing is made to the insured or the person paying premiums on the policy of the converted insurance company, for delivery to the policyholder.

(4) **DIRECTOR CONFLICTS OF INTEREST** Section 611.60 applies to mutual holding companies.

History: 1997 a 227; 1999 a 30

**644.17 Removal of officers.** Sections 181.0843 and 181.0844 apply to mutual holding companies.

History: 1997 a 227; 1999 a 30

**644.18 Directors' and officers' liability and indemnification.** (1) **LIABILITY** Sections 181.0850 to 181.0855, except s. 181.0855 (2) (c), apply to mutual holding companies.

(2) **INDEMNIFICATION** Sections 181.0871 to 181.0881 and 181.0889 apply to mutual holding companies.

(3) **INSURANCE** Section 181.0883 applies to mutual holding companies.

(4) **DERIVATIVE ACTIONS** Sections 181.0740 to 181.0747 apply to mutual holding companies.

History: 1997 a 227; 1999 a 30

**644.19 Executive compensation.** (1) **GENERAL** Section 611.63 (4) and (5) applies to mutual holding companies.

(2) **APPROVAL BY MEMBERS** A benefit plan or amendment to a benefit plan that proposes to provide benefits in the form of stock or stock options of a converted insurance company or any inter-

mediate stock holding company to the directors or officers of the converted insurance company, intermediate stock holding company or mutual holding company may not take effect unless it is submitted to a vote of the members of the mutual holding company and approved by a majority of the members voting. Notice of a meeting at which a vote under this subsection will be taken shall be given in accordance with s. 644.14 (1) or (2).

(3) **NOTICE TO COMMISSIONER** The commissioner may by rule require that any action taken by the board of a mutual holding company, or the board of any intermediate stock holding company, on any of the subjects specified in s. 181.0302 (11) to (14) be reported to the commissioner within 30 days after the action is taken.

History: 1997 a 227; 1999 a 30

**644.20 Management contract services.** A mutual holding company may not be a party to a contract that has the effect of delegating to a person, to the substantial exclusion of the board, the authority to exercise any management control of the mutual holding company or of any of its major corporate functions.

History: 1997 a 227

**644.21 Annual report of domestic mutual holding company.** Each mutual holding company domiciled in this state shall file such annual report as may be prescribed by the commissioner by rule.

History: 1997 a 227

**644.22 Securities regulation.** A membership interest in a domestic mutual holding company shall not constitute a security, as defined in s. 551.102 (28).

History: 1997 a 227; 2007 a 196

**644.23 Authority to issue mutual bonds and contribution notes.** Section 611.33 (2) (a), (b), (c) and (e) applies to mutual holding companies. In the event of dissolution under this chapter, unpaid amounts of principal and interest on contribution notes shall be subordinated to the payment of principal and interest on any mutual bonds issued by the mutual holding company at any time.

History: 1997 a 227

**644.24 Subsequent restructuring.** A mutual holding company, in conjunction with the converted insurance company and any intermediate stock holding company, may merge together and convert into a mutual insurance company if the requirements of ss. 611.72 and 611.75 are met and the members of the mutual holding company vote to approve the merger and conversion into a mutual insurance company.

History: 1997 a 227

**644.25 Conversion of domestic mutual holding company into a stock corporation.** (1) **CONVERSION PERMITTED AND PROCEDURES** A mutual holding company formed by a converted insurance company under this chapter may convert into a stock corporation organized under ch. 180. Subject to this section, s. 611.76 (1) to (3) and (5) to (11) applies to mutual holding companies.

(2) **PLAN OF CONVERSION** (a) In this subsection, “net premium” means gross premium less return premium and dividends paid.

(b) The board of a domestic mutual holding company may adopt a plan of conversion that specifies all of the following:

1. The number of shares proposed to be authorized for the new stock corporation, their par value and the price at which they will be offered to members, which price may not exceed 50 percent of the median equitable share of all members under subd. 2.

2. That each member who has been a policyholder of a converted insurance company and has paid premiums within 5 years prior to the resolution passed by the board related to the conversion under this section shall be entitled without additional payment to so much common stock of the new stock corporation as

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his or her equitable share of the value of the converting mutual holding company will purchase.

3. That each member's equitable share shall be determined by the ratio that the net premium paid by such member to the converted insurance company during the 5 years immediately preceding the resolution specified in subd. 2. bears to the total net premium received by the converted insurance company during the same period.

4. That, if a member's equitable share is sufficient only for the purchase of a fraction of a share of stock, the member shall have the option either to receive the value of the fractional share in cash or to purchase a full share by paying the balance in cash.

5. That, notwithstanding subds. 2. to 4., each member who was a policyholder of a converted life insurance company on the date of the resolution specified in subd. 2. or within 5 years prior to that date shall be entitled to an equitable share based on a formula that fairly reflects the policyholder's interest in the company and the policies and contracts issued by the company to the policyholder, and that takes into account premiums paid, cash surrender values, policy loans, reserves, surplus benefits payable and other relevant factors.

6. That a member's equitable share shall be provided to the member on a uniform basis approved by the commissioner in the form of common stock, cash, increased benefits or lower premiums or a combination of those forms.

7. The procedure for stock subscriptions, which shall include a written offer to each such member indicating his or her individual equitable share and the terms of subscription.

8. That no common stock under subd. 2. may be issued to persons other than the members under subd. 2. until all subscriptions by the members have been filled and that thereafter any new issue of stock for 5 years after the conversion shall first be offered to the persons who have become shareholders under subd. 2. in proportion to their interests under subd. 2.

9. That no member, other than a member who is a policyholder of a converted life insurance company, may receive a distribution of shares valued in excess of the amount to which he or she is entitled under s. 645.72 (4) (b). Any excess over that amount shall be distributed in shares to the state treasury for the benefit of the common school fund. After 5 years the shares may be sold by the treasurer at his or her discretion and the proceeds credited to the common school fund.

10. That, except with the approval of the commissioner, during the first 5 years after the conversion under this section the directors and officers of a mutual holding company with a converted life insurance company subsidiary and persons acting in concert with them may not, in the aggregate, acquire control over more than 5 percent of the common stock of the converted mutual holding company or any other corporation that acquires control of more than 5 percent of the common stock of the converted mutual holding company.

**(3) AFTER CONVERSION** Upon the conversion of a mutual holding company under this section, this chapter no longer applies to the mutual holding company, any intermediate stock holding company or the converted insurance company.

History: 1997 a 227

**644.26 Transfer of business or assets of mutual holding companies.** (1) A sale, lease, exchange or other disposition of less than substantially all of the property and assets of a mutual holding company, and the mortgage or pledge of any or all property and assets of a mutual holding company, whether or not made in the usual and regular course of its affairs, may be made upon the terms and conditions authorized by the mutual holding company's board of directors. Unless otherwise provided by the articles of incorporation, consent of the members is not required for a sale, lease, exchange or other disposition of property, or for a mortgage or pledge of property, authorized under this subsection.

(2) A sale, lease, exchange or other disposition of all or substantially all of the property and assets of a mutual holding company may be made upon such terms and conditions as may be authorized in the following manner:

(a) If the articles of incorporation give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of the mutual holding company's property and assets, the board of directors shall adopt a resolution recommending the sale, lease, exchange or other disposition and directing that it be submitted to a vote at an annual or special meeting of the members. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the mutual holding company shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by this chapter for providing notice of member meetings. At the meeting, the members may authorize the sale, lease, exchange or other disposition and may authorize the board of directors to fix any or all of the terms and conditions of the sale, lease, exchange or other disposition. The authorization shall be by the affirmative vote of at least two-thirds of the members present or represented by proxy at the meeting. After the authorization by a vote of the members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange or other disposition, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by the members.

(b) If the articles of incorporation do not give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of a mutual holding company's property and assets, the sale, lease, exchange or other disposition may be authorized by the vote of the majority of the directors in office.

History: 1997 a 227; 1999 a 30

**644.27 Merger and consolidation of mutual holding companies.** Section 611.73 applies to mutual holding companies.

History: 1997 a 227

**644.28 Voluntary dissolution of domestic mutual holding companies.** (1) **PLAN OF DISSOLUTION** Subject to this section, ss. 181.1401 to 181.1407 apply to mutual holding companies.

(2) **APPROVAL BY THE COMMISSIONER** (a) At least 60 days prior to the submission to members of any proposed voluntary dissolution of a mutual holding company under s. 181.1401, the plan shall be filed with the commissioner. The commissioner may require the submission of additional information relevant to the effect of the proposed dissolution on the solvency of the converted insurance company. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds that dissolution of the mutual holding company would cause the converted insurance company to become insolvent, would be unfair or inequitable to the members of the mutual holding company or would not be in the best interests of the policyholders of the converted insurance company or the public.

(b) The acquisition of the converted insurance company and any other insurance company owned directly or indirectly by a dissolving mutual holding company shall be subject to ss. 611.71 and 611.72 and ch. 617.

(3) **REVOCATION OF VOLUNTARY DISSOLUTION** If the mutual holding company revokes the voluntary dissolution proceedings under s. 181.1404, a copy of the resolution revoking the voluntary dissolution proceedings adopted under s. 181.1404 shall be filed with the commissioner.

(4) **FILING AND RECORDING ARTICLES OF DISSOLUTION AND EFFECT THEREOF** Upon approval by the commissioner under sub. (2) and by the members under s. 181.1401, the mutual holding company shall file articles of dissolution with the commissioner. When the articles are filed, the existence of the mutual holding

company shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of members, directors and officers as provided in this chapter and in ss. 181.1401 to 181.1407. Upon the filing of the articles, the commissioner may issue a certificate of dissolution.

**(5) DISTRIBUTION OF ASSETS** No distribution may be made to members of a mutual holding company in excess of the amounts to which they would be entitled under s. 645.72 (4) (b) had the converted insurance company not reorganized and formed a mutual holding company. Any excess over such amounts shall be paid into the state treasury to the credit of the common school

fund.

**History:** 1997 a 227; 1999 a 30

**644.29 Involuntary dissolution of domestic mutual holding companies.** A mutual holding company may at any time during a voluntary dissolution under ss. 181.1401 to 181.1407 apply to the commissioner to have dissolution continued under the commissioner's supervision. Any distribution to members shall be limited in the same manner as under s. 644.28 (5) and any excess over such amounts shall be paid into the state treasury to the credit of the common school fund.

**History:** 1997 a 227; 1999 a 30

**EXHIBIT B**  
**MHC PLAN**

**MUTUAL HOLDING COMPANY PLAN**

**of**

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY**

**Under Chapter 644 of the**

**Wisconsin Insurance Code**

**Dated September 30, 2016**

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**Exhibits**

Exhibit A - Adopting Resolutions

Exhibit B - Second Amended and Restated Articles of Incorporation of Converted AFMIC

Exhibit C - Third Amended and Restated Bylaws of Converted AFMIC

Exhibit D - Articles of Incorporation of AFI MHC

Exhibit E - Bylaws of AFI MHC

Exhibit F - Articles of Incorporation of AmFam Holdings, Inc.

Exhibit G - Bylaws of AmFam Holdings, Inc.

Exhibit H - Directors and Officers of AFI MHC, AmFam Holdings, Inc., and Converted AFMIC

## **PREAMBLE**

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, a Wisconsin mutual insurance company (“AFMIC”), intends to restructure into a mutual holding company structure pursuant to Chapter 644 of the Wisconsin Insurance Code (the “Restructuring”).

## **RECITALS**

A. By a unanimous written consent action dated September 30, 2016, the Board of Directors of AFMIC (the “Board of Directors”) passed certain resolutions attached hereto as Exhibit A (the “Adopting Resolutions”) which, among other things, (i) found that the Restructuring is fair and equitable to AFMIC’s Policyholders and is expected to benefit AFMIC and its Policyholders for the reasons set forth therein, (ii) adopted this Plan, (iii) directed that this Plan be submitted to the Wisconsin Commissioner for approval as provided in Wis. Stat. § 644.07(4), and (iv) subject to approval by the Wisconsin Commissioner, directed that this Plan be submitted for approval by the Members of AFMIC, and that the proposed Second Amended and Restated Articles of Incorporation of Converted AFMIC (attached hereto as Exhibit B) (the “Second Amended and Restated Articles”) be submitted for approval by the Members of AFMIC, as provided by Wis. Stat. § 644.07(8) and/or applicable provisions of the current Amended and Restated Articles of Incorporation of AFMIC dated March 8, 2016 (the “Current AFMIC Articles”) and the current Bylaws of AFMIC (the “Current AFMIC Bylaws”);

B. For United States federal income tax purposes, it is intended that the transactions consummated pursuant to the Restructuring will qualify as non-recognition transactions under sections 368(a) and 351(a) of the Internal Revenue Code, respectively, and that this Plan will be, and is hereby, adopted as a plan of reorganization for purposes of the Internal Revenue Code.

## **ARTICLE 1 DEFINITIONS**

As used in this Plan, the following words or phrases have the following meanings. The following definitions shall be equally applicable to both the singular and plural forms and to both genders of any of the terms herein defined:

“Adopting Resolutions” has the meaning set forth in the Recitals.

“AFI MHC” means American Family Insurance Mutual Holding Company.

“AFMIC” means American Family Mutual Insurance Company.

“American Family Member Group” initially means the following companies: Converted AFMIC, American Standard Insurance Company of Ohio (“ASICO”), and American Family Insurance Company (“AFIC”), together with such other wholly owned subsidiaries of AFI MHC as may be designated as such by the Board of Directors of AFI MHC from time to time.

“American Family Member Company” means a company in the American Family Member Group.

“Board of Directors” means the Board of Directors of AFMIC.

“Contract Rights” means a Policyholder’s right to receive the insurance coverage specified in the Policyholder’s Policy in accordance with the terms and provisions thereof.

“Converted AFMIC” means American Family Mutual Insurance Company, S.I., the converted mutual insurance company.

“Current AFMIC Articles” means the Amended and Restated Articles of Incorporation of AFMIC dated March 8, 2016 and in effect as of the date hereof.

“Current AFMIC Bylaws” means the Second Amended and Restated Bylaws of AFMIC dated May 23, 2016 and in effect as of the date hereof.

“Effective Date” means the date upon which the Restructuring becomes effective, which will be the date upon which the Wisconsin Commissioner issues a certificate of incorporation to AFI MHC.

“Foley & Lardner LLP” means the law firm of Foley & Lardner LLP.

“In Force” means, with respect to a Policy, issued and not cancelled or otherwise terminated. Whether a Policy is In Force is determined based on the records of the company that issued the Policy.

“Member” means a Policyholder who, by the records of AFMIC or AFI MHC, and by their respective Articles of Incorporation and Bylaws, is a Member of AFMIC or AFI MHC, as applicable.

“Membership Interest” means: (i) prior to the Effective Date, the voting rights of a Member arising under the Wisconsin Insurance Code and the Current AFMIC Articles and Current AFMIC Bylaws, including the right to vote on the election of directors and the right to vote on any plan of conversion, voluntary dissolution, or amendment of the Articles of Incorporation; and (ii) on and after the Effective Date, the voting rights of a Member arising under the Wisconsin Insurance Code and the Articles of Incorporation and Bylaws of AFI MHC, including the right to vote on the election of directors and the right to vote on any plan of conversion, voluntary dissolution, or amendment of the Articles of Incorporation. “Membership Interest” does not include any Members’ Rights in Surplus, if any.

“Person” means a natural person, partnership, firm, association, corporation, joint-stock company, limited liability company, limited liability partnership, trust, government, government agency, state or political subdivision of a state, public or private corporation, board of directors, association, estate, trustee, or fiduciary, or any similar entity.

“Plan” means this Mutual Holding Company Plan, including all Exhibits attached hereto.

“Policy” means an insurance policy or contract (other than a reinsurance contract), or any binder or a renewal certificate issued by AFMIC (or, on and after the Effective Date, any American Family Member Company) in the course of business and not cancelled or otherwise terminated.

“Policyholder” means a Person identified in the records of AFMIC, Converted AFMIC, and/or any other American Family Member Company as the owner of one or more Policies issued by such company.

“Public Hearing” means the public hearing conducted by the Wisconsin Commissioner or a hearing examiner designated by the Wisconsin Commissioner regarding the Plan, pursuant to the provisions of Wis. Stat. § 644.07(6).

“Record Date” means the date established by the Board of Directors to determine which AFMIC Members will be eligible to vote for approval of the Plan.

“Record Date Members” means Persons who are Members on the Record Date.

“Resolution Date” means September 30, 2016, the date the Board of Directors passed the Adopting Resolutions.

“Resolution Date Members” means Record Date Members who were also Members on the Resolution Date.

“Restructuring” has the meaning set forth in the Preamble.

“Rights in Surplus” means: (i) prior to the Effective Date, any rights of a Member arising under the Current AFMIC Articles or Chapter 611 of the Wisconsin Insurance Code to a return of the surplus in respect of Policies of AFMIC, including rights of Members to a distribution of such surplus in dissolution or conversion proceedings under Chapter 611 of the Wisconsin Insurance Code; and (ii) on and after the Effective Date, any rights of a Member of AFI MHC arising under its Articles of Incorporation or Chapter 644 of the Wisconsin Insurance Code to the net worth of AFI MHC, including rights of Members of AFI MHC to a distribution of any portion of the net worth of AFI MHC in dissolution or conversion proceedings under Chapter 644 of the Wisconsin Insurance Code.

“Second Amended and Restated Articles” means the proposed Second Amended and Restated Articles of Incorporation of Converted AFMIC (attached hereto as Exhibit B) that will go into effect on the Effective Date of the Restructuring.

“Special Meeting” means the special meeting of Members of AFMIC called for the purpose of approving this Plan.

“Subsidiary Policyholder Member” means a Person who was not a Member of AFMIC immediately prior to the Effective Date of the Restructuring and who becomes a Member of AFI MHC by virtue of being a Policyholder of AFIC or ASICO.

“Wisconsin Commissioner” means the Office of the Commissioner of Insurance for the State of Wisconsin.

“Wisconsin Insurance Code” means the insurance laws of the State of Wisconsin, codified in Chapters 600 to 655 of the Wisconsin Statutes, and all applicable regulations thereunder.

## **ARTICLE 2 THE RESTRUCTURING**

**2.1 Formation of AmFam Holdings, Inc.** On or before the Effective Date, AFMIC shall incorporate AmFam Holdings, Inc. as a Wisconsin business corporation under Chapter 180 of the Wisconsin Statutes.

**2.2 Formation of AFI MHC.** Pursuant to Wis. Stat. § 644.07(10)(a), on the Effective Date, AFI MHC shall be incorporated as a Wisconsin mutual holding company under Chapter 644 of the Wisconsin Insurance Code, as evidenced by the issuance of a certificate of incorporation by the Wisconsin Commissioner.

**2.3 Preservation of Mutuality.** As more particularly described in Section 2.4, on and after the Effective Date, the former Members of AFMIC, together with the policyholders of other American Family Member Companies who or which have become Members as provided for herein and in the Articles of Incorporation of AFI MHC, will constitute 100% of the Members of AFI MHC, and AFI MHC will indirectly own 100% of the shares of voting stock of Converted AFMIC. In this manner, the mutuality of AFMIC is preserved.

**2.4 The Restructuring.** Effective as of 12:01 a.m. on the Effective Date, and in accordance with the terms of this Plan and Chapter 644 of the Wisconsin Insurance Code, the following will occur:

- (a) AFMIC will become a Wisconsin stock insurance company;
- (b) All Membership Interests and Rights in Surplus of AFMIC will be extinguished and the Members of AFMIC will become Members of AFI MHC, with such rights and privileges, including Membership Interests and Rights in Surplus of AFI MHC, as are provided for pursuant to the Wisconsin Insurance Code and the Articles of Incorporation and Bylaws of AFI MHC;
- (c) Provided the Board of Directors of AFMIC has not exercised its authority under Section 2.8(b)(ii), all policyholders of AFIC and ASICO will become Members of AFI MHC, with such rights and privileges as are provided for pursuant to the Wisconsin Insurance Code and the Articles of Incorporation and Bylaws of AFI MHC;
- (d) AmFam Holdings, Inc. will be issued 100% of the initial shares of voting stock of Converted AFMIC;
- (e) AFI MHC will be issued 100% of the initial shares of voting stock of AmFam Holdings, Inc.;
- (f) (i) AmFam, Inc. and American Family Life Insurance Company will transfer 100% of the limited liability company membership interests of New Ventures, LLC to AmFam Holdings, Inc.; and  
(ii) AmFam, Inc. and American Family Life Insurance Company shall assign to AmFam Holdings, Inc., and AmFam Holdings, Inc. shall assume, all of AmFam, Inc.'s and American Family Life Insurance Company's rights and obligations under the Operating Agreement of New Ventures, LLC, and any related agreements or undertakings; and
- (g) Converted AFMIC will make a distribution to New Ventures, LLC in the amount of \$50 Million.

**2.5 Corporate Existence of Converted AFMIC.** On the Effective Date, AFMIC shall change its name to "American Family Mutual Insurance Company, S.I.". Converted AFMIC shall be considered to have been organized at the time that AFMIC was organized. The Board of Directors of AFMIC will be deemed removed and replaced, without further action, by the initial Board of Directors of Converted AFMIC identified in Exhibit H. Except as otherwise provided herein, the officers, agents, and employees of Converted AFMIC shall continue in like capacity without regard to the Restructuring, subject to any and all existing rights and obligations of such parties and Converted AFMIC pursuant to existing contracts and applicable law.

**2.6 Continuation of Rights and Obligations.** The Restructuring of AFMIC into a stock insurance company subsidiary of AFI MHC shall in no way annul, modify or change any of AFMIC's existing suits, rights, property interests, contracts or liabilities. Converted AFMIC shall exercise all of the rights and powers and perform all of the duties conferred or imposed by law upon insurers writing the classes of insurance written by AFMIC before the Effective Date, and shall retain the rights and contracts existing prior to the Effective Date, except with respect to the Membership Interests and Rights in Surplus that are extinguished and replaced by Membership Interests and Rights in Surplus of AFI MHC, as provided in Paragraph 2.4(b).

**2.7 Continuation of Policies.** On and after the Effective Date, every Policy of AFMIC which is In Force shall continue as a Policy of Converted AFMIC, and all Contract Rights of all such Policies shall be and remain as they existed immediately prior to the Effective Date as Contract Rights of Policies of Converted AFMIC, except with respect to the Membership Interests and Rights in Surplus that are extinguished and replaced by Membership Interests and Rights in Surplus of AFI MHC, as provided in Paragraph 2.4(b).

**2.8 Members of AFI MHC.**

(a) Each person who, and each entity which, is a member of AFMIC, as provided in the records of AFMIC and in accordance with the Current AFMIC Articles and the Current AFMIC Bylaws, immediately prior to the Effective Date, shall become a Member of AFI MHC as of the Effective Date without further act, and shall remain a Member so long as at least one (1) policy of insurance by virtue of which such Member status in AFI MHC is derived remains In Force.

(b) (i) Each person who, and each entity which, is the owner of one (1) or more policies of insurance issued or assumed by AFIC or ASICO and In Force immediately prior to the Effective Date shall become a Member of AFI MHC as of the Effective Date without further act, and shall remain a Member so long as at least one (1) policy of insurance by virtue of which such Member status in AFI MHC is derived remains In Force.

(ii) Notwithstanding the provisions of Section 2.8(b)(i), the Board of Directors shall have authority, exercisable by Board action taken on or prior to the Effective Date, to nullify the provisions of Section 2.8(b)(i), with the result that policyholders of AFIC and ASICO shall become Members of AFI MHC under the provisions of Section 2.8(c).

(c) Each person who, and each entity which, becomes the owner of one (1) or more policies of insurance issued, renewed, or assumed by an American Family Member Company after the Effective Date shall become a Member of AFI MHC without further act, commencing with the date any such policy is first In Force, and shall remain a Member so long as at least one (1) policy of insurance by virtue of which such Member status in AFI MHC is derived remains In Force.

(d) Any person who, or entity which, has become a Member of AFI MHC as described in Section 2.8(a), (b), or (c) shall cease to be a Member; and all associated rights and privileges, including without limitation the Membership Interest and Rights in Surplus, if any, of such Member, shall cease; as of the date no policy of insurance by virtue of which such Member status is derived remains In Force, whether as a result of lapse, expiration, nonrenewal, cancellation, termination, or novation of such policy.

**2.9 Articles of Incorporation and Bylaws of Converted AFMIC.** On the Effective Date, the Current AFMIC Articles shall, without further act or deed, be amended and restated as set forth in the Second Amended and Restated Articles attached hereto as Exhibit B. On the Effective Date, the Current AFMIC Bylaws shall, without further act or deed, be amended and restated as set forth in the Third Amended and Restated Bylaws attached hereto as Exhibit C.

**2.10 Articles of Incorporation and Bylaws of AFI MHC.** On the Effective Date, the Articles of Incorporation of AFI MHC shall be as set forth in the Articles of Incorporation attached hereto as Exhibit D. On the Effective Date, the Bylaws of AFI MHC shall be as set forth in the Bylaws attached hereto as Exhibit E.

**2.11 Articles of Incorporation and Bylaws of AmFam Holdings, Inc.** On the Effective Date, the Articles of Incorporation of AmFam Holdings, Inc. shall be as set forth in the Articles of Incorporation attached hereto as Exhibit F. On the Effective Date, the Bylaws of AmFam Holdings, Inc. shall be as set forth in the Bylaws attached hereto as Exhibit G.

**2.12 Sale of Voting Stock.** The Board of Directors has no current plans for the sale of voting stock of Converted AFMIC, AmFam Holdings, Inc., or any other affiliated company to third parties.

### **ARTICLE 3 ADOPTION BY THE BOARD OF DIRECTORS**

**3.1 Adoption by the Board of Directors.** The Adopting Resolutions were approved by the Board of Directors by a unanimous written consent action effective on September 30, 2016.

### **ARTICLE 4 SUBMISSION TO, AND APPROVAL BY, THE WISCONSIN COMMISSIONER**

**4.1 Submission of the Plan.** This Plan shall be submitted to the Wisconsin Commissioner for formal Public Hearing and approval. In addition to the Plan, AFMIC will submit to the Wisconsin Commissioner, among other things, the following documents:

- (a) The proposed Articles of Incorporation and proposed Bylaws of AFI MHC;
- (b) The proposed Articles of Incorporation and proposed Bylaws of AmFam Holdings, Inc.;
- (c) The proposed Second Amended and Restated Articles and proposed Third Amended and Restated Bylaws of Converted AFMIC; and
- (d) So much of the following information relative to AFI MHC as the Wisconsin Commissioner reasonably requires:
  - (1) The names and, for the preceding 10 years, all addresses and occupations of all proposed directors and officers;
  - (2) All agreements relating to AFI MHC to which any proposed director or officer is a party;
  - (3) The amount and sources of the funds available for organization expenses and initial operating expenses;
  - (4) The proposed compensation of directors and officers;
  - (5) The proposed capital; and
  - (6) A business plan of AFI MHC for the first five (5) years of operation.

**4.2 Public Hearing.** This Plan is subject to the approval of the Wisconsin Commissioner who, pursuant to Wis. Stat. § 644.07(6), must hold a Public Hearing on the Plan after receipt thereof.

**4.3 Notice to Policyholders of Public Hearing.** AFMIC shall mail notice of the Public Hearing to the last-known address of each person who was a Policyholder of AFMIC on the Resolution Date as such appears on the records of AFMIC. The notice shall be mailed not more than sixty (60) days and not less than ten (10) days before the scheduled date of the Public Hearing. The notice shall be accompanied by a copy of this Plan, and any comment that the Wisconsin Commissioner considers necessary for the adequate information of Policyholders. AFMIC's failure to mail notice to a Policyholder as required by this Paragraph 4.3 will not invalidate a Public Hearing if the Wisconsin Commissioner determines that AFMIC substantially complied with this Paragraph 4.3 and attempted in good faith to mail notice to all Policyholders entitled thereto.

**4.4 Notice to Other Insurance Commissioners of Public Hearing.** The notice, documents and/or comment(s) described in Paragraph 4.3 shall also be mailed to the insurance commissioner of every jurisdiction in which AFMIC is authorized to do any business. The notice shall be mailed not more than sixty (60) days and not less than ten (10) days before the scheduled date of the Public Hearing.

**4.5 Statements by Policyholders and Other Insurance Commissioners.** In accordance with such hearing procedures as the Wisconsin Commissioner or the designated hearing examiner may prescribe, any Policyholder identified in Paragraph 4.3 and any insurance commissioner identified in Paragraph 4.4 may present written or oral statements at the Public Hearing and may present written statements within a period after the Public Hearing specified by the Wisconsin Commissioner or the hearing examiner. The Wisconsin Commissioner shall take statements so presented into consideration in making the determination to approve the Plan.

**4.6 Approval by the Wisconsin Commissioner.** The Wisconsin Commissioner shall approve the Plan unless he or she finds that the Plan violates the law, is not fair and equitable to Policyholders, or is contrary to the interests of Policyholders or the public.

**4.7 Potential Stipulation and Order.** The Wisconsin Commissioner may request that AFMIC, Converted AFMIC, AFI MHC, and/or AmFam Holdings, Inc., among others, enter into a Stipulation and Order or other form of agreement(s) with the Wisconsin Commissioner containing various covenants and/or undertakings binding upon such parties as a condition of the approval contemplated in Paragraph 4.6. The Board of Directors has authorized the Officers of AFMIC to represent AFMIC in all negotiations with the Wisconsin Commissioner related to his or her review and approval of the Plan and has further authorized the Officers of AFMIC to negotiate and execute, on behalf of AFMIC and, if necessary, Converted AFMIC, AFI MHC, and/or AmFam Holdings, Inc. or any other affiliated company, any such Stipulation and Order or other form of agreement(s) with the Wisconsin Commissioner which, in the Officers' sole judgment and discretion, are reasonable and necessary to secure regulatory approval of the Plan.

## **ARTICLE 5 APPROVAL BY MEMBERS**

**5.1 Member Vote.** After approval of this Plan by the Wisconsin Commissioner, the Plan shall be submitted at the Special Meeting to a vote of those persons who are Members of AFMIC on the Record Date. Voting on the Plan shall be in accordance with: (i) Wis. Stat. § 644.07(8); and (ii) the Current AFMIC Articles and Current AFMIC Bylaws. Wis. Stat. § 644.07(8) provides that voting on the Plan shall be in accordance with the Current AFMIC Articles and Current AFMIC Bylaws, but in no event shall the required vote to approve the Plan be less than a majority of those Resolution Date Members voting. The Current AFMIC Articles provide that

an amendment to such Articles (which amendment is a component element of the Plan) must be approved by a vote of three-fourths of those Record Date Members voting at the Special Meeting. Therefore, the Plan will be deemed approved if: (i) not less than a majority of Resolution Date Members; and (ii) not less than three-fourths of Record Date Members, present and voting in person or by proxy at the Special Meeting, approve the Plan. Only proxies specifically related to this Plan may be used for a vote on approval of the Plan.

**5.2 Notice of Meeting of Policyholders.** Notice of the Special Meeting must be mailed to each Record Date Member not less than 30 days in advance of the Special Meeting. Notice of the Special Meeting shall be sent to the last-known address of each Record Date Member and may be included with any notice sent under Paragraph 4.3.

## **ARTICLE 6 CONDITIONS PRECEDENT TO RESTRUCTURING**

**6.1 Approval of Wisconsin Commissioner and Members.** This Plan shall not become effective, and the Restructuring shall not be consummated, until the Plan has been approved as follows:

(a) This Plan (including the proposed Second Amended and Restated Articles and the Third Amended and Restated Bylaws of Converted AFMIC, the proposed Articles of Incorporation and Bylaws of AmFam Holdings, Inc., and the proposed Articles of Incorporation and Bylaws of AFI MHC) is approved by the Wisconsin Commissioner as set forth in Article 4; and

(b) This Plan is approved by the Members as set forth in Article 5.

**6.2 Private Letter Ruling or Tax Opinion.** This Plan shall not become effective, and the Restructuring shall not be consummated, until AFMIC receives a private letter ruling issued by the Internal Revenue Service and/or an opinion of Foley & Lardner LLP or other independent tax counsel to AFMIC, in either case or in combination, substantially to the effect that:

(a) Neither the Members nor any Subsidiary Policyholder Member will recognize taxable gain or loss in connection with the Restructuring; and

(b) Neither AFI MHC, AmFam Holdings, Inc., nor AFMIC will recognize taxable gain or loss in connection with the Restructuring.

**6.3 Securities Law Opinion.** This Plan shall not become effective, and the Restructuring shall not be consummated, until AFMIC receives either a “no action” letter from the Securities and Exchange Commission, and/or an opinion from Foley & Lardner LLP or other independent legal counsel in form and substance satisfactory to the duly authorized Officers of AFMIC with respect to federal and state securities law matters.

**6.4 Other Regulatory Approvals.** This Plan shall not become effective, and the Restructuring shall not be consummated, until AFMIC has received all other regulatory approvals that the duly authorized Officers of AFMIC deem to be necessary or appropriate.

**6.5 Issuance of Certificates.** This Plan shall not become effective, and the Restructuring shall not be consummated, until the issuance by the Wisconsin Commissioner of a new certificate of authority for Converted AFMIC and a certificate of incorporation for AFI MHC and the issuance by the Wisconsin Department of Financial Institutions of a certificate of incorporation for AmFam Holdings, Inc.

**ARTICLE 7**  
**ADDITIONAL PROVISIONS**

**7.1 Directors and Officers.** Upon Restructuring, the directors and officers of AFI MHC, AmFam Holdings, Inc., and Converted AFMIC shall be those individuals identified in Exhibit H hereto. The directors and officers of all other affiliated companies shall be the directors and officers of such companies serving immediately prior to the Effective Date, in each case until their successors have been duly elected and qualified.

**7.2 Liability of Member.** A Member of AFI MHC shall not, by virtue of being a Member, be personally liable for the acts, debts, liabilities, or obligations of AFI MHC.

**7.3 Expenses.** AFMIC shall not pay compensation of any kind to any Person in connection with this Plan other than regular salaries to AFMIC personnel. This Paragraph does not prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, financial advisors, actuaries or other consultants for services performed in the independent practice of their professions. All expenses of the Restructuring, including any expenses incurred by the Wisconsin Commissioner and the prorated salaries of any involved office staff members of the Wisconsin Commissioner and payable by AFMIC, shall be borne by AFMIC.

**7.4 Amendment or Withdrawal of Plan.** At any time before the Effective Date, AFMIC may, by resolution of the Board of Directors, amend or withdraw this Plan. The Wisconsin Commissioner shall determine whether any amendment made after the Public Hearing identified in Paragraph 4.2 changes this Plan in a manner that is materially disadvantageous to the Policyholders of AFMIC and, in such case, may require a further Public Hearing on the Plan as amended. If an amendment that the Wisconsin Commissioner determines is materially disadvantageous to any of the Policyholders is made after the Plan has been approved by the Members, the Plan as amended shall be submitted for reconsideration by the Members. If the Board of Directors approves an amendment that is not determined by the Wisconsin Commissioner to be materially disadvantageous to the Policyholders of AFMIC prior to the Effective Date, this Plan, including any exhibits hereto, shall be deemed amended in accordance with such amendment without the necessity of a further Public Hearing on the Plan or the submission of the Plan for reconsideration by the Members.

**7.5 Agreements Among Affiliates.** AFI MHC or any of its subsidiaries or affiliates may enter into tax sharing agreements, management agreements, administrative or other service contracts, other cost-sharing arrangements, and similar agreements with another affiliate, subject to any required regulatory approval by the Wisconsin Commissioner pursuant to the Wisconsin Insurance Code.

**7.6 Governing Law.** The terms of this Plan shall be governed by and construed in accordance with the laws of the State of Wisconsin, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

**7.7 Headings.** Article and Paragraph headings contained in this Plan are used for convenience only, and shall not be considered in construing or interpreting any of the provisions hereof.

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IN WITNESS WHEREOF, American Family Mutual Insurance Company, by authority of its Board of Directors, has caused this Plan to be signed by its Chairman, CEO, and President and attested to by its Chief Strategy Officer and Secretary on September 30, 2016.

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY

By: /s/ Jack C. Salzwedel

Jack C. Salzwedel,  
Chairman, CEO, and President

ATTEST:

By: /s/ David C. Holman

David C. Holman,  
Chief Strategy Officer and Secretary

**EXHIBIT C**

**MHC ARTICLES OF INCORPORATION**

# ARTICLES OF INCORPORATION

OF

## AMERICAN FAMILY INSURANCE MUTUAL HOLDING COMPANY (a Wisconsin Mutual Insurance Holding Company)

These Articles of Incorporation are executed for the purpose of forming a Wisconsin mutual holding company pursuant to the authority and provisions of Chapters 644, 611, and 181 of the Wisconsin Statutes.

### ARTICLE I.

#### Name

The name of the Corporation is American Family Insurance Mutual Holding Company.

### ARTICLE II.

#### Principal Office, Registered Office, and Registered Agent

The mailing and street address of the initial principal office of the Corporation is 6000 American Parkway, Madison, Dane County, Wisconsin 53783. The address of the initial registered office of the Corporation is 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717. The name of the Corporation's initial registered agent at such address is Corporation Service Company.

### ARTICLE III.

#### Incorporator

The name and address of the sole incorporator is Ann F. Wenzel, c/o American Family Mutual Insurance Company, S.I., 6000 American Parkway, Madison, Wisconsin 53783.

### ARTICLE IV.

#### Purposes

The purposes for which this Corporation is organized are to (i) engage in any lawful activity within the purposes for which mutual insurance holding companies may be organized under Chapter 644 of the Wisconsin Statutes, and (ii) to own at all times, directly or indirectly, at least fifty-one percent (51%) of the voting stock of American Family Mutual Insurance Company, S.I., the stock insurer into which American Family Mutual Insurance Company ("AFMIC") has been reorganized in accordance with the provisions of Chapter 644 of the Wisconsin Statutes and the Mutual Holding Company Plan filed with the Office of the Wisconsin Commissioner of Insurance (the "Plan").

## ARTICLE V.

### Members

5.1 Entitlement to Membership. The term “Member” shall mean, for purposes of these Articles and the Bylaws of the Corporation, each person and each entity which is deemed a Member of the Corporation pursuant to paragraphs (a) or (b) of this Section 5.1.

(a) Each person who, and each entity which, became a Member of the Corporation in accordance with the Mutual Holding Company Plan pursuant to which the Corporation was formed as of the effective date of such formation (the “Inception Date”) shall remain a Member so long as at least one (1) policy of insurance by virtue of which such membership in the Corporation is derived remains in force.

(b) Each person who, and each entity which: (i) is not a Member pursuant to Section 5.1(a); and (ii) is the owner of one (1) or more policies of insurance issued, renewed, or assumed after the Inception Date by an insurance company that has been designated in accordance with these Articles of Incorporation and the Bylaws of the Corporation as an American Family Member Company shall be a Member of the Corporation without further act, commencing with the date any such policy is first in force and continuing for so long as at least one (1) policy of insurance by virtue of which such membership in the Corporation is derived remains in force.

5.2 Cessation of Membership. Any person who, or entity which, has become a Member of the Corporation as described in Section 5.1(a) or (b) shall cease to be a Member; and all associated rights and privileges, including without limitation the Membership Interest and Rights in Surplus of such Member, if any, shall cease; as of the date no policy of insurance by virtue of which such Member status is derived remains in force, whether as a result of lapse, expiration, nonrenewal, cancellation, termination, or novation of such policy.

5.3 American Family Member Companies. Initially, the designated American Family Member Companies shall be American Family Mutual Insurance Company, S.I., American Standard Insurance Company of Ohio, and American Family Insurance Company. After the date hereof, the Board of Directors of the Corporation may take action to designate any direct or indirect subsidiary of the Corporation as an additional American Family Member Company. Notwithstanding the provisions of Section 5.1(b), at the time it takes action to designate an additional American Family Member Company, the Board of Directors may also specify the timing of admission of policyholders of such company as Members of the Corporation. For the avoidance of doubt: (a) once designated as an American Family Member Company, such company shall retain such designation unless and until it is no longer a direct or indirect subsidiary of the Corporation; and (b) the Corporation may have subsidiaries that are not American Family Member Companies.

5.4 Meetings of Members. Annual and special meetings of the Members shall be held at such time, date and place as determined by the Board of Directors in accordance with the Bylaws. Each Member of record as of the record date for any meeting of Members shall be entitled to vote in person or by proxy at such meeting in accordance with procedures prescribed in the Bylaws.

5.5 Voting Rights of Members. Each Member shall be entitled to one vote on each matter coming before a meeting of the Members and for each director to be elected regardless of the number of policies or amount of insurance and benefits held by such Member. The owner of a group policy shall have but one vote regardless of the number of individuals insured or benefited thereunder. Two or more persons who qualify as policyholders under

a single policy shall be deemed one Member for purposes of voting and collectively shall be entitled to one vote. Fractional voting is not permitted. When a Member is a minor, the vote shall be vested in the parent or legal guardian of the minor.

5.6 Restrictions. No Member may transfer any rights arising out of such Member's status as a Member; provided, however, that such limitation shall not restrict the Member's right to assign a policy that is otherwise permissible pursuant to the terms of such policy and the Corporation's Bylaws.

5.7 Rights in Surplus. This Corporation shall be a mutual holding company, without capital stock. The Members of the Corporation shall have such Rights in Surplus of the Corporation as are provided for under Chapter 644 of the Wisconsin Statutes, as amended from time to time, or any successor provisions of Wisconsin law.

## ARTICLE VI.

### Board of Directors

The initial Board of Directors shall be those individuals named in the Plan. Thereafter, the Board of Directors shall be elected by the Members.

## ARTICLE VII.

### Amendment of Articles

7.1 Required Vote. These Articles of Incorporation may be amended by a vote of the lesser of: (i) two-thirds (2/3) of the Members present and voting in person or by proxy at a meeting of the Members; or (ii) a majority of the voting power held by the Members.

## ARTICLE VIII.

### Notice of Meetings

8.1 Notice of Meeting by Publication. In lieu of delivery of a notice of meeting of Members to each Member, the Corporation may publish a copy of the notice of meeting in a newspaper of general statewide circulation in the State of Wisconsin at least thirty (30) days prior to such meeting, together with such additional notice, if any, as may be required by the Commissioner of Insurance, or upon such notice and in such manner as may be provided by the laws of the State of Wisconsin and the Bylaws of the Corporation effective at the time such meeting is held.

8.2 Notice of Time and Place of Annual Meetings. In lieu of delivery to each Member of a notice of the annual meeting of Members at which directors are elected, the Corporation may print the time and place of such annual meeting conspicuously on each policy under which a Member derives a membership interest.

IN WITNESS WHEREOF, these Articles of Incorporation are executed on behalf of American Family Insurance Mutual Holding Company.

Dated: \_\_\_\_\_, 20\_\_.

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Ann F. Wenzel, Sole Incorporator

**EXHIBIT D**  
**MHC BYLAWS**

**BYLAWS**  
**OF**  
**AMERICAN FAMILY INSURANCE MUTUAL HOLDING COMPANY**

Adopted: \_\_\_\_\_, 20\_\_

**ARTICLE 1**  
**OFFICES**

The principal office of the Corporation shall be in the City of Madison, Dane County, Wisconsin, but the Corporation may also have offices at such other places as the Directors may from time to time designate or its business may require.

**ARTICLE 2**  
**MEETINGS OF MEMBERS**

Section 2.1 Annual Meetings and Notices. The annual meeting of the Members of the Corporation for the purpose of electing Directors and for the transaction of such other business as shall properly come before the meeting, shall be held at the principal office of the Corporation on the first Tuesday in March at 2:00 p.m., in each year. The notice of such meeting printed in any policy conferring membership in the Corporation shall constitute proper notice to the Member owning such policy of the time and place of the annual meetings. Notice of annual meetings may be given by any other means permitted under the Articles of Incorporation of the Corporation and the laws of the State of Wisconsin.

Section 2.2 Special Meetings. Special meetings of the Members shall be held at the principal office of the Corporation upon call by the Secretary, who shall call such special meeting, upon written request, filed with the Secretary at least sixty (60) days in advance of the date of such meeting, (1) by the Chairman of the Board, or (2) by a majority of the Board of Directors, or (3) by not less than 5% of the Members of the Corporation. Request for a special meeting must be in writing and shall state the proposed time, place, and purpose of such meeting. Special meetings shall be confined to the purposes stated in the call and matters germane thereto. Notice of special meetings of the Members shall be given not less than fifteen (15) days in advance of such meeting, or such longer period as may be required by the Articles of Incorporation or applicable law, and in such manner, consistent with applicable law and the Articles of Incorporation of the Corporation, as may be prescribed by resolution of the Board of Directors.

Section 2.3 Conduct of Meetings. The Chairman of the Board or the Board of Directors shall set and approve the agenda for Members meetings. The Chairman of the Board, or in the Chairman of the Board's absence, the President, or in the President's absence, the Secretary, shall call the meeting of the Members to order and shall act as chairperson of the meeting, and the Secretary of the Corporation shall act as Secretary of all meetings of the Members, but in the absence of the Secretary, or in the event the Secretary is acting as chairperson of the meeting, the presiding chairperson may appoint any other person to act as secretary of the meeting.

Section 2.4 Voting. Each Member, present in person or represented by proxy, at any annual or special meeting of the Members shall be entitled to cast one vote.

Section 2.5 Proxies. A Member may vote at any meeting of the Members in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Member by a written appointment form signed by or on behalf of the Member, or by electronically transmitting or authorizing the electronic transmission of the appointment to the person who will be appointed as proxy or to a proxy solicitation firm, proxy support service organization, or like agent authorized to receive the transmission by the person who will be appointed as proxy. Every electronic transmission shall contain, or be accompanied by, information that can be used to reasonably determine that the Member electronically transmitted or authorized the electronic transmission of the appointment. Any person charged with determining whether a Member electronically transmitted or authorized the electronic transmission of the appointment shall specify the information upon which the determination is made. Proxies shall be valid only for one meeting, to be specified therein, unless otherwise provided in the proxy, and any adjournments of such meeting. Proxies shall be dated and shall be filed with the records of the meeting. The Board of Directors shall have the power and authority to make rules establishing presumptions as to the validity and sufficiency of proxies. Proxies must be filed with and be in the hands of the Secretary at least five (5) days prior to the date of any annual or special meeting of the Members and any proxy not so filed shall not be voted.

Section 2.6 Quorum and Manner of Acting. A quorum shall be required for the transaction of business at any meeting of the Members. Ten (10) Members present in person or by proxy shall constitute a quorum. If a quorum is not present, the majority of those present and qualified to vote may adjourn such meeting from time to time without notice other than by announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting had it been held at the time originally fixed therefor. Unless otherwise provided by law, the Articles of Incorporation or these Bylaws, action at any annual or special meeting of the Members shall be by majority vote of Members entitled to vote, present either in person or by proxy.

Section 2.7 Record Date. The Board of Directors may fix a date for determination of record those Members who are entitled to notice of and to vote at meetings of Members, which date shall be not less than twenty (20) or more than ninety (90) days prior to such meeting.

Section 2.8 Waiver of Notice by Members. Whenever any notice is required to be given to any Member of the Corporation under the Articles of Incorporation or Bylaws or any provision of law, a waiver thereof in writing, signed at any time, whether before or after the time of meeting, by the Member entitled to such notice, shall be deemed equivalent to the giving of such notice; provided that such waiver in respect to any matter of which notice is required under any provision of law, shall contain the same information as would have been required to be included in such notice, except the time and place of meeting.

### **ARTICLE 3 DIRECTORS**

Section 3.1 General Powers and Number. The business and affairs of the Corporation shall be managed by a Board of Directors of not more than fifteen (15) and not less than the number required by Wisconsin law, at the discretion of the Board of Directors. The

actual number of the Directors shall be designated annually within these limits by the Board of Directors prior to the annual meeting. Except as expressly limited by law, all corporate powers of the Corporation shall be vested in and may be exercised by the Board of Directors.

Section 3.2 Classification. The Board of Directors shall be divided into three (3) groups, to be as nearly equal in number of Directors in each group as possible. The three groups are to be designated Group I, Group II, and Group III. The term of office of the Directors in Group III shall expire at the first annual meeting after their initial election and until their successors are elected and qualified; the term of office of the Directors in Group I shall expire at the second annual meeting after their initial election and until their successors are elected and qualified; and the term of office of the Directors in Group II shall expire at the third annual meeting after the initial election and until their successors are elected and qualified. At each annual meeting after the initial classification of the Board of Directors, the group of Directors whose term expires at the time of such election shall be elected to hold office until the third succeeding annual meeting and until their successors are elected and qualified.

Section 3.3 Tenure and Qualifications. Each Director shall hold office until the end of his or her term and until his or her successor shall have been elected, or until his or her prior death, resignation, or removal. A Director may be removed from office with or without cause by affirmative vote of two-thirds (2/3) of the remaining members of the Board of Directors, taken at a regular meeting or a special meeting called for that purpose. A Director may resign at any time by filing his or her written resignation with the Secretary of the Corporation.

No Director, not a former employee or Officer of the Corporation, shall be qualified to continue on the Board of Directors after retirement from his or her principal occupation unless the Nominating and Governance Committee recommends to the Board of Directors his or her continued service.

No Director shall be qualified to continue on the Board of Directors who, for whatever reason, fails to attend one-half or more of the total Board of Directors meetings and his or her committee meetings in any calendar year, or is absent for three (3) consecutive meetings either of the Board of Directors and his or her committee assignments or a combination of both.

No Director shall serve beyond the date of the regularly scheduled meeting immediately preceding his or her seventieth (70th) birthday.

A Director residing in an operating state of the Corporation's subsidiaries is encouraged to become a policyholder of one or more of the Corporation's subsidiaries.

Section 3.4 Nomination for Election to the Board of Directors. Nominations for election to the Board of Directors may be made by the Board of Directors or by any Member of the Corporation entitled to vote for election of Directors. Nominations, other than those made by, or on behalf of, the existing Board of Directors, shall be made in writing and shall be delivered or mailed to the Chairman of the Board, and/or the President of the Corporation, not less than ninety (90) days prior to the annual meeting of Members. Such notification shall contain the following information: (a) the name and address of each proposed nominee; (b) the principal occupation of each proposed nominee; and (c) the name and residence address of the nominating Member. Nominations not made in accordance herewith may be disregarded by the chairperson of the meeting, and in determining the total votes cast for any such nominee, such votes shall be disregarded.

Section 3.5 Regular and Special Meetings. Regular meetings of the Board of Directors shall be held at the Corporation's principal office or at such other place as may be designated by the Chairman of the Board. Such meetings shall be held at least quarterly at such times as the Directors shall prescribe. The Chairman of the Board may call special meetings of the Directors and he or she shall call a special meeting of the Board of Directors when requested, in writing, by three (3) Directors. The Secretary shall give notice of all special meetings in the manner provided herein.

Section 3.6 Annual Meeting. The annual meeting of the Directors shall be held on the same day and at the same place as the annual meeting of the Members and shall convene immediately after adjournment thereof. At such meeting the Directors shall elect Officers and standing committees. If for any reason the annual meeting of Directors is not held at the time designated, or if there is a failure to elect Officers and standing committees, such Officers and committees may be elected either at a special meeting called for such purpose or at the next regular meeting.

Section 3.7 Quorum and Manner of Acting. A majority of the Directors in office shall constitute a quorum for the transaction of business. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by the Articles of Incorporation or these Bylaws.

Section 3.8 Notice; Waiver. Notice of each special meeting of the Board of Directors shall be given by written notice delivered in person, by facsimile, e-mail, or other form of wire or wireless communication, or by mail or private carrier, to each Director at his or her business address or at such other address as such Director shall have designated in writing filed with the Secretary, in each case not less than forty eight (48) hours prior to the meeting. The notice need not describe the purpose of the special meeting of the Board of Directors or the business to be transacted at such meeting. If delivered by facsimile or e-mail, such notice shall be deemed to be given when sent. If mailed, such notice shall be deemed to be given when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by private carrier, such notice shall be deemed to be given when delivered to the private carrier. Whenever any notice whatever is required to be given to any Director of the Corporation under the Articles of Incorporation or these Bylaws or any provision of Wisconsin law, a waiver thereof in writing, signed at any time, whether before or after the date and time of meeting, by the Director entitled to such notice shall be deemed equivalent to the giving of such notice. A Director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the Director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 3.9 Vacancies. Any vacancy occurring in the Board of Directors, including a vacancy created by an increase in the number of Directors, may be filled until the next succeeding annual election by the Members by the affirmative vote of a majority of the Directors then in office, though less than a quorum of the Board of Directors; provided, that in the case of a vacancy created by the removal of a Director by vote of the Members, the Members shall have the right to fill such vacancy.

Section 3.10 Compensation. A Director may receive such compensation for services as is determined by resolution of the Board of Directors. A Director may also serve the Corporation in any other capacity and receive compensation therefor.

Section 3.11 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors or a committee thereof of which he or she is a member, at which action on any corporate matter is taken, shall be presumed to have assented to the action taken unless his or her written dissent to such action is filed with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 3.12 Committees. The Board of Directors, by resolution adopted by the affirmative vote of a majority of the total number of Directors then in office, may create an Executive Committee and one or more other committees, appoint members of the Board of Directors to serve on the committees, designate other members of the Board of Directors to serve as alternates, and appoint one or more Officers to serve as non-voting members of any committee. Any committee created by the Board of Directors shall have three or more voting members who shall serve at the pleasure of the Board of Directors. The committees, if any, shall have and may exercise such powers as may be provided in the Resolution of the Board of Directors creating such committee, as such resolution may from time to time be amended and supplemented, and subject to any requirements of applicable law. Unless otherwise provided by the Board of Directors in creating a committee, a committee may employ counsel, accountants and other consultants to assist it in the exercise of its authority. Each such committee shall fix its own rules governing the conduct of its activities and shall make such reports to the Board of Directors of its activities as the Board of Directors may request.

Section 3.13 Unanimous Consent without Meeting. Any action required or permitted by the Articles of Incorporation or Bylaws or any provision of law to be taken by the Board of Directors or any of its committees at a meeting or by resolution may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors then in office or, in the case of a committee, all of the voting members of such committee.

Section 3.14 Electronic Meetings. Except as herein provided and notwithstanding any place set forth in the notice of the meeting or these Bylaws, members of the Board of Directors (and any committees thereof created pursuant to Article 3, Section 3.12 hereof) may participate in regular or special meetings by, or through the use of, any means of communication by which all participants may simultaneously hear each other, such as by conference telephone or other electronic device. If a meeting is conducted by such means, then at the commencement of such meeting the chairperson or committee chair, as applicable, shall inform the participating Directors that a meeting is taking place at which official business may be transacted. Any participant in a meeting by such means shall be deemed present in person at such meeting. Notwithstanding the foregoing, no action may be taken at any meeting held by such means on any particular matter which the chairperson or committee chair, as applicable, determines, in his or her sole discretion, to be inappropriate under the circumstances for action at a meeting held by such means. Such determination shall be made and announced in advance of such meeting.

## ARTICLE 4 OFFICERS

Section 4.1 Principal Officers. The Principal Officers of the Corporation shall be Chief Executive Officer, President, Secretary, and Treasurer, each of whom shall be elected by the Board of Directors. Additional officers may be elected by the Board of Directors, including without limitation one or more Assistant Treasurers and Assistant Secretaries (together with the Principal Officers, the "Officers"). The Board of Directors may also authorize any officer to appoint one or more of such other Officers. The duties of the Officers shall be those enumerated herein and any further duties designated by the Board of Directors.

Section 4.2 Chairman of the Board. The Board of Directors shall elect a Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members and the Board of Directors. In the absence or inability of the Chairman of the Board to act, the President shall preside at the meeting of the Members and the Board of Directors, and in the absence of both the Chairman of the Board and the President, the Secretary shall preside at such meetings.

Section 4.3 Chief Executive Officer. The Chief Executive Officer shall exercise general administrative leadership and direction of the Corporation in conformity with actions and controls established and maintained by the Board of Directors. The Chief Executive Officer shall have the power and authority to execute on behalf of the Corporation any and all documents, contracts, instruments, or other papers to which the signature of the Corporation is to be attached; provided, however, a facsimile signature may be printed, engraved, or stamped on any approved document, contract, instrument or other papers of the Corporation.

Section 4.4 President. The President shall be the Chief Operating Officer of the Corporation and shall, in concurrence with the Chief Executive Officer and actions of the Board of Directors, direct the activities of its Officers. The President shall have the power and authority to execute on behalf of the Corporation those documents, contracts, instruments, or other papers to which the signature of the Corporation is to be attached; provided, however, a facsimile signature may be printed, engraved or stamped on any approved document, contract, instrument, or other papers of this Corporation. The President shall exercise the discretion of and perform generally all of the duties incident to the Office of President and such other and further duties as may be required by the Board of Directors and the Chief Executive Officer.

Section 4.5 Succession. Should the Chief Executive Officer be absent or unable to act, the President shall assume the role of the Chief Executive Officer with the same power and authority vested in the Chief Executive Officer. If the President is unable to serve, the Board of Directors shall designate another Officer or Director to discharge the duties of the Chief Executive Officer with the same power and authority vested in the Chief Executive Officer in accordance with the current plan of succession as determined by the Board of Directors.

Section 4.6 Secretary. The Secretary shall keep a record of the Minutes of the meetings of the Members and of the Board of Directors. He or she shall countersign all instruments and documents executed by the Corporation which the laws or Bylaws require to be so executed; affix to instrument and documents the seal of the Corporation; keep in proper books therefor the transactions of the Corporation; and perform such other duties as usually are incident to such office.

Section 4.7 Treasurer. The Treasurer, subject to the control of the Board of Directors, shall collect, receive, and safely keep all moneys, funds, and securities of the Corporation, and attend to all its pecuniary affairs. He or she shall keep full and complete accounts and records of all his or her transactions, of sums owing to or by the Corporation, and all rents and profits in its behalf. The books of account and records shall at all reasonable times be open to the inspection of the Members, and he or she shall furnish to the Members at their annual meeting and to the Directors, whenever requested by them, such statements and reports of the same as are necessary to a full exhibit of the financial condition of the Corporation.

Section 4.8 Term, Removal & Salaries. All Officers shall hold office for one year and until their successors are elected and qualified, or until their prior death, resignation, or removal. The Board of Directors may remove any officer and, unless restricted by the Board of Directors or these Bylaws, an officer may remove any officer appointed by that officer, at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed. The appointment of an officer does not of itself create contract rights. Salaries of all Officers, with the exception of any Assistant Treasurers and any Assistant Secretaries, shall be fixed by the Board of Directors.

## **ARTICLE 5 FUNDS OF THE CORPORATION**

Section 5.1 Deposits. All funds of the Corporation shall be deposited or invested in such depositories or in such securities as may be authorized from time to time by the Board of Directors or appropriate committee under authorization of the Board of Directors.

Section 5.2 Investments. All investments and deposits of funds of the Corporation shall be made and held in its corporate name, except that securities kept under a custodial agreement or trust arrangement with a bank or banking and trust company may be issued in the name of a nominee of such bank or banking and trust company and except that securities may be acquired, and held in bearer form.

Section 5.3 Loans. All loans contracted on behalf of the Corporation and all evidences of indebtedness that are issued in the name of that Corporation shall be under the authority of the resolution of the Board of Directors. Such authorization may be general or specific.

Section 5.4 Contracts. The Board of Directors may authorize one or more Principal Officers or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. Such authorization may be general or specific.

Section 5.5 Disbursements. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such Officer or Officers, agent or agents of the Corporation and in such manner, including by means of facsimile signature, as shall from time to time be determined by or under authority of a resolution of the Board of Directors

Section 5.6 Borrowing Prohibited. No Director or Officer of the Corporation shall borrow money from the Corporation, or receive any compensation for selling, aiding in the sale, or negotiating for the sale of any property belonging to the Corporation, or for negotiating any loan for or by the Corporation.

Section 5.7 Voting of Securities Owned by the Corporation. Subject always to the specific directions of the Board of Directors, (a) any shares or other securities issued by any other corporation and owned or controlled by this Corporation may be voted at any meeting

of security holders of such other corporation by the Chairman of the Board or the President of this Corporation, or their designee, and (b) whenever, in the judgment of the Chairman of the Board or the President, it is desirable for this Corporation to execute a proxy or written consent in respect to any shares or other securities issued by any other corporation and owned by this Corporation by the Chairman of the Board or President, or their designee, without necessity of any authorization by the Board of Directors, affixation of corporate seal, or countersignature or attestation by the Secretary or Assistant Secretary. Any person or persons designated in the manner above stated as the proxy or proxies of this Corporation shall have full right, power, and authority to vote the shares or other securities issued by such other corporation and owned by this Corporation the same as such shares or other securities might be voted by this Corporation.

## **ARTICLE 6 INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Corporation shall, to the fullest extent permitted or required by Section 644.18(2) and Sections 181.0871 to 181.0881 and 181.0889, inclusive, of the Wisconsin Statutes, including any amendments thereto (but in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than prior to such amendment), indemnify its Directors and Officers against any and all Liabilities, and advance any and all reasonable Expenses, incurred thereby in any Proceeding to which any such Director or Officer is a Party because he or she is or was a Director or Officer of the Corporation. The Corporation shall also indemnify an employee who is not a Director or Officer of the Corporation, to the extent that the employee has been successful on the merits or otherwise in defense of a proceeding, for all Expenses incurred in the Proceeding if the employee was a party because he or she was an employee of the Corporation. The rights to indemnification granted hereunder shall not be deemed exclusive of any other rights to indemnification against Liabilities or the advancement of Expenses which a Director, Officer or employee may be entitled under any written agreement or resolution of the Board of Directors, vote of the Members, the Wisconsin Insurance Code or otherwise. The Corporation may, but shall not be required to, supplement the foregoing rights to indemnification against Liabilities and advancement of Expenses under this Article 6 by the purchase of insurance on behalf of any one or more of such Directors, Officers or employees, whether or not the Corporation would be obligated to indemnify or advance Expenses to such Director, Officer or employee under this Article 6. All capitalized terms used in this Article 6 and not otherwise defined herein shall have the meaning set forth in Section 181.0871 of the Wisconsin Statutes.

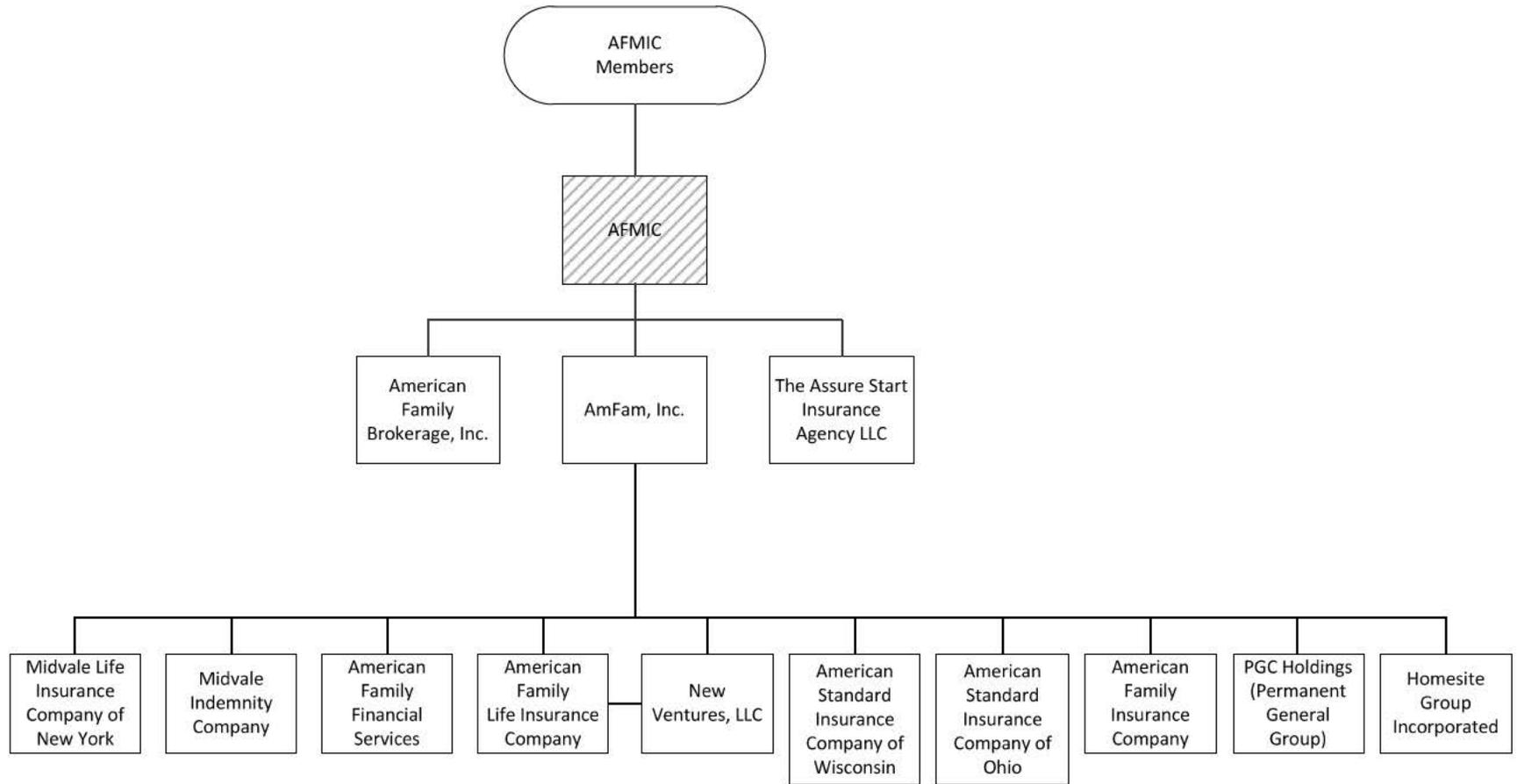
## **ARTICLE 7 AMENDMENTS**

Section 7.1 Amendment by Board Action. These Bylaws may be amended or a provision of the Bylaws waived by a vote of three-fourths (3/4) of the Directors voting at any regular or special meeting of the Board of Directors.

Section 7.2 Implied Amendments. Any action taken or authorized by the Board of Directors, which would be inconsistent with the Bylaws then in effect but is taken or authorized by the affirmative vote of not less than the number of Directors required to amend the Bylaws so that the Bylaws would not be inconsistent with such action, shall be given the same effect as though the Bylaws had been amended or suspended to the extent and for so long, but only to the extent and for so long, as is necessary to permit the specific action so taken or authorized.

**EXHIBIT E-1**

**STRUCTURE BEFORE REORGANIZATION**



**EXHIBIT E-2**

**STRUCTURE AFTER REORGANIZATION**

