

Securities Act of 1933 §2(a)(1)
Securities Exchange Act of 1934 §12(g)

VIA ELECTRONIC SUBMISSION

October 22, 2018

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

Re: Noridian Mutual Insurance Company d/b/a Blue Cross Blue Shield of North Dakota

Ladies and Gentlemen:

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

- Noridian Mutual Insurance Company d/b/a Blue Cross Blue Shield of North Dakota, a nonprofit mutual insurance company incorporated under the laws of North Dakota ("the Company"); and
- HealthyDakota Mutual Holdings, a nonprofit mutual holding company to be organized under the laws of North Dakota ("Holdings") for the purpose of becoming the sole member of the Company following the Reorganization.

The Reorganization will be effected under the provisions of Subsection 12 of §33.1 of Chapter 26.1-17 of the North Dakota Century Code ("Subsection 12"). Subsection 12 permits the Company, as a North Dakota mutual insurer, to reorganize by forming Holdings as a nonprofit mutual holding company, which will become the sole member of the Company by operation of law, and transferring the membership interests in the Company to Holdings (the "Reorganization").¹ A copy of Subsection 12 is attached hereto as Exhibit A.

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

¹ The Company was formerly organized as a nonprofit health service corporation before converting into a nonprofit mutual insurance company pursuant to §26.1-17-33.1 of the North Dakota Century Code (the "Century Code"). As a result, the Company is restricted from relying on North Dakota's mutual insurance holding company act as provided under §26.1-12.1 of the Century Code as the basis for the Reorganization. See §26.1-12.1-14 of the of the Century Code. This restriction prompted North Dakota's legislative branch to create Subsection 12 for the purpose of providing a means to permit a holding company reorganization for an entity, like the Company, that was formerly organized as a nonprofit health services corporation.

that the Securities and Exchange Commission (the "Commission") take any enforcement action if (i) upon the completion of the Reorganization, the membership interests of the current policyholders in the Company automatically convert to membership interests in Holdings, and (ii) following the Reorganization, future policyholders of the Company receive membership interests in Holdings automatically in accordance with the Reorganization, the provisions of Subsection 12 and the charter and bylaws of Holdings, in each case without registration of the membership interests under the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Membership interests in a domestic mutual insurance holding company do not constitute a security under North Dakota Law.²

II. Background

The Company is a nonprofit mutual insurance company that provides health insurance coverage to its policy holders (each a "Member," and collectively, the "Members") and is incorporated under the laws of North Dakota. In addition to its insurance operations, the Company has several subsidiaries which provide a variety of services ancillary to the provision of health insurance. The board of directors of the Company believes that the Reorganization will:

- enable the Company to maintain the benefits of mutuality while continuing its mission to improve the health and wellness of its Members;
- preserve nonprofit mutual status, at both the Company and the Holdings level, while providing flexibility for the use of for-profit entities within the holding company structure;
- allow more flexibility in how assets can be used across the entire enterprise as well as increase the Company's ability to operate more effectively with affiliates, subsidiaries and other companies in support of its mission;
- further insulate the Company's nonprofit insurance business and related business functions from risks that accompany the operations of certain non-regulated for-profit subsidiaries by re-locating these subsidiaries directly under Holdings;
- allow the declaration and payment of dividends by subsidiaries to Holdings for capital deployment within the holding company structure;
- preserve the Members' membership interests at the Holdings level, including the right to elect directors of Holdings and vote on amendments to the articles of incorporation of Holdings;

² See Chapter 26.1-12.1-11 of the Century Code.

- permit Holdings to make investments that may otherwise be limited under the present organizational structure; and
- enhance the Company's structural flexibility and support for its current and future business opportunities, including potential joint ventures, mergers and acquisitions.

Under the Company's present structure, each policyholder has rights both as an insured and as a member of the Company. As an insured, a policyholder is entitled to insurance coverage to the extent and in the amount specified in the insured's policy. The membership interests accompanying the insurance coverage include the right to vote in the election of directors of the Company and on other matters submitted to a vote of the membership. The terms of the insurance policies in force at the effective time of the Reorganization will not be changed by the Reorganization. In the Reorganization, the membership interests of the Company's policyholders will be transferred to Holdings and the policyholders' membership interests in Holdings will not be separately transferable from the underlying insurance policy. As is currently the case with respect to voting rights of the Company's policyholders, each member of Holdings will be entitled to only one vote on each matter submitted to a vote of the membership, irrespective of the number of Company insurance policies or contracts held by that member or of the nature of the coverage or services provided thereunder. The membership rights of the holders of membership interests in Holdings, including voting rights, will be substantially the same as the rights they presently have as holders of membership interests in the Company.

III. The Century Code

Subsection 12 permits a domestic nonprofit mutual insurance company to adopt a reorganization plan under which it may create a nonprofit mutual holding company which becomes the sole member of the nonprofit mutual insurance company by operation of law. In a reorganization under Subsection 12, the membership interests of the members of the restructuring company must be converted into membership interests in the nonprofit holding corporation. In this respect, the membership interests and contractual policyholder rights of the nonprofit mutual insurance company's policyholders are separated. The membership interests of the nonprofit mutual insurance company's policyholders are transferred to the nonprofit mutual holding company, while their contractual rights remain at the insurance company. Pursuant to a reorganization plan under Subsection 12, holders of insurance policies of the mutual insurance company, through their status as policyholders, automatically become members of the nonprofit mutual holding company.³

Any reorganization undertaken pursuant to Subsection 12 is subject to the approval of the Insurance Commissioner of the State of North Dakota (the "Insurance Commissioner").

³ See §26.1-17-33.1(12)(e).

Under Subsection 12, a restructuring company is required to submit an application for restructuring, consisting of revised articles and bylaws, the articles and bylaws of the nonprofit holding company, any share or membership interest transfer documents, authorizing resolutions and other materials the restructuring company deems pertinent to the restructuring to the Insurance Commissioner who may order a public hearing at which policyholders and other interested parties may appear and be heard.⁴ The Insurance Commissioner shall approve a reorganization plan unless he finds that any of the following will occur as a result of the proposed reorganization:

- The domestic insurance company that is subject to reorganization is unable to meet the requirements for the issuance of a certificate of authority to write the lines of insurance for which the domestic insurance company is presently licensed;
- The reorganization would substantially lessen competition in insurance or tend to create a monopoly in North Dakota;
- The financial condition of any party involved in the reorganization might jeopardize the financial stability of the insurance company or prejudice the interest of the insurance company's policyholders;
- Plans or proposals to liquidate the insurance company, to sell the insurance company's assets, to consolidate or merge with any person, or to make any other material change in the insurance company's business or corporate structure or management are unfair and unreasonable to policyholders of the company and are not in the public interest;
- The competence, experience, and integrity of those persons that would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control; or
- The reorganization is likely to be hazardous or prejudicial to the insurance buying public.⁵

The Company provided notice of the public hearing in connection with the Reorganization Plan consistent with North Dakota law by publishing notice of the public hearing in connection with the Reorganization Plan on the Company's website at <https://www.bcbsnd.com/>.⁶ In addition, the North Dakota Department of Insurance (the "Department") published notice of the public hearing in connection with the Reorganization Plan on the Department's website. The Company believes that the public notices provided

⁴ *Id.*

⁵ *Id.*

⁶ See subsection 4 of §26.1-10-03 of the Century Code.

by the Company and the Department, respectively, provided policyholders and other interested parties with due notice of the public hearing and the opportunity to attend the public hearing and express their views with respect to the Reorganization. The public hearing on the Reorganization Plan was held on April 11, 2018 in Bismarck, North Dakota. At the public hearing, representatives of the Company testified that, prior to the public hearing, the Company had not received any inquiries, either written or by telephone, about the Reorganization Plan. In addition, the Department stated that it was not aware of any objections to the Reorganization Plan that would be material to the factors under Subsection 12 and noted that no objections to the Reorganization Plan were offered at the hearing. The Insurance Commissioner approved the Reorganization Plan on April 18, 2018 via signed order (the "Order").

Subsection 12 also requires that the restructured company will continue to be treated as a mutual insurance company and remain subject to the provisions of the Century Code that apply to mutual insurance companies, former nonprofit health service organizations (under Subsection 12) and nonprofit corporations.⁷

The nonprofit mutual holding company will also be subject to requirements under the Century Code that are substantially equivalent to that to which the Company is currently subject as a domestic mutual insurer including the provisions of the Century Code that apply to mutual insurance companies specified in Subsection 12, as described below, and the provisions applicable to nonprofit corporations. For example, following the Reorganization:

- As a nonprofit mutual holding company, Holdings will not be permitted to offer, sell or otherwise issue securities and will have no authorized, issued or outstanding capital stock;
- The only means by which Holdings could issue capital stock would be for it to first undergo a full demutualization pursuant to the provisions of the Century Code applicable to domestic mutual insurers, which would require advance approval by the Insurance Commissioner and approval of the members of Holdings;⁸
- Holdings 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 membership interest, other than as approved by the Insurance Commissioner;
- Any voluntary liquidation and dissolution of Holdings would be governed by the Century Code and is subject to the approval of the Insurance

⁷ See §26.1-17-33.1(12)(a)-(c) of the Century Code.

⁸ The Company currently has no plans for Holdings to demutualize and issue capital stock following the Reorganization.

Commissioner.⁹ The Company's Members will have no liquidation or other rights with respect to Holdings in their capacities as such;

- As its sole member, Holdings could be deemed a party to any consolidation, rehabilitation or liquidation of the Company. In addition, in the event of any proceeding involving the Company, the assets of Holdings could be deemed assets of the Company for purposes satisfying the claims of the Company's policyholders;
- The Company and Holdings are charitable and benevolent organizations under the laws of the state of North Dakota, as such, laws relating to and affecting nonprofit charitable and benevolent corporations will be fully applicable to the Company and Holdings following the Reorganization;¹⁰
- Holdings' bylaws must specify requirements for member meeting notification, member approval of proposals submitted at a member meetings, quorum requirements, and member voting;¹¹
- Holdings' articles of incorporation may be amended, term of corporate existence extended, and bylaws adopted, amended, or repealed at any annual meeting, or at any special meeting called for that purpose, only by the affirmative vote of two-thirds of the members voting on the proposition;¹²
- Membership in Holdings will continue while the underlying policy is in force;¹³
- Every member of Holdings will be entitled to one vote on matters submitted to the vote of members;¹⁴
- Every member of Holdings must be notified of the time and place of the holding of meetings by written notice;¹⁵
- Members of Holdings will be permitted to vote by proxy;¹⁶ and,

⁹ See §26.1-17-33 of the Century Code. In addition, in connection with its approval of the Reorganization, the Insurance Commissioner required revision to the proposed bylaws for the Company following the Reorganization to remove any prohibition therein on the ability to seek payment from Holdings for the losses or expenses of the Company.

¹⁰ See §26.1-17-33.1(10) of the Century Code.

¹¹ See §26.1-12-06 of the Century Code. Note that this provision will no longer be applicable to the Company following the Reorganization pursuant to §26.1-17-33.1(12)(b) of the Century Code.

¹² See §26.1-12-07 of the Century Code. Note that this provision will no longer be applicable to the Company following the Reorganization pursuant to §26.1-17-33.1(12)(b) of the Century Code.

¹³ See 26.1-12-14 of the Century Code. Note that this provision will no longer be applicable to the Company following the Reorganization pursuant to §26.1-17-33.1(12)(b) of the Century Code.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See §26.1-12-16 of the Century Code.

- A merger or consolidation of Holdings or acquisition of control or acquisition of another insurer by Holdings is subject to compliance with the Century Code¹⁷. And any such merger would, to the same extent as a merger of a domestic mutual insurer, require the approval of the Insurance Commissioner.¹⁸

Additionally, the Insurance Commissioner will retain jurisdiction at all times over Holdings and its subsidiaries to assure that policyholders' interests are protected. For example, as part of its continuing oversight by the Insurance Commissioner, Holdings will be subject to recurring reporting requirements following the Reorganization that are similar to those currently submitted to the Department by the Company. While the Company will remain a filing entity for purposes of the Own Risk and Solvency Assessment ("ORSA") as promulgated by the National Association of Insurance Commissioners ("NAIC") and required by the Department, following the Reorganization,¹⁹ NAIC's ORSA requirements will also require Holdings to provide an enterprise risk report to the Department reflecting a group-level perspective on risk and capital, as a supplement to the existing legal entity view.²⁰ As such, because Holdings will be the ultimate controlling person of the Company, it will be required to file such report (a "Form F") with the Department on behalf of the entire holding company system including the Company and all other subsidiaries and affiliates within the holding company system which includes Holdings' ERM analysis with respect to the entire holding company enterprise.²¹

Notwithstanding the foregoing examples of consistent oversight and requirements, there are various provisions of the Century Code that are applicable to Holdings that differ from those that will be applicable to the Company following the reorganization. For example, following the effective date of the Reorganization, the Company will continue to operate solely as a nonprofit mutual insurance company and, as such, will be subject to requirements under the Century Code that limit its investment of funds and accumulations in certain types of assets and limit the amount of certain investment transactions for the protection of policyholders.²² For example, the Company is restricted from investing in subsidiaries if such investment exceeds twenty-five percent of the Company's admitted assets without approval from the Insurance Commissioner.²³ In contrast, the provisions of the Century Code that apply to Holdings, as specified explicitly in Subsection 12, do not include any reference to restrictions on investments, amounts that may be invested in subsidiaries, or

¹⁷ See §26.1-17-33.1(13) of the Century Code (citing transactions under §§26.1-10-03 and 26.1-10-03.1 and Chapter 26.1-07).

¹⁸ *Id.*

¹⁹ See §26.1-10.2(01)-(08) of the Century Code.

²⁰ See §26.1-10.2(01)-(06) (requiring that ORSA reports be prepared consistent with the NAIC own risk and solvency assessment guidance manual available at https://www.naic.org/store/free/ORSA_manual.pdf). The NAIC's manual states that one of the primary goals of the ORSA report is to provide a group-level perspective on risk and capital consistent with assessing an insurer's enterprise risk management (ERM) information and reporting.

²¹ See Chapter 45-03-05-17.2 of the North Dakota Administrative Code.

²² See §26.1-05-19 of the Century Code.

²³ See §26.1-17-33.1(7) of the Century Code

any restrictions on the ability to engage directly or indirectly in business other than insurance.²⁴

As described above, investments by Holdings in subsidiaries or otherwise are not subject to the same regulations as are applicable to a mutual insurance company under the Century Code. However, investments by the Company will continue to be subject to these restrictions, and distributions from the Company to Holdings will also be subject to strict regulation such that substantially all of the assets and business of the overall enterprise will be protected by the same degree of regulation before and after the Reorganization. The business of the Company will be regulated by the Insurance 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 Reorganization Plan

In accordance with Subsection 1 of §33.1 of Chapter 26.1-17 of the Century Code, the board of directors of the Company adopted a reorganization plan on February 23, 2018 (the "Reorganization Plan") pursuant to which it intends to reorganize into a nonprofit mutual holding company structure by, among other things, (i) causing the articles and bylaws of Holdings to become effective forming Holdings as the nonprofit mutual holding company and (ii) amending the charter and bylaws of the Company to reflect the Reorganization Plan including among other things, causing Holdings to become the sole member of the Company, causing the membership interests of Members of the Company to become membership interests in Holdings in accordance with the articles of incorporation and bylaws of Holdings and causing the Members' membership interests in the Company to be extinguished. As discussed above, the Company has submitted its proposed Reorganization Plan to the Insurance Commissioner for approval and received such approval following a public hearing. The Company plans to provide the Reorganization Plan, a letter to policyholders, a proxy card and a proxy statement containing information about the Reorganization (the "Member Approval Materials") to Members in connection with seeking Member approval of the Reorganization. The Company intends to hold a meeting of its Members, currently scheduled to be held in December of 2018, at which the eligible members may vote in person or by proxy to approve the Reorganization Plan. The Company plans to mail a notice of the meeting to policyholders (the "Notice") in the fall of 2018 in compliance with the Century Code²⁵ and solicit proxies via the Member Approval Materials beginning in late October of 2018. As required by the Reorganization Plan, and in compliance with Century Code, the Reorganization Plan and the transactions contemplated thereby must be approved by the affirmative vote of at least a majority of votes entitled to be cast by members of record on the record date, either in person or by proxy. The targeted

²⁴ See §26.1-17-33.1(12)(d) of the Century Code.

²⁵ Pursuant to §26.1-12-06, notice of an annual meeting must be mailed to all members at least sixty days before the meeting.

effective date for the Reorganization, subject to obtaining all regulatory and member approvals and the satisfaction of all of the other conditions to consummation of the Reorganization Plan (the "Effective Date"), is January 1, 2019.

Upon its reorganization into a mutual holding company structure, the Company will continue its corporate existence as a North Dakota nonprofit mutual insurance company and will be renamed Blue Cross Blue Shield of North Dakota. The membership interests of Members of the Company shall become membership interests in Holdings in accordance with the articles of incorporation and bylaws of Holdings and the Members' membership interests in the Company shall be extinguished. Holdings will become, by operation of law, the sole member of the Company following the Reorganization. For the Staff's convenience, please refer to the charts attached hereto as Exhibit B for a visual comparison of the companies' corporate structure before and after the Reorganization. As illustrated in Exhibit B, certain of the current subsidiaries of the Company will become directly held subsidiaries of Holdings post-reorganization. A description of the business of each of the subsidiaries and the Company's ownership is also included within Exhibit B. Policyholders in the Company prior to the Reorganization and members of Holdings following the Reorganization do not have any membership interests, expectations of any profits or otherwise derive any benefit from the subsidiaries.

As a nonprofit mutual holding company, Holdings is not permitted to offer, sell or otherwise issue securities. However, the subsidiaries are not restricted from issuing capital stock for capital raising purposes, or otherwise, prior to the Reorganization and would not be restricted from engaging in such transactions following the Reorganization.²⁶ The subsidiaries would also be permitted to distribute any proceeds from such transactions to Holdings. However, Holdings will be prohibited from making any such distributions to members. Any determination to offer capital stock in the future by the subsidiaries 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 the Company and compliance with regulatory requirements and approvals under North Dakota law.²⁷ In addition, any risks associated with offerings by the subsidiaries would be

²⁶ Prior to the Reorganization, approval of the Department and Insurance Commissioner is not required for the issuance of capital stock for capital raising purposes, or otherwise, by the Company's subsidiaries. However, such securities transactions by the subsidiaries are, and will continue to be, subject to regulation by the securities commissioner of North Dakota (the "Securities Commissioner"), as further described in the footnote below.

²⁷ In particular § 10-04 of the Century Code (the "North Dakota Securities Act") governs the issuance of sale of securities as supervised by the Securities Commissioner. The North Dakota Securities Act include, for example, the following provisions, each of which would be applicable to any proposed securities offerings by the subsidiaries:

- § 10-04-04: "It is unlawful for any person to sell, or offer for sale, any security in this state unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05 or 10-04-06 or it is a federal covered security;"
- § 10-04-08: "Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by qualification must be made by the issuer of the securities or by a registered broker-dealer by filing with the department;"
- 10-04-08.1: "The right to sell securities in this state shall not be granted in any case when it appears to the commissioner that the sale of such securities would work a fraud or deception on purchasers or the public, or that the proposed

reflected in Holdings' ERM reports filed with the Department, as discussed above, and would be subject to evaluation and analysis by the Department as part of its oversight responsibilities. There are no current plans to offer shares of the capital stock of the subsidiaries to the public, to other investors or in connection with acquisitions.

Current contractual rights and interests arising under written agreement or contract for or effecting insurance from the Company (the "Policies") will continue to apply to the Company following the Reorganization. The coverage terms and provisions of the existing Policies held by Members will not be changed as a result of the Reorganization. In addition, the benefits and the rights of Members specified in their existing Policies will not be reduced or altered in any way, and the premiums required to be paid as specified in those Policies will not be increased as a result of the Reorganization. The Company will remain fully obligated under all of the Company's Policies. Notwithstanding the foregoing, upon the renewal of the Policies, the forms and endorsements issued to the Members as policyholders of the Company may be made on new forms, in which case they will be filed with and approved by the Department. The coverage and benefits and associated premiums for such coverage and benefits under the new policy forms and endorsements are not expected to differ materially from those provided under the Policies.

Neither Holdings nor the Company intends to issue certificates evidencing the membership interests in Holdings. North Dakota law does not require such issuance. Rather, a list of members will be kept on the books and records of Holdings similar to how the Company currently keeps a list of its members.

Pursuant to the Reorganization Plan, Holdings will be organized under North Dakota law. The proposed articles of Incorporation and bylaws of Holdings are substantially similar to the current Articles and Bylaws of the Company. In particular, the current policyholders of the Company will constitute the members of Holdings, just as the policyholders of the Company currently are the members of the Company and will enjoy the same voting rights with respect to Holdings as they previously had in the Company. The business and the proposed charter and bylaws of Holdings, as a nonprofit mutual holding company differ in certain respects from the Company, as a mutual insurance company. For example, Holdings is being formed in order to serve as the sole member of the Company. Holdings will be permitted to engage in all acts permitted or not prohibited for a nonprofit mutual holding company under North Dakota law. Holdings will not be engaged in the business of insurance.

B. Effects of the Reorganization on Members and Policyholders

On the Effective Date, the membership interests and the contract rights of the Company's policyholders will be separated. Under Subsection 12, the Reorganization Plan

and the charter and bylaws of Holdings, policyholders' membership interests in the Company automatically will be extinguished and replaced with membership interests in Holdings. Policyholders' contractual rights will remain intact with the Company. Each person who becomes a policyholder of the Company on or after the Effective Date will automatically become a member of Holdings until such time as the Company's insurance policy or policies owned by the member are no longer owned or no longer remain in force. Membership interests in the Company prior to the Reorganization are not separately transferable from the related policy. Members of Holdings also will not be able to transfer their membership interest in Holdings or any right arising from such membership. A membership interest in Holdings will automatically terminate upon the lapse, non-renewal or other termination of the policy. No member of Holdings will be personally liable, as a member, for the debts, liabilities or obligations of Holdings or the Company, or subject to assessments of any kind.

Aside from the receipt of membership interests described above, Members of the Company before the Reorganization and members of Holdings after the Reorganization will not receive shares of stock, cash, additional insurance policy credits or consideration or payment of any other kind attributable to the Reorganization including with respect to the certain subsidiaries being transferred to Holdings. In addition, the charter of Holdings will prohibit Holdings from paying dividends or making other distributions or payments of income or profits to its members.

Pursuant to the Reorganization Plan, Holdings (whose members will be the Company's policyholders) will be the sole member of the Company. After the Reorganization, the membership interests in Holdings held by its members will include:

- the right to elect the board of directors of Holdings, (and which individuals will also be appointed to board of directors of the Company); and
- the right to vote on such other matters as may come before the members of Holdings at an annual meeting or special meeting of its members.

V. Summary of the Reorganization

The terms of the Reorganization may be summarized as follows: (i) the Reorganization will be undertaken in accordance with Subsection 12, which permits the formation of nonprofit mutual holding companies by nonprofit mutual insurance companies, (ii) the membership rights of members of Holdings will be substantially the same as membership rights of the Company's policyholders', (iii) on and after the Effective Date, persons who hold or subsequently acquire policies of the Company will automatically become members of Holdings, (iv) the Reorganization is subject to the approval of the majority of votes cast by the eligible members of the Company and the approval by the Insurance Commissioner after a public hearing on the Reorganization Plan for which public notice must be provided along with the opportunity to appear (which approval has already been obtained), (v) the Insurance Commissioner approved the Reorganization Plan only after being satisfied that the

interests of the policyholders are properly protected and that the Reorganization Plan is fair and reasonable to the Company's policyholder members, (vi) Holdings will be subject to regulation by the Insurance Commissioner substantially equivalent to that of the Company, and (vii) Holdings will not make any distributions to its members.

VI. §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 Holdings to the Company's policyholders in connection with the Reorganization, whether arising on the Effective Date of the Reorganization in accordance with the Reorganization Plan or arising from time to time by virtue of the issuance of a policy by the Company, would not constitute the offer or sale of a "security" as that term is defined in the §2(a)(1) of the Securities Act.

A. Definition of a "Security" under §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 Holdings to existing members of the Company in connection with the Reorganization, nor the grant of membership interests in Holdings from time to time after the Reorganization to future policyholders of the Company, would constitute the offer or sale of a "security" as that term is defined in §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 the Company (the "Reorganization Letters").²⁸

²⁸ See, e.g., MAG Mutual Insurance Company (publicly available June 21, 2017); American Family Mutual Insurance Company (publicly available December 5, 2016); Federal Life Insurance Company (Mutual) (publicly available August 31, 2015); Blue Cross and Blue Shield of Florida, Inc. (publicly available September 9, 2013); Amerisure 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 principal difference between the Reorganization and the Reorganization Letters is that this will be the first nonprofit mutual holding company reorganization proposed to be completed under the Century Code. In addition, unlike several of the company reorganizations described in the Reorganization Letters, the Reorganization does not involve a conversion of the Company from a mutual insurance company to a stock insurance company or creation of an intermediate stock holding company, which the Company believes simplifies the transactions contemplated by the Reorganization and further supports the Company's request for relief.²⁹ 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 Holdings are securities under Section 2(a)(1) of the Securities Act. Moreover, for the reasons discussed below, we believe that the legal support for the proposition that the membership interests granted to policyholders of the Company are not securities is equivalent to the support which formed the basis for the relief granted in the Reorganization Letters.

The provisions of the Century Code applicable to the Reorganization specified in Subsection 12 and the provisions of the Century Code cross-referenced thereunder, are not materially different from the holding company laws in other states in which the Staff has previously granted no-action relief. For example, Subsection 12, like the provisions of Georgia Law that permitted the proposed reorganization in *MAG Mutual Insurance Company*³⁰, includes the following elements and requirements:

- Separation of membership interests and contractual policyholder rights of mutual insurance company's policyholders;
- Transfer of membership interests of mutual insurance company's policyholders to mutual insurance holding company, while contractual rights remain at insurance company;
- Automatic membership in mutual insurance holding company for holders of insurance policies of reorganized stock insurance company, through status as policyholders;
- Required board approval and adoption of reorganization plan;
- Mandatory pre-approval by insurance commissioner; after a public hearing where policyholders may appear and be heard; and
- Required approval by members of mutual insurance company.

In addition, the Member Approval Materials to be used in the Company's Reorganization are comparable to the materials used in other mutual holding company

²⁹ The Company is restricted by statute from converting to a for-profit mutual company or to a for-profit stock company under §26.1-17-33.1(6) of the Century Code.

³⁰ Chapter 13A of Title 33 of the Official Code of Georgia.

reorganizations.³¹ As discussed below, it is our opinion that the applicability of the Century Code, as compared to other states in which the Staff has considered mutual holding company reorganizations, does not alter the analysis of whether any membership interests of the nonprofit mutual holding company are securities under §2(a)(1) of the Securities Act.

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 supports the view that registration is not necessary to protect policyholders in these circumstances. Insurance policies are included within the literal words of §3(a)(8) of the Securities Act which, while phrased as an exemption, has been commonly recognized to constitute supererogation (i.e., to reflect the fact that the insurance contracts specified therein are not within the statute’s definition of “security”).³² 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

³¹ Although the Century Code does not specify any particular disclosures that must be included in communications with members in connection with an annual meeting of members, the Member Approval Materials to be provided to Members in connection with seeking Member approval of the Reorganization are modeled after and substantially similar to the proxy statement provided to members in connection with reorganization transaction completed by Blue Cross and Blue Shield of Florida, Inc. (d/b/a Florida Blue) in 2013 that was also subject of a no-action letter from the staff in *Blue Cross and Blue Shield of Florida, Inc.* In particular, the Member Approval Materials are expected to include the following elements that were also included in the proxy statement provided to its members by Blue Cross and Blue Shield of Florida, Inc.: a summary and overview of the Reorganization, the reasons for the Reorganization, a comparison between the articles of incorporation and bylaws of Holdings with the current bylaws of the Company, a discussion of the effects of the Reorganization and post-Reorganization rights of Members, a discussion of Federal Income Tax Consequences and an annex including of the Plan of Reorganization.

³² See *Tcherepnin v. Knight*, 389 U.S. 332, 342, n.30 (1967).

[Securities] Act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the [Securities] Act."³³

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.³⁴

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 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.³⁵ While the *Howey* test focused only on investment contracts, the Court subsequently applied the test more broadly.³⁶ All elements of the *Howey* test must be met before an investment is deemed to constitute an "investment contract" and, therefore, deemed to be a "security." We understand that the Commission has stated that the second item, "in a common enterprise," is not a separate element of the *Howey* test.³⁷ The grant of membership interests in Holdings does not meet the first and third elements of the *Howey* test.

1. Membership Interests Do Not Involve an Investment

The first criterion under the *Howey* test, an investment, is not satisfied because policyholders of the Company are not required to pay cash or any other property to acquire their membership interests in Holdings. An investment is characterized by "an exchange for value," most often a monetary contribution.³⁸ The membership interests are not issued upon a simple monetary contribution; instead, membership interests automatically accompany, by operation of law and the charter and bylaws of Holdings, the ownership of a policy. The money paid by Company or the Company 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 Holdings. Indeed, at the time of issuance of the related policies, the membership interests have no value separate and apart from the insurance policies.

³³ H.R. Rep. No. 73-85, at 15 (1933)

³⁴ See *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 559 (1979).

³⁵ See *Howey*, 328 U.S. at 299

³⁶ 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).

³⁷ See *In re Anthony H. Barkate*, Exchange Act Release No. 34-49542, 82 S.E.C. Docket 2130 at n. 13 (April 8, 2004).

³⁸ See *Useton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564, 574-75 (10th Cir. 1991).

Also, the membership interests will not be marketed as investments. the Company's selling efforts will focus on insurance coverages. Additionally, current members have been and prospective members must be qualified and accepted as insureds by the Company and the Company, respectively. Such qualification is an independent requirement that must be satisfied on the basis of objective insurance underwriting criteria. Finally, there is no basis for the current or prospective members to regard the membership interests in the Company or in the Company as investments because the membership interests are and will be non-transferable.

2. There is No Expectation of Profits Related to the Membership Interests

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 North Dakota law. 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."³⁹ On its face, voting rights 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.⁴⁰ By contrast, "when a purchaser is motivated by a desire to use or consume the item purchased. . . the securities laws do not apply."⁴¹ The economic reality of becoming member of a nonprofit mutual holding company 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, Holdings 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 nonprofit mutual holding company membership interest, other than as approved by the Insurance Commissioner. A policyholder's expectations of increased value for 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.

An owner of a membership interest in Holdings therefore has no ability to realize any profit on the membership interest. The fact that Holdings and its subsidiaries are not subject to the same limitations under the Century Code as the Company with respect to engaging directly or indirectly in business other than insurance, including the limitations on investments does not affect this analysis. Likewise, the ability of the subsidiaries to issue capital stock in a capital raising transaction, or otherwise, following the Reorganization has no impact on the analyses. Members of Holdings will have no expectation of sharing in any profits generated

³⁹ See *United Housing Foundation, Inc. v. Forman*, 421 U.S. at 852.

⁴⁰ *Id.* at 858.

⁴¹ *Id.*

by Holdings and its subsidiaries, whether those profits may derive from an insurance business or a non-insurance business, because, among other factors:

i. As a nonprofit mutual holding company, Holdings is not permitted to offer, sell or otherwise issue securities and will have no authorized, issued or outstanding capital stock. In addition, Holdings is not able to pay dividends (or make other distributions or payments of income or profits, including any distributions received from subsidiaries, except in the event of dissolution or liquidation) to members without the approval of the Insurance Commissioner,

ii. the members are not able to sell, redeem or otherwise receive value for their membership interest (at a higher value than the cost of their related policy or at all), and

iii. the Company is able to cancel the member's membership interest without consideration by canceling or not renewing the member's related policy.

The fact that investments by the Holdings will not be subject to the same restrictions on the amount invested in non-insurance operations as apply to the Company, is therefore not relevant to the question of whether the Holdings 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.⁴²

Without the ability to receive any value for a membership interest by transfer or distribution, a member could have no reasonable expectation of profit from an offer and sale of securities. In sum, the inability to receive dividends or other distributions of profits or to sell a membership interest to a third party assures that a policyholder will not be motivated "solely by the prospect of a return" on the membership interests.⁴³

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

⁴² See American Family Mutual Insurance Company (publicly available December 5, 2016), Blue Cross and Blue Shield of Florida, Inc. (publicly available September 9, 2013), and Milwaukee Mutual Insurance Company (publicly available January 30, 2003).

⁴³ *Id.* (citing *Howey*, 328 U.S. at 300).

Securities Act unnecessary."⁴⁴ Under the four criteria set forth in *Reves* for determining whether an instrument is a security, a membership interest in Holdings will not constitute a security.

As to the first factor under *Reves*, 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.'"⁴⁵ This factor suggests that Holdings 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 and membership interests are extinguished without payment when the related policies expire or are cancelled.

As to the second factor under *Reves*, 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 under *Reves*, the Court noted that the marketing efforts employed in selling an alleged security are relevant to the expectations of the general public.⁴⁶ 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 Holdings and/or its subsidiaries to invest in non-insurance business operations without being subject to the same limitations that apply to the Company 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. And as noted above, membership interests in a domestic mutual insurance holding company do not constitute a security under North Dakota Law.

As to the fourth factor under *Reves*, since Holdings will be subject to extensive regulation by the Insurance Commissioner, this factor also supports the conclusion that the membership interests in Holdings would not constitute securities. Holdings will be governed by a comprehensive regulatory scheme that will substantially reduce the risks associated with the membership interests in Holdings, substantially comparable to the regulatory

⁴⁴ See *Reves*, 494 U.S. at 67.

⁴⁵ *Id.* at 66.

⁴⁶ *Id.* at 69.

requirements imposed on a North Dakota nonprofit mutual insurance company. Some of the regulatory restrictions which will serve to reduce the risks associated with the membership interests in Holdings include the following: (i) Holdings' charter and bylaws must be approved by the Insurance Commissioner; (ii) the Insurance Commissioner held a public hearing regarding the Reorganization at which policyholders of the Company and other interested parties were permitted to attend and be heard; (iii) as a condition for approving the Reorganization Plan, the Insurance Commissioner must be satisfied that the interests of the policyholders of the Company are properly protected and that the Reorganization Plan is fair and reasonable to policyholders; (iv) following the Reorganization the Insurance Commissioner will retain jurisdiction over Holdings and the subsidiaries; (v) Holdings may not enter into a merger, be acquired, demutualize, or dissolve without the approval of the Insurance Commissioner; (vi) the payment of dividends or other distributions from the Company and Holdings will be restricted, (vii) as a nonprofit mutual holding company, Holdings is not permitted to offer, sell or otherwise issue securities and will have no authorized, issued or outstanding capital stock; (viii) the only means by which Holdings could issue capital stock would be for it to first undergo a full demutualization pursuant to the provisions of the Century Code applicable to domestic mutual insurers, which would require advance approval by the Insurance Commissioner and approval of the members of Holdings; and (ix) the Company and Holdings are charitable and benevolent organizations under the laws of the state of North Dakota, as such, laws relating to and affecting nonprofit charitable and benevolent corporations will be fully applicable to the Company and Holdings following the Reorganization.

We believe that the insurance statutes and regulations to which Holdings will be subject following the Reorganization will satisfy the fourth factor under *Reves*, in that Holdings will be subject to an extensive regulatory scheme that will reduce the risks associated with the membership interests in Holdings. The Staff has previously taken no-action positions 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.⁴⁷

VII. Registration Pursuant to the Securities Exchange Act of 1934

To be subject to registration pursuant to §12(g) of the Exchange Act, a person must issue "securities." The definition of "security" in §3(a)(10) of the Exchange Act is in all pertinent respects identical to the definition of that term in §2(a)(1) of the Securities Act.⁴⁸ Consequently, in accordance with the discussion of the Securities Act above, we are of the opinion that the nonprofit mutual holding company membership interests are not securities within the meaning of the Exchange Act. Accordingly, it is our opinion that the nonprofit

⁴⁷ See American Family Mutual Insurance Company (publicly available December 5, 2016) and Blue Cross and Blue Shield of Florida, Inc. (publicly available September 9, 2013)

⁴⁸ See *Landreth Timber Co.*, 471 U.S. at 686 n.1 (1982).

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mutual holding company will not be subject to the registration requirements of §12(g) of the Exchange Act.

VIII. Conclusion

In consideration of the foregoing and consistent with our opinion that the membership interests in Holdings do not constitute "securities" as defined in §2(a)(1) of the Securities Act and §3(a)(10) of the Exchange Act, we request that the Staff advise us as to whether it would recommend to the Commission that no action be taken if the Reorganization and issuance of membership interests in Holdings as described above are effected without compliance with the registration requirements under the Securities Act and the Exchange Act.

Because of the importance of the Reorganization to the Company, 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 its reaching any final decision on this matter. If you should have any comments or would like additional information, please contact the undersigned at (612) 335-7119 or Bryan Pitko at (612) 335-7061.

Very truly yours,

Stinson Leonard Street LLP



Jill R. Radloff

Enclosures

cc: Daniel R. Conrad, Chief Legal Officer, Noridian Mutual Insurance Company

EXHIBIT A

SUBSECTION 12 OF §33.1 OF CHAPTER 26.1-17 OF THE NORTH DAKOTA CENTURY CODE

26.1-17-33.1. Nonprofit health service corporation - Conversion to nonprofit mutual insurance company - Application of law.

1. Any nonprofit health service corporation organized under chapter 26.1-17, having admitted assets in excess of all liabilities at least equal to the original surplus required of a mutual insurance company by section 26.1-12-10, without reincorporation, and upon adoption of a resolution by its board of directors, may petition the insurance commissioner for an order to become a nonprofit mutual insurance company subject to chapter 26.1-12. For the purpose of obtaining approval from the insurance commissioner, conversion to a nonprofit mutual insurance company under this section is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described therein must be followed.

2. Upon becoming subject to chapter 26.1-12, the company may continue to provide health care and related services to its present or future members and subscribers by health care contracts and may make provision for the payment of health care services directly to hospitals and other agencies or institutions or persons rendering health care services or related services or may make direct payment to the member or subscriber. The conversion of a nonprofit health service corporation into a mutual insurance company must not impair the rights or obligations or any existing contractual rights of a health care service corporation or its members. Except as provided in this section, the laws that apply to mutual insurance companies, and insurance companies generally, apply to a nonprofit mutual insurance company converted from a nonprofit health service corporation pursuant to this section.

3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive.

4. The funds of a nonprofit mutual insurance company may be invested in those investments authorized to be made by domestic insurance companies under section 26.1-05-19, as limited by section 26.1-05-18.

5. A nonprofit mutual insurance company may form a wholly owned company for the purpose of administering Medicare claims and engaging in other business activities that do not accept insurance risk. A company established under this subsection may form a joint venture or subsidiary to conduct one or more of the functions the nonprofit mutual insurance company could conduct directly. An officer, a director, or a management employee of the nonprofit mutual insurance company may not directly or indirectly own an interest in a subsidiary.

6. Except as authorized under subsection 12, a nonprofit mutual insurance company may not demutualize. A nonprofit mutual insurance company may not be converted to a for-profit mutual company or to a for-profit stock company.

7. A nonprofit mutual insurance company may avail itself of the additional investment authority under chapter 26.1-10. Upon approval by the commissioner after a showing of good cause by the nonprofit mutual insurance company, aggregate investments in all subsidiaries of the company under subsection 21 of section 26.1-05-19 and under chapter 26.1-10 may exceed an amount equal to twenty-five percent of the company's admitted assets.

8. A conversion of a nonprofit health service corporation to a nonprofit mutual insurance company under this section or the restructuring of a nonprofit mutual insurance company under subsection 12, to the extent that any assets of the nonprofit health service corporation or the restructured nonprofit mutual insurance company and the restructured nonprofit mutual insurance company's nonprofit holding corporation parent formed pursuant to subsection 12 are impressed with a charitable trust immediately before the conversion or restructuring, does not give rise to a breach of the charitable trust or violate any fiduciary duty laws, and does not constitute grounds for disapproval of the petition to convert to a nonprofit mutual insurance company, the articles of incorporation of the company under section 26.1-12-04, or application for restructuring of a nonprofit mutual insurance company under subsection 12. A conversion or restructuring authorized by this section does not diminish the application of charitable trust or fiduciary duty laws that may apply to the converted or restructured company immediately before the conversion.

9. A nonprofit mutual insurance company may not engage in the practice of medicine, dentistry, optometry, or any other profession for which a license or registration is required.

10. Each nonprofit mutual insurance company and each nonprofit mutual insurance company and its nonprofit holding corporation parent are charitable and benevolent organizations and the laws of this state relating to and affecting nonprofit charitable and benevolent corporations are applicable to all nonprofit mutual insurance companies and restructured nonprofit mutual insurance companies and their nonprofit holding corporation parents.

11. Except as authorized under subsection 12, a nonprofit mutual insurance company may not form a mutual insurance holding company.

12. Upon approval of the nonprofit mutual insurance company's board of directors, the approval of the commissioner pursuant to this subsection, and any necessary approval of the nonprofit mutual insurance company's members, a nonprofit mutual insurance company

may restructure, while remaining a nonprofit corporation, by forming a nonprofit holding corporation that will be the sole member of the restructured company.

a. The restructured company shall retain any additional authority granted to the restructured company as a nonprofit mutual insurance company under this section and the restructured company shall remain subject to subsections 3, 4, 5, 6, 7, 8, 9, and 10, except to the extent inconsistent with this subsection and chapter 10-33.

b. The restructured company must be treated as a mutual insurance company subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01, 26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08, 26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19, 26.1-12-23, 26.1-12-24, 26.1-12-25, 26.1-12-26, 26.1-12-29, and 26.1-12-30.

c. The restructured company may elect to use the term "mutual" in the company's name, marketing materials, and other communications.

d. The nonprofit holding corporation is subject to the provisions of sections 26.1-12-06, 26.1-12-07, 26.1-12-14, and 26.1-12-16. After restructuring under this subsection, chapter 26.1-12.1 does not apply to the restructured company or the restructured company's nonprofit holding corporation parent.

e. The membership interests of the members of the restructuring company must be converted into membership interests in the nonprofit holding corporation; however, notwithstanding section 26.1-12-14, upon the effective date of the restructuring, such membership interests may be weighted or otherwise adjusted to reflect the number of subscribers covered under a particular policy. Concomitantly with the restructuring, and without complying with sections 26.1-10-05 and 26.1-10-05.1, the restructuring company may transfer or assign the restructuring company's shares, membership units, or other incidents of ownership in one or more of the restructuring company's subsidiaries and affiliates, as well as the restructuring company's workforce, to the nonprofit holding corporation.

f. The restructuring company shall submit an application for restructuring, consisting of revised articles and bylaws, the articles and bylaws of the nonprofit holding company, any share or membership interest transfer documents, authorizing resolutions and other materials the restructuring company deems pertinent to the restructuring to the commissioner. The commissioner shall approve the restructuring unless, after a public hearing, the commissioner finds:

(1) After the change of control, the domestic insurance company referenced in subsection 1 would not be able to satisfy the requirements for the issuance of

a certificate of authority to write the lines of insurance for which the domestic insurance company is presently licensed;

(2) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this state or tend to create a monopoly in this state;

(3) The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of the insurance company's policyholders;

(4) The acquiring party's plans or proposals to liquidate the insurance company, to sell the insurance company's assets, to consolidate or merge with any person, or to make any other material change in the insurance company's business or corporate structure or management are unfair and unreasonable to policyholders of the company and are not in the public interest;

(5) The competence, experience, and integrity of those persons that would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control; or

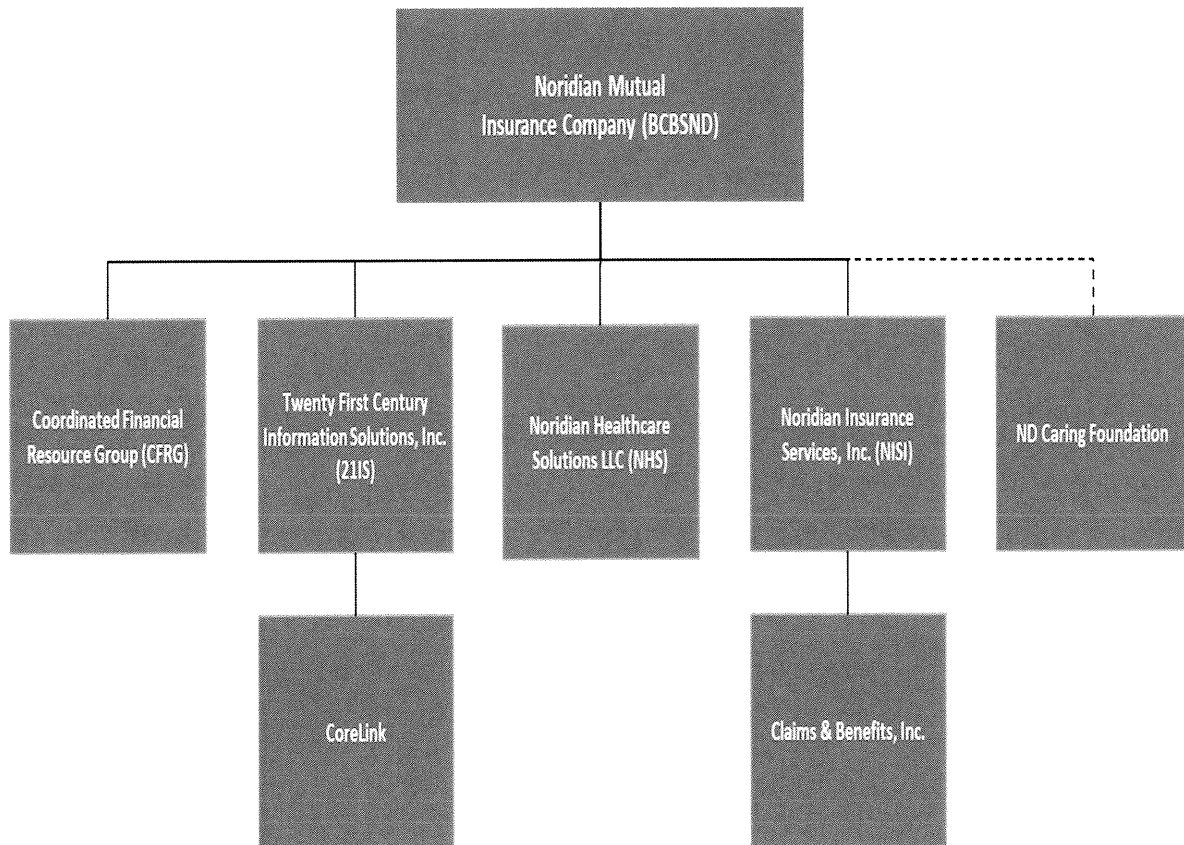
(6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

g. Within thirty days of submission of the application to the commissioner under this subsection, the commissioner shall make written findings, conclusions, and a determination on the application.

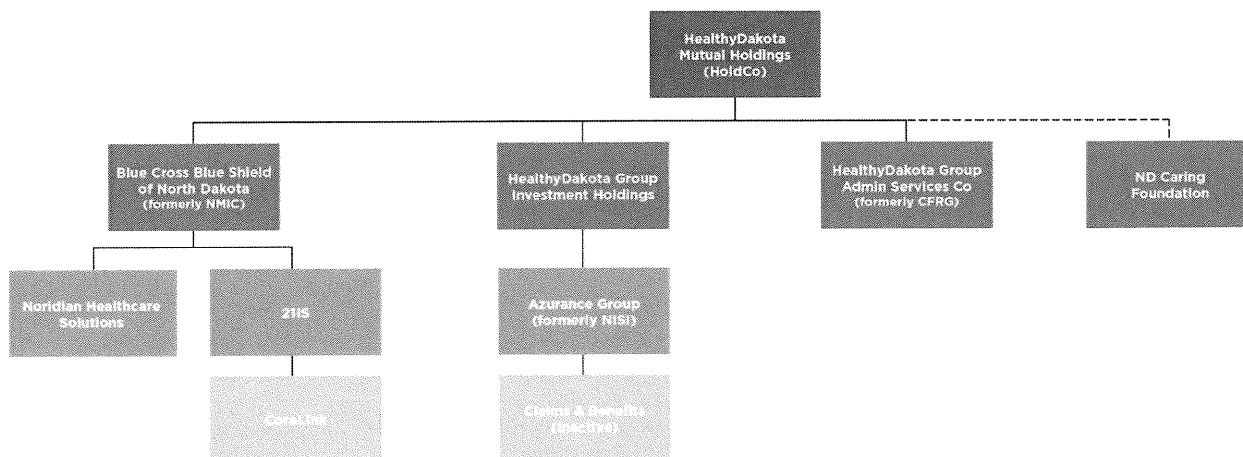
13. A merger or consolidation of a nonprofit mutual insurance company that has been restructured under subsection 12, merger or consolidation of the restructured nonprofit mutual insurance company's nonprofit holding corporation parent, acquisition of control of either, or acquisition of another insurer by the restructured company or the restructured company's nonprofit holding corporation parent is subject to the provisions of sections 26.1-10-03 and 26.1-10-03.1 and chapter 26.1-07 which would be applicable to the type of transaction involved.

EXHIBIT B

**PRE-REORGANIZATION ORGANIZATIONAL CHART OF NORIDIAN MUTUAL INSURANCE
COMPANY D/B/A BLUE CROSS BLUE SHIELD OF NORTH DAKOTA**



POST-REORGANIZATION ORGANIZATIONAL CHART OF HEALTHYDAKOTA MUTUAL HOLDINGS



POST-REORGANIZATION SUBSIDIARY DESCRIPTIONS

- HealthyDakota Group Investment Holdings – an intermediate level holding company that will own interests in ancillary businesses and permitted investments (100% owned by HealthyDakota Mutual Holdings);
- Azurance Group (formerly Noridian Insurance Services Inc.) – provides employee benefits and health insurance brokerage services (100% owned by HealthyDakota Group Investment Holdings)
- Claims & Benefits – currently inactive with no operations (100% owned by HealthyDakota Group Investment Holdings)
- HealthyDakota Group Administrative Services Co. (formerly Coordinated Financial Resources Group, Inc.) – currently inactive; may in the future employ staff that provides services to BCBSND as well as third parties (e.g. call center customer service, IT security consulting, etc.) (100% owned by HealthyDakota Mutual Holdings)
- ND Caring Foundation - a 501(c)(3) charitable organization entirely funded by Blue Cross and Blue Shield of North Dakota (BCBSND) as primarily a grantmaking foundation with a mission to help positively transform the health and well-being of North Dakotans and their communities.