June 13, 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: American Mutual Life Insurance Company (the "Company")
Incoming letter dated June 10, 1996

On the basis of the facts presented, but without necessarily agreeing with your analysis, the Division will not recommend any enforcement action to the Commission if: (1) pursuant to the described reorganization (the "Reorganization") the membership interests of existing policyholders in the Company become membership interests in American Mutual Holding Company (the "Holding Company"); and (2) after the Reorganization, new policyholders automatically receive membership interests in the Holding Company as the result of purchasing new Policies (as defined in your letter) from the Company, without registration of these membership interests under the Securities Act of 1933 or the Securities Exchange Act of 1934.

In arriving at this position, we have taken particular note of your representations that: (1) the Reorganization will be undertaken in accordance with the referenced Iowa legislation regarding the formation of mutual insurance holding companies (the "Iowa Statute"); (2) the membership rights of the holders of membership interests in the Holding Company will be substantially the same as those they had as holders of membership interests in the Company, as required by the Iowa Statute; (3) after the Reorganization, holders of the Policies automatically will become members of the Holding Company in accordance with the Iowa Statute and the Holding Company's articles of incorporation and bylaws; (4) the Reorganization is subject to the approval of the Iowa Commissioner of Insurance after providing notice to policyholders and conducting a public hearing at which policyholders and other interested parties may appear and be heard; (5) the approval referenced in (4), above, may be granted only after a determination that the Reorganization is fair and equitable to existing policy holders; (6) the Holding Company will be subject to regulation by the Iowa Commissioner of Insurance at a level equal to that of an Iowa domestic insurance company (e.g., the Holding Company's ability to engage in non-insurance related activities is limited to the same extent as an Iowa domestic insurance company and the Holding Company may not

merge with, be acquired by or acquire another entity without approval of the Iowa Insurance Commissioner and the Iowa Attorney General); and (7) the Holding Company will not be permitted to make any payment of income, dividends, or any other distributions of profits, except as directed or approved by the Iowa Commissioner of Insurance or pursuant to a voluntary dissolution or liquidation approved by the Iowa Commissioner of Insurance.

The Division of Investment Management has asked us to inform you that, on the basis of the facts presented but without necessarily agreeing with your legal analysis, it would not recommend enforcement action to the Commission under the Investment Company Act of 1940 (the "1940 Act") if the Holding Company is operated in the manner you describe without registration under the 1940 Act, in reliance upon your opinion as counsel that the Holding Company is not an investment company under Section 3 of the 1940 Act.

Because these positions are based on the representations made to the Divisions in your letter, it should be noted that any different facts or conditions might require different conclusions. Moreover, this response represents the Divisions' position on enforcement action only and does not express any legal conclusions on the questions presented.

Sincerely,

William H. Carter

William H. Carter
Special Counsel

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June 10, 1996

1933 Act/§§ 2(1); 3(a)(8)
1934 Act/ § 12(g)
1940 Act/§§ 2(a)(17), (22), (36); 3(a); 3(b)(1); 3(c)(3)

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: American Mutual Life Insurance Company

Dear Sir/Madam:

We are counsel to American Mutual Life Insurance Company (the "Company"), an Iowa mutual insurance company, and a proposed company to be known as American Mutual Holding Company (the "Holding Company"). The Holding Company will be formed under the laws of the State of Iowa. The Company is engaged in the business of issuing policies of life and health insurance and annuity contracts ("Policies").

I. REQUEST:

We respectfully request that the Division of Corporate Finance (the "Staff") advise us that no enforcement action will be recommended by the Staff to the Securities and Exchange Commission (the "Commission") if (i) the reorganization of the Company and operation of the Holding Company is undertaken, (ii) the membership interests of the policyholders in the Company become membership interests of the Holding Company and (iii) the policyholders receive membership interests in the Holding Company automatically by operation of law as a result of purchasing Policies from time to time without registration under the

Securities Act of 1933 (the "1933 Act"), the Securities Exchange Act of 1934 (the "1934 Act"), or the Investment Company Act of 1940 (the "1940 Act").

II. STATEMENT OF FACTS:

A. Background

Driven by a variety of economic and regulatory factors, change in the insurance industry has eroded profit margins and is generating increased competition from all types of financial institutions. Further, the marketplace is placing additional emphasis on the financial strength of insurance companies as measured and evaluated by rating agencies and other industry observers. The maintenance of superior risk-based capital ratios is increasingly important to companies and their customers, and the need to make large capital investments in technology and automated processes is growing. Moreover, the critical mass necessary to remain competitive continues to increase as both the insurance and banking industries consolidate. These and other factors have made it necessary for insurance companies to seek additional capital to enhance their financial strength and flexibility and to support long term growth through creative internal strategies and mergers and acquisitions, both of which are essential elements for future survival in the insurance industry as it presently exists.[1]

Raising capital poses monumental difficulties for mutual companies, however, because they are constrained by their organizational form. Except for surplus notes (a type of subordinated debt security), which are subject to restrictions and are not feasible for all but the very largest mutual companies, a mutual's ability to raise capital is limited to internally generating funds.

Recognizing the capital-raising difficulties faced by mutual insurers and the present competitive state of the insurance industry, the Iowa legislature in 1995 amended Iowa's insurance law to permit mutual insurance companies to reorganize

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[1] See Robert Stein, Industry Faces Roadblocks in Profitable Search, National Underwriter (Jan. 22, 1996); Lucy Barnes McDowell, The Future of the Industry: A Rating Company Perspective, Resource (Nov. 1995); Moody's Investors Services, Research Report on the Life Insurance Industry (Sept. 1995).

into a mutual insurance holding company structure. The legislation provides a potentially significant alternative structure to help strengthen the Iowa mutual insurance industry. The legislation was recommended by the Iowa Insurance Development Board (whose membership includes the Iowa Director of Economic Development) and was supported by the Iowa Commissioner of Insurance, who presented the proposed legislation in the Iowa Senate Commerce Committee.

The legislation permits an Iowa mutual insurer to reorganize into two separate entities -- a mutual insurance holding company and a stock life insurance company (which would be a subsidiary of the holding company). As recognized by various observers of the mutual insurance industry, the legislation offers at least two significant advantages. First, such a structure would enable the mutual insurance holding company to raise equity capital on the basis of the subsidiary stock life company's assets and prior earnings history, as opposed to a structure requiring it to raise capital using a new, start-up subsidiary which would lack the financial size and history to raise significant amounts of equity capital. In addition, such a structure would facilitate potential acquisitions by the issuance of stock to consummate acquisitions of stock companies, while at the same time maintaining the ability to effect mergers with mutual insurance companies.

The Iowa mutual insurance holding company law was patterned after legislation passed by Congress in 1987 authorizing savings associations operating in mutual form to reorganize so as to become a mutual holding company which owns a stock savings association. See 12 U.S.C.A. § 1467a(o) (West 1989 & Supp. 1995); 12 C.F.R. Part 575 (1995). The charter of a mutual holding company formed to own a stock savings association must confer upon existing and future depositors of the resulting stock association the same membership rights in the mutual holding company as was conferred upon the depositors by the charter of the reorganizing association in the mutual form as in effect immediately prior to the reorganization. 12 C.F.R. § 575.5 (1995). At least twelve states have also adopted legislation authorizing mutual holding companies to own stock savings associations. To the Company's knowledge, there have been at least 40 reorganizations by savings institutions into the mutual holding company form since 1988.

At present, the Company is organized and operates as a mutual life insurance company. Every policyowner has rights both as an insured and as a member of the Company. As an insured, a

policyowner is entitled to insurance coverage or annuity benefits to the extent and in the amount specified in the insured's Policy. In addition to a policyowner's right as insured, each policyowner has a membership interest which consists of the right to vote as provided in the Company's articles of incorporation and bylaws and such other rights as are provided by law. The Company proposes to reorganize in a manner similar to the reorganizations in which savings associations in mutual form are reorganized into mutual holding companies owning stock savings associations with the membership interests being held in the mutual holding company. In such reorganization, a mutual insurance holding company would be formed which would own a stock life insurance company.

As is customary for a mutual insurance company, the Company has no authority to issue shares of capital stock and has no access to market sources of equity capital. Only by generating and retaining earnings from year-to-year business operations is the Company able to increase its surplus position.

The principal purpose of the Company's reorganization is to enhance the Company's strategic and financial flexibility by creating, among other things, an opportunity for obtaining additional capital from sources currently unavailable to it as a mutual insurance company and by creating a corporate structure which will facilitate mergers and acquisitions. At present, the Company can increase its capital primarily through retained surplus contributed by its business. However, the Company believes that this source of capital will not be sufficient on a long-term basis to achieve the growth required to execute its strategic plan successfully. Upon reorganization, the Company will have a corporate structure potentially enabling it to access capital markets through the sale of a portion of the capital stock of a stock life insurance company. In addition, such a structure will facilitate potential acquisitions by the issuance of stock to consummate acquisitions of stock companies, while at the same time maintaining the ability to effect mergers with mutual insurance companies.

B. Iowa Legislation

In 1995, the Iowa Legislature enacted Iowa Code § 521A.14, which enables a domestic mutual insurance company (the "Mutual Company") to reorganize into a mutual insurance holding

company structure. Iowa Code § 521A.14(1)(a) (supp. 1995).[2] Reorganization under this statute is accomplished by: (1) reorganizing a Mutual Company into two separate entities, a mutual insurance holding company and a stock life insurance company, and (2) separating the membership interests and contractual rights of Mutual Company policyholders. The Mutual Company's policyholders' membership interests are transferred to the holding company, while their contractual rights remain at the Mutual Company, which converts into a stock life insurance company as a wholly owned stock subsidiary (the "Stock Life Company") of the holding company. § 521A.14(2)(a). Holders of insurance policies of the Stock Life Company, through their status as policyholders, automatically become members of the holding company in accordance with the Iowa Code and the holding company's articles of incorporation and bylaws. § 521A.14(1)(b). Membership interests in a mutual insurance holding company are not securities under Iowa law. § 521A.14(6).

All of the Stock Life Company's initial shares of capital stock must be issued to the holding company. § 521A.14(1)(b). Moreover, the holding company must at all times own, directly or indirectly through one or more intermediate holding companies, a majority of the voting shares of the capital stock of the Stock Life Company.[3] Id.; see also 1996 Amended Code § 521A.14(7) (any transfer or pledge of a majority interest

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[2] Section 521A.14 was amended in April of 1996. See Iowa General Assembly Act, House File 2363, Acts of 1996 Regular Session of the General Assembly of the State of Iowa ("1996 Amended Code").

[3] The phrase "majority of the voting shares of the capital stock of the reorganized insurance company" is defined under the statute to mean the shares of the capital stock of the reorganized insurance company subsidiary which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company subsidiary for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company subsidiary. See 1996 Amended Code § 521A.14(7).

An intermediate holding company subsidiary of a mutual insurance holding company is subject to the jurisdiction of the Iowa Commissioner as if it were a mutual insurance holding company. 1996 Amended Code § 521A.14(7).

shall be deemed void to extent necessary for the holding company to maintain unencumbered majority control). A holding company may own a majority of the voting shares of more than one stock insurance company.

Any reorganization undertaken pursuant to § 521A.14 is subject to the approval of the Iowa Commissioner of Insurance (the "Iowa Commissioner"). Before approving a reorganization, the Iowa Commissioner must provide notice and conduct a public hearing at which policyowners and other interested parties may appear and be heard. If satisfied that the proposed reorganization is fair and equitable to existing policyholders and that their interests are properly protected, the Iowa Commissioner may approve the reorganization. § 521A.14(2)(a). The Iowa Commissioner may also require, as a condition for approval, modifications to a proposed plan as the Iowa Commissioner finds necessary for the protection of the policyholders' interests. Id. The Iowa Commissioner retains jurisdiction at all times over any mutual insurance holding company to assure that policyholders' interests are protected. Id. Additionally, a holding company's articles of incorporation and any amendments to such articles are subject to approval by the Iowa Commissioner and the Iowa Attorney General in the same manner as those of a domestic insurance company. § 521A.14(3).

A mutual insurance holding company cannot dissolve or liquidate without the approval of the Iowa Commissioner or as ordered by a court. § 521A.14(4). In the unlikely event of a voluntary dissolution, the articles of incorporation provide that at the time of such dissolution any surplus which remains after payment of the liabilities shall be distributed to the members in a manner as determined by the holding company's board of directors and as approved by the Iowa Commissioner.

Section 521A.14(4) of the Iowa Code provides that the mutual insurance holding company is automatically a party in any proceeding commenced against the Stock Life Company under Chapter 507C of the Iowa Code for the purpose of liquidating, rehabilitating, conserving or otherwise reorganizing the Stock Life Company. Section 521A.14(4) further provides that the assets of the mutual insurance holding company are available to satisfy the claims of Stock Life Company's policyowners.

An initial public offering of stock by the holding company's reorganized stock insurance subsidiary or an intermediate insurance holding company would require the prior

approval of the Iowa Commissioner. See Iowa Administrative Code § 46.1(3).

Pursuant to Chapter 508B of the Iowa Code, a mutual insurance holding company can be demutualized in the same manner as a mutual life insurance company and must be similarly approved by the Iowa Commissioner. In the event a plan of conversion were to be adopted and approved in the future, section 508B.3 of the Iowa Code permits various methods of conversion, each of which is subject to approval by the Iowa Commissioner. The Company has no plans to convert or demutualize the Holding Company.

A mutual insurance holding company is subject to regulation at a level equal to that of an Iowa domestic insurance company. A mutual insurance holding company is governed by the following statutory and regulatory requirements, which are identical to, or which parallel, the regulatory requirements imposed upon domestic insurance companies:

(i) the Iowa Commissioner retains jurisdiction at all times over a mutual insurance holding company to assure that policyholders' interests are protected; Iowa Code § 521A.14(2)(a);

(ii) a mutual insurance holding company's articles of incorporation and any amendments to such articles are subject to approval by the Iowa Commissioner and the Iowa Attorney General in the same manner as those of a domestic insurance company; Iowa Code § 521A.14(3);

(iii) a mutual insurance holding company is deemed to be an insurer subject to the Iowa Insurer Supervision, Rehabilitation and Liquidation Act, Iowa Code Chapter 507C, in the same manner as domestic insurance companies; Iowa Code § 521A.14(4);

(iv) a mutual insurance holding company is subject to the provisions of the Iowa Insurance Holding Company Systems Act to the same extent as domestic insurance companies; accordingly, its ability to engage in non-insurance related activities through its subsidiaries is limited to the same extent as a domestic insurance company; see Iowa Code,

Chapter 521A.2; Iowa Administrative Code § 46.6(1);

(v) a mutual insurance holding company's assets are available to satisfy claims of policyholders in a liquidation in the same manner as a domestic insurance company; Iowa Code § 521A.14(4);

(vi) a mutual insurance holding company may not merge with, be acquired by or acquire another entity without approval of the Iowa Commissioner in accordance with Chapter 521 of the Iowa Code (relating to Consolidation and Reinsurance) and Chapter 521A of the Iowa Code (the Insurance Holding Company Systems Act); see Iowa Code §§ 521.5 and 521A.3; in addition, in the case of a merger or consolidation, separate approval by the Iowa Attorney General is required; Iowa Code § 521.5;

(vii) a mutual insurance holding company is required to provide to the Iowa Division of Insurance an annual report containing historical and prospective information, including financial statements, an investment plan covering all assets, any intention it has of borrowing money and information regarding any "closed block" formed as part of a reorganization; see Iowa Administrative Code § 46.6(4);

(viii) the majority of the voting shares of the capital stock of the reorganized insurance company subsidiary (which is required at all times to be owned, directly or indirectly, by the mutual insurance holding company) may not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or any intermediate holding company; see 1996 Amended Code § 521A.14(7); and

(ix) any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance or

hypothecation or alienation by a mutual insurance holding company or any intermediate holding company, in or on the majority of the voting shares of the reorganized insurance company shall be deemed void in inverse chronological order of the date of such transaction to the extent necessary to give the mutual insurance holding company unencumbered direct or indirect ownership of a majority of such voting shares; see 1996 Amended Code § 521A.14(7).

C. Proposed Reorganization

Pursuant to § 521A.14, the Company has prepared a Plan of Reorganization (the "Plan") pursuant to which it intends to reorganize into a mutual insurance holding company (the "Reorganization"). Upon consummation of the Plan (the "Effective Time"), the Company would concurrently restate its Articles of Incorporation to become a stock life insurance company and would change its corporate name. At the Effective Time, the membership interests and the contractual rights of the Company's policyholders would be separated. The membership interests of the policyholders in the Company would become membership interests in the Holding Company. The contractual rights would remain with the Stock Life Company, which would become a wholly owned stock subsidiary of the Holding Company.[4]

At the Effective Time, each member's membership interest in the Holding Company would follow and not be severable from the Policy by virtue of which the member's membership in the Holding Company is derived. The Company does not intend to issue certificates evidencing the membership interests in the Holding

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[4] A hearing was held on the Reorganization on November 21, 1995 and the Plan was subsequently approved by the Iowa Commissioner on December 13, 1996. The Plan was approved by the Company's policyowners at a special meeting which was held on November 28, 1995. Each policyowner of record as of September 30, 1995 was entitled to cast one vote at the special meeting, irrespective of the number of Policies owned by such policyowners as of such date. Prior to the special meeting, the Company distributed to each voting policyowner a copy of the Plan, together with a "Policyowner Information Statement" setting forth the terms and conditions of the Plan and background information relating to the Reorganization.

Company nor does Iowa law require such issuance. Rather, a list of members will be kept on the books and records of the Holding Company.

Membership interests in the Holding Company are not transferable or alienable in any manner whatsoever except if ownership of the insurance policy itself is transferred. Moreover, upon lapse or termination of the Policy by virtue of which the member's membership in the Holding Company is derived, the member's membership in the Holding Company shall automatically terminate and cease and the member shall not be entitled to receive any distribution or compensation from the Holding Company for the member's membership in the Holding Company. In other words, all membership interests would remain in force only so long as the individual remained a policyholder of the Stock Life Company. When the Stock Life Company sells additional Policies, the holders of designated Policies which satisfy certain requirements automatically by operation of law would acquire membership interests in the Holding Company, effective as of the second anniversary of the consummation of the Reorganization.

Members are entitled to vote in the election of directors of the Holding Company and to vote on such other matters as are presented to them from time to time by the Holding Company's board of directors. In addition, in the event that any of the following actions has not been approved by a resolution duly adopted by the Holding Company's board of directors, the affirmative vote of at least seventy-five percent (75%) of the members is required to approve: (i) the sale, lease or exchange of all or a substantial part of the assets of the Holding Company; (ii) the distribution of all or any part of the surplus of the Holding Company; (iii) the dissolution or liquidation of the Holding Company; (iv) the acquisition, merger or consolidation of the Holding Company, or any similar proposal; (v) the demutualization of the Holding Company; and (vi) amendments to the articles of incorporation of the Holding Company. The board of directors of the Holding Company may, in its sole discretion, determine whether (and when) any of the actions set forth in (i) - (vi) above, which has not been approved by a resolution duly adopted by the board of directors, irrespective of how or by whom the proposition was initiated, will be submitted to the members. Votes would be cast by ballot which would be distributed to voting policyowners at least twenty days prior to the meeting at which such vote is to be taken. Each member would be entitled to only one vote, irrespective of

the number of policies owned by such member. Votes may not be cast by proxy.

The Holding Company would at all times, directly or indirectly through one or more intermediate holding companies, control the Stock Life Company by owning at least a majority of the voting shares of the Stock Life Company. The Holding Company, as a mutual insurance holding company, would not have any capital stock.

Pursuant to the Reorganization, the Holding Company will receive all of the initial shares of the Stock Life Company's capital stock. Under its proposed Articles of Incorporation, the Holding Company will be prohibited from selling, transferring, or otherwise alienating, subjecting to a lien, mortgaging, granting a security interest in, using as collateral or hypothecating in any manner a majority of the voting shares of the Stock Life Company.[5] See also 1996 Amended Code § 521A.14(7) (prohibiting same).

The Holding Company will not be permitted to make any payment of income, dividends contingent upon an apportionment of profits, or any other distributions or profits, except to the limited extent provided in Section 7.3 of the Holding Company's Articles of Incorporation or as otherwise directed or approved by the Commissioner of Insurance of the State of Iowa.[6] The Company has no intention of causing the Holding Company to pay dividends or other distributions to its members.

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[5] By statute, any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance or hypothecation or alienation by a mutual insurance holding company or one of its affiliates of, in or on the majority of the voting shares of the reorganized insurance company will be deemed void in inverse chronological order of the date of such transaction to the extent necessary to give the mutual insurance holding company unencumbered direct or indirect ownership of a majority of such voting shares. See 1996 Amended Code § 521A.14(7).

[6] Section 7.3 of the Holding Company's Articles of Incorporation provides that in the event of a voluntary dissolution or liquidation, any surplus which remains after payment of the Holding Company's liabilities shall be distributed to the members in a manner as determined by the Holding Company's board of directors and as approved by the Commissioner of Insurance of the State of Iowa.

Accordingly, as is the case for mutual holding companies in the savings and loan context, it is intended that the Holding Company will reinvest earnings in the Holding Company or in the Stock Life Company or other subsidiaries. The Board of Directors of the Holding Company may, in its sole discretion, from time to time waive receipt by the Holding Company of any or all dividends, or any part thereof, from Stock Life Company upon the condition that the amount of any dividends waived be held by the Stock Life Company for the sole benefit of those policyholders who are members.

Under its proposed Articles of Incorporation, the Holding Company shall have the power to conduct any lawful business and shall have perpetual existence unless sooner dissolved as provided by law. Each person who is the owner of a Policy issued or assumed by the Company which is in force at the time of the reorganization shall automatically become a member of the Holding Company by operation of law so long as such Policy remains in force. Each person who becomes the owner of a designated Policy issued by the Stock Life Company after the Reorganization shall become a member of the Holding Company and have a membership interest in the Holding Company by operation of law so long as the Policy remains in force.

After the Reorganization, merger and acquisition activity of the Holding Company would be subject to regulation at a level which is at least equal to the level of regulation which is currently imposed on the Company. The Holding Company would be permitted to acquire another company only if the business of such company was reasonably ancillary to the insurance business. § 521A.2. A proposed merger or acquisition would be subject to prior approval by the Iowa Commissioner, the Board of Directors of the Holding Company and, in certain cases, by the members. In addition, a proposed merger or consolidation would be subject to prior approval by the Iowa Attorney General. § 521.5.

In accordance with Iowa law, the Holding Company would at all times be subject to the jurisdiction and oversight of the Iowa Commissioner. § 521A.14.

III. DISCUSSION:

A. Registration Pursuant to the Securities Act of 1933

Based upon the foregoing facts and the analysis set forth herein, it is our opinion that the membership interests created from time to time in the Holding Company and the insurance policies to be offered by and through the Stock Life Company would not constitute the offer or sale of a "security" as that term is defined in the 1933 Act.

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

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

15 U.S.C.A. § 77b(1) (West 1981 & Supp. 1995).

1. The Insurance Policies are not Securities

The Stock Life Company will offer various types of insurance including life or health insurance and annuities. Insurance policies, including those offered by stock insurance companies such as the Stock Life Company, are not considered securities. Congress explicitly stated this in the 1933 Act. Section 3(a)(8) of the 1933 Act exempts insurance policies from the registration requirements of the 1933 Act if the policies are "issued . . . subject to the supervision of the insurance commissioner . . . of any state . . . of the United States . . ." 15 U.S.C.A. § 77c(8) (West 1981 & Supp. 1995). As the facts indicate, the Holding Company and the Stock Life Company would be subject to the supervision of the Iowa Commissioner. This exemption, by its terms, applies to all insurance policies issued by stock companies, mutual companies, and, as in the instant

case, both insurance by and membership in a mutual insurance holding company.

The fact that the policyholders are members of the Holding Company while their insurance policies are written by the Stock Life Company does not appear to be pertinent. The House Report on the 1933 Act states that the purpose of the exemption in section 3(a)(8) "makes clear what is already implied in the act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the act." H.R. Rep. No. 85, 73rd Cong., 1st Sess. 15 (1933), cited in SEC v. Variable Life Ins. Co. of Am., 359 U.S. 65, 74 n.4 (1959) (Brennan, J., concurring). Professor Louis Loss, who testified on behalf of the Commission before the Subcommittee of the Senate Committee on Banking and Currency concerning the scope of section 3(a)(8) stated that, in effect, the exemption is "supererogation." S. Rep. No. 2408, 81st Cong., 2d Sess. 33 (1950). Cf. Tcherepnin v. Knight, 389 U.S. 332, 342 n.30 (1967) (referring to the exemption as "clearly supererogation").

Certain types of insurance products that offer the prospect of a variable investment return tied to a separate investment account, such as variable annuities, may constitute securities. See SEC v. United Benefit Life Ins. Co., 387 U.S. 202 (1967); Variable Life Ins. Co. of Am., 359 U.S. 65 (1959). Thus, where the prospect of a variable investment return is significant and the policyholder assumes the investment risk, a security is involved. See 387 U.S. at 210-11; 359 U.S. at 71. However, in this case, conventional insurance would be purchased through the Stock Life Company and, as a result, a policyholder by operation of law would become a Holding Company member. This arrangement for the sale of conventional insurance is not within the legislative intent of the definition of a security. Accordingly, the policies available from the Stock Life Company would constitute "insurance," not "securities," as those terms are commonly understood.

2. The Membership Interests are not Securities

The definition of a security in section 2(1) of the 1933 Act includes both interests whose names have commonly accepted meanings, such as any note, stock, bond or debenture, as well as interests of "more variable character [that] were necessarily designated by more descriptive terms." SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 351 (1943). The term "membership interest" is not enumerated as a traditional class of security in section 2(1). However, certain non-traditional