

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

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

**PROCEDURAL AND SCHEDULING ORDER**

On February 15, 2010, Security Benefit Mutual Holding Company (“SBMHC”) and its direct wholly owned subsidiary, Security Benefit Corporation (“SBC”), entered into a Purchase and Sale Agreement (the “Agreement”) with Guggenheim SBC Holdings LLC (the “Investor”) for a demutualization and dissolution whereby the Investor will purchase all of the shares of capital stock of SBC (the “Acquisition of Control”) as part of the demutualization, and prior to the dissolution, of SBMHC to be effected pursuant to the Plan (as defined below) (the “Demutualization and Dissolution”). Collectively, SBMHC and SBC, together with Security Benefit Life Insurance Company (“SBL”), are sometimes referred to herein as “Security Benefit.” Pursuant to the broad authority vested in the Kansas Commissioner of Insurance (the “Commissioner”) under K.S.A. §§ 40-4001 and 40-4003a(c)(5), the Commissioner will determine whether SBMHC may effect the Demutualization and Dissolution in accordance with the proposed Plan and as determined in these proceedings. Collectively, the Acquisition of Control and Demutualization and Dissolution are sometimes referred to herein as the “Transaction”.

SBMHC submitted a draft Demutualization and Dissolution Plan (the “Plan”) to the Commissioner for review and comment prior to adoption of the Plan by the Board of Directors of SBMHC (the “Board”). Pursuant to the Plan, which was adopted by the Board as of March 2, 2010, if it is approved by the Commissioner and SBMHC members eligible to vote (“Eligible Members”), and other conditions are satisfied, the corporate existence of SBMHC would cease and all members’ membership interests in SBMHC would be extinguished. Eligible Members, as determined under the Plan, would receive, in cash or policy credits, an amount determined by dividing: (i) \$20,000,000 less certain claims, if any, against SBMHC in excess of \$500,000 in the aggregate (the “Total Aggregate Consideration”); by (ii) the total number of Eligible Members.

On March 11, 2010, the Investor filed a draft “Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer” (the “Form A”) seeking the Commissioner’s approval of the Acquisition of Control.

The regulatory review and proceedings associated with the Transaction will take place pursuant to the Kansas Administrative Procedures Act, K.S.A. §§ 77-501 *et seq.* (“KAPA”). This Procedural and Scheduling Order, issued under authority of K.S.A. § 77-517(c), establishes administrative procedures for the review and hearing of the Transaction and makes initial rulings on various procedural matters. The Commissioner hereby orders and finds:

1. Proposed Plan Submitted by SBMHC. The Kansas legislature has acknowledged that it is not possible to anticipate all of the circumstances and considerations which may arise incident to a demutualization and has therefore given the Commissioner broad authority in reviewing any such demutualization. Furthermore, the procedures and criteria to be applied by the Commissioner are flexible within the statutory parameters. The Plan calls for the dissolution of SBMHC in a manner as the Commissioner may approve pursuant to K.S.A. § 40-4003a(c)(5). The Commissioner will therefore exercise her broad discretion in reviewing and making determinations upon the proposed Plan.
2. Commissioner To Review and Comment Upon Plan. The Commissioner will review and comment upon the Plan to enable SBMHC to address any procedural or substantive concerns and, if necessary, revise the Plan prior to submission to the members. In order to facilitate this review process, the Commissioner has retained independent special counsel and independent advisors, and has appointed certain members of her legal and technical staff (“KID Testimonial Team”) to investigate and review the proposed transaction. The KID Testimonial Team shall include: Larry Bruning–Chief Actuary, Ken Abitz–Director, Financial Surveillance, and Zac Anshutz–Assistant General Counsel, all of the Kansas Insurance Department; Dan Watkins; and Polsinelli Shughart PC.
3. Parties to the Proceedings. Any “Party” (as that term is defined in K.S.A. § 77-502) to the Hearing on the Form A (defined below) shall also be admitted as a party to the Plan Hearing (defined below), and any Party to the Plan Hearing (defined below) shall also be admitted as a party to the Hearing on the Form A. The Commissioner concludes that SBMHC, SBC, SBL, and the Investor are Parties to the proceedings. The KID Testimonial Team may offer argument and documentary and testimonial evidence, including cross-examination of any Party’s witnesses and shall participate in this proceeding and the hearings to the same extent as a Party.
4. Public Comment Meeting. In addition to the Plan Hearing (defined below) and the Hearing on the Form A (defined below) (collectively, and to be held concurrently, the “Evidentiary Hearing”), the Commissioner will hold a public comment meeting (the “Public Comment Meeting”) for purposes of providing information about the Transaction to the public and allowing the public to comment upon it. Notice of the Public Comment Meeting shall be given not less than 20 days in advance of such meeting. No formal evidence will be taken at the Public Comment Meeting, but the meeting will be transcribed. The Parties shall attend and make introductory comments at such Public Comment Meeting and may take such other action as is permitted by law and the Commissioner.
5. The Commissioner Will Conduct a Hearing on the Application for Acquisition of Control and the Plan Concurrently, and Will Rule on Both Matters Pertaining to the Proposed Transaction Concurrently. Consistent with the structure of the Transaction, the Acquisition of Control is expressly conditioned on the Commissioner’s approval of the proposed Plan, and the proposed Plan is expressly contingent on the Commissioner’s approval of the Investor’s Form A. The Commissioner will conduct a hearing on the Form A and the Plan concurrently, by first conducting a hearing on the Form A, and then

converting the proceedings to a hearing on the Plan (collectively, the “Evidentiary Hearing”). The Commissioner will rule upon the Form A and the Plan in a single combined final order or separate and concurrent final orders.

6. Publication. Security Benefit shall publish public notices of the Public Comment Meeting and the Evidentiary Hearing, in a form approved by the Commissioner, in *The Wall Street Journal* and the *Topeka Capital Journal* once, not less than twenty days prior to the Public Comment Meeting. Such notices may be combined in a single notice and shall refer to the more detailed notice that will appear on the Web site of Security Benefit.
7. Hearing and Notice of Plan Hearing. The Commissioner hereby orders that a hearing on the Plan (“Plan Hearing”) shall be held commencing at a date to be specified in a subsequent notice (the “Hearing Notice”). Notwithstanding this notice, any person may make oral or written statements or comment upon the proposed Transaction without being required to become an Intervener under the procedures described in Paragraph 10 below. Service of the Hearing Notice shall constitute the written notice required to be given by SBMHC not less than 20 days in advance of the Plan Hearing. Notice shall also be mailed by first-class mail at the expense of SBC to SBMHC’s members, *i.e.*, SBL’s “Policyholders” (as defined in K.S.A. § 40-4002(g)) at least 20 days prior to the Plan Hearing. The notice of the Plan Hearing shall be accompanied by information relevant to such hearing, all of which shall be in a form pre-approved by the Commissioner. In addition, the Commissioner hereby orders that the insurance-buying public shall be given not less than seven days notice of the Plan Hearing, such notice to be provided in accordance Paragraph 6 above; provided, however, that receipt of notice alone shall not be construed as recognizing the recipient to have legal rights, duties, privileges, immunities, or other legal interests that may be substantially affected by the Commissioner’s approval or disapproval of the Plan or to qualify as an Intervener under any provision of law.
8. Notice of Special Meeting of Voting Members to Vote on the Plan. SBMHC shall mail notice to all Voting Members, as determined by the Plan, of a special meeting (the “Special Meeting”) at which each Voting Member shall be entitled to vote, in person or by proxy, on the proposal to approve the Plan. The notice (the “Special Meeting Notice”) shall set forth the reasons for the vote and the place, the day, and the hour of the Special Meeting, and shall be accompanied by a written proxy in a form pre-approved by the Commissioner allowing the Voting Member to vote for or against the Plan. Such notice and form of proxy shall be mailed by first-class mail, to the address of each Voting Member as it appears on the company records, as defined in the Plan, at least 10 days prior to the Special Meeting, and shall be in a form approved by the Commissioner. Such notice period for the Special Meeting may run concurrently with the notice period for the Plan Hearing and the Special Meeting Notice may be given together with the notice of the Plan Hearing, provided however, that the notice of the Special Meeting shall include a statement that the date of the Special Meeting may be changed upon order of the Commissioner. The Special Meeting Notice shall be accompanied by a copy of the Plan and such other information as the Commissioner deems necessary to Voting Members understanding, including a comprehensible summary of the Plan, all of which shall be in

a form pre-approved by the Commissioner. Upon prior approval of the Commissioner, SBMHC may also mail supplemental information relating to the Plan to Voting Members either before or after the date of the Special Meeting, provided that such specific communications to Voting Members or others as a result of inquiries by Voting Members or others, as well as general communications to Voting Members primarily designed to update such Voting Members on the status of the Plan or to provide them with general information regarding the Transaction, which communications are not misleading or contrary to applicable law and do not seek action regarding the Plan, shall not require such prior approval.

9. Hearing and Notice of Hearing on Form A. The Commissioner hereby orders that a hearing on the Form A (the "Hearing on Form A") shall be held concurrently with and immediately prior to the Plan Hearing. Service of the Hearing Notice to the Parties identified in Paragraph 3 of this Order and to persons admitted as Interveners pursuant to Paragraph 10 of this Order shall constitute the written notice required to be given to the Investor not less than 20 days in advance of the hearing and shall substitute for the notice required to be given by the Investor to SBMHC, and to other persons designated by the Commissioner, not less than seven days in advance of the Hearing on Form A. In addition, the Commissioner hereby designates the insurance-buying public as persons who shall be given not less than seven days notice of such public hearing, such notice to be provided in accordance with Paragraph 6 above; provided, however, that receipt of notice alone shall not be construed as recognizing the recipient to have legal rights, duties, privileges, immunities, or other legal interests that may be substantially affected by the Commissioner's approval or disapproval of the Form A or to qualify as an Intervener under any provision of law.
10. Interveners. The Plan and the approval of the Form A are conditioned upon the approval of each other by the Commissioner after completing the Evidentiary Hearing. The Commissioner reserves the right, pursuant to K.S.A. § 77-521(a)(3), to grant a petition for intervention only upon a determination that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the Evidentiary Hearing. The Commissioner may in her discretion permit non-parties to make statements or comment upon the Transaction without being required to become Interveners. Any person who believes his or her legal rights, duties, privileges, immunities, or other legal interests may be affected substantially by the Plan and/or the Form A may petition for intervention in the proceedings as a Party pursuant to the following criteria:
  - (a) A petition to intervene must be submitted in writing to the Commissioner at the address provided herein, with copies mailed to SBMHC and Investor at the addresses provided herein, at least three days before the Hearing on Form A (the Commissioner will forward a copy to the KID Testimonial Team for the proceedings); provided, however, that because of the complexity of the Transaction and the proceedings, the Commissioner determines that the interests of justice and the orderly and prompt conduct of the proceedings would be impaired by allowing full participation as a party to the proceeding to any person submitting a petition to intervene after April 26, 2010, and therefore orders that any

person seeking to participate fully as a Party-Intervener shall submit his or her petition as otherwise required in this subparagraph (a), but no later than April 26, 2010. Any petition to intervene first made after April 26, 2010, may be denied in its entirety or approved only upon substantial restrictions in order to avoid disruption and delay to the proceeding. The foregoing notwithstanding, submission of a petition to intervene on or prior to April 26, 2010, shall not in itself qualify the petitioner for intervention without limitation on participation, such determination being dependent on the particulars of the petition. Nor shall submission of a petition to intervene on or prior to April 26, 2010, in itself qualify the petitioner to intervene to any extent, or preclude denial of such petition in the interests of justice and the orderly and prompt conduct of the proceedings or for other reasons set forth in K.S.A. § 77-521.

- (b) A petition to intervene must set forth a brief and plain statement of facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceedings or that the petitioner qualifies as an Intervener under any provision of law;
- (c) The Commissioner may grant a petition to intervene if, after considering any objections by the Parties, she determines that it should be approved in the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention;
- (d) In granting a petition to intervene, the Commissioner may impose conditions upon any Intervener's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:
  - (i) Limiting the Intervener's participation to designated issues in which the Intervener has a particular interest demonstrated by the petition;
  - (ii) Limiting the Intervener's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
  - (iii) Requiring two or more Interveners to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.
- (e) If the Commissioner determines that a person's legal rights, duties, privileges, immunities, or other legal interests are substantially affected by her approval or disapproval of the Plan, then such person's legal rights, duties, privileges, immunities, or other legal interests will be automatically deemed to be substantially affected by her approval or disapproval of the

Form A, and vice versa. Therefore, any person whose petition to intervene in the Plan Hearing is granted shall also be allowed to intervene to the same extent as a Party in the Hearing on Form A, whether or not petition was made for intervention in the latter hearing. Any person whose petition to intervene in the Hearing on Form A is granted shall also be allowed to intervene to the same extent as a Party in the Plan Hearing.

- (f) The granting of a petition to intervene shall not obligate the petitioner to participate in the proceedings.
  - (g) The Commissioner will issue one or more Orders Granting or Denying Petitions For Intervention no later than one day before the Evidentiary Hearing, such Orders ruling upon such petitions for intervention as were submitted in writing on or prior to April 26, 2010. Any Order Granting or Denying Petitions For Intervention will specify any conditions to intervention, briefly state the reasons for granting, granting with limitation, or denying each petition for intervention. The Commissioner may modify any Order granting, denying, or modifying intervention at any time, stating the reasons for the modification.
  - (h) The Commissioner will promptly give notice of any Order granting, denying, or modifying intervention to the petitioner for intervention, to all Parties, to all persons previously granted status as Interveners, and to the KID Testimonial Team.
11. Public Comments at the Hearing. In her discretion, the Commissioner may permit any interested person who is not a party to may make oral or written statements upon the proposed Demutualization and Dissolution and Acquisition of Control at the Evidentiary Hearing to be included in the formal record without first becoming an Intervener herein.
  12. Form of Hearing on Proposed Plan and Form A. The Commissioner or her designee shall preside over the Hearing on Form A and the Plan Hearing in accordance with KAPA. The record for each hearing shall include: all pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, and findings of fact and conclusions of law proposed by any Party or Intervener and any written brief filed or as provided by K.S.A. § 77-532. No *ex parte* material or representation of any kind without notice shall be received or considered by the Commissioner. In advance of the Evidentiary Hearing, the Commissioner shall endeavor to identify any additional information upon which the Commissioner may rely, respectively, in rendering a decision as to the proposed Plan or the Form A, and provide notice of such information by filing it in conjunction with, and making such filing a part of the record of, the relevant hearing.
  13. Scope of Hearing on Form A. The scope of the proceedings regarding the proposed Acquisition of Control and Hearing on Form A (and related evidence and argument) is limited to the criteria set forth in K.S.A. § 40-3304.

14. Scope of Plan Hearing. The scope of the proceedings regarding the proposed Plan and the Plan Hearing (and related evidence and argument) shall be determined by the Commissioner pursuant to her authority under K.S.A. §§ 40-4001 and 40-4003a(c)(5), which may include, but not be limited to, the criteria set forth below, and such other criteria as the Commissioner in her discretion deems appropriate:
- (a) The Plan is fair and equitable to Members and to Policyholders;
  - (b) The Plan complies with the provisions of the Kansas Insurance Code;
  - (c) The Plan does not unjustly enrich any director, officer, agent, or employee of SBMHC or SBL; and
  - (d) Following the Demutualization and Dissolution, SBL will meet minimum requirements to be issued a certificate of authority by the Commissioner to transact business in Kansas and the continued operations of SBL will not be hazardous to existing or future policyholders or the public.
15. Conduct of Hearing. The Evidentiary Hearing will be conducted as follows:
- (a) The Commissioner will conduct and regulate the course of the proceedings.
  - (b) To the extent necessary for full disclosure of all relevant facts and issues, the Commissioner shall afford all Parties and Interveners the opportunity to respond, present evidence, examine and cross-examine witnesses, submit rebuttal evidence, and offer oral and written arguments, except as restricted by a limited grant of intervention.
  - (c) The Commissioner need not be bound by technical rules of evidence, but will give the Parties and Interveners reasonable opportunity to be heard and to present evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interest of any party. Documentary evidence may be received in the form of a copy or excerpt; however, upon request, parties shall be given an opportunity to compare the copy with the original if available.
  - (d) All testimony of Parties, Interveners, and Witnesses shall be made under oath or affirmation.
  - (e) Parties and Interveners shall file written testimony, if any, and may present oral testimony.
  - (f) Parties and Interveners shall file written expert reports and rebuttal reports, if any, and may present oral testimony.

- (g) The Commissioner reserves the right to limit any Intervener examinations which are redundant or duplicative.
- (h) The Commissioner may give persons who are neither Parties nor Interveners an opportunity to present oral or written statements. All Parties and Interveners will be given an opportunity to challenge or rebut such statements and, on motion of any Party or Intervener, the Commissioner will require any such statements to be given under oath or affirmation. Statements presented by non-parties in accordance with this paragraph may be received as evidence.
- (i) The Commissioner may take official notice of (1) any matter that could be judicially noticed in the courts of this state, (2) the record of other proceedings before the Kansas Insurance Department, (3) technical or scientific matters within the Kansas Insurance Department's specialized knowledge, and (4) codes of standards that have been adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association. Parties shall be notified before or during the Evidentiary Hearing, or before the issuance of any Final Order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest or rebut the matters or material so noticed.
- (j) The Evidentiary Hearing will be recorded at the expense of the Kansas Insurance Department which, however, is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any Party or Intervener, at its own expense and subject to such reasonable conditions as the Commissioner may establish, may cause a person other than the Kansas Insurance Department to prepare a transcript from the Kansas Insurance Department's record, or cause additional recordings to be made during the Evidentiary Hearing.
- (k) The Evidentiary Hearing will be open to public observation, except for the parts that the Commissioner states to be closed pursuant to a provision of law expressly authorizing closure.

16. Proposed Findings of Fact, Conclusions of Law and Policy Reasons. The Commissioner will allow the Parties and Interveners to submit proposed findings of fact, conclusions of law and policy reasons after conclusion of the Evidentiary Hearing in accordance with her Order at the Plan Hearing.

17. Kansas Insurance Department to Maintain an Official Record of the Hearings. The Kansas Insurance Department will maintain an official record of the Public Comment Meeting and the Evidentiary Hearing, which, together with the record for these proceedings, shall constitute the exclusive basis for the Commissioner's Final Orders.

18. Issuance of the Commissioner's Final Orders. Within 30 days after submission of proposed findings of fact, conclusions of law, and policy reasons, unless this period is waived or extended with the written consent of all Parties or for good cause shown, the Commissioner will render a combined Final Order or separate and concurrent Final Orders on the Plan and the Form A, which shall be served on each Party. If the 30-day period is extended for good cause, the Commissioner will set forth such good cause in writing on or before the expiration of the thirty days. Each Final Order will be in writing and include, separately stated, findings of fact, conclusions of law, and policy reasons for the decision to the extent that it is an exercise of the Commissioner's discretion, for all aspects of the Order. Findings of fact, conclusions of law, and policy reasons will be based exclusively upon the evidence of record and on matters officially noticed in the proceedings. Findings of fact, conclusions of law, and policy reasons will not be mere repetition or paraphrase of the relevant provisions of law but rather will be accompanied by a concise and explicit statement of the underlying facts of record to support the findings and conclusions. Each Final Order will also include a statement of the available procedures and time limits for seeking reconsideration, other administrative relief, or judicial review, and shall identify the agency officer to receive service of a petition for judicial review.
19. Effective Date of the Final Orders. Unless later dates are stated in the Final Orders or stays are granted, the Final Orders will be effective upon service.
20. Stay. A Party may, after rendition of the Final Orders, submit to the Commissioner a petition for stay of effectiveness of such Final Orders until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the final order. The Commissioner may take action on any such petition for stay, either before or after the effective date of the Final Orders.
21. Reconsideration. Any Party, within 15 days after service of the Final Orders, may file a petition for reconsideration with the Commissioner, stating the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review of the Final Orders. Within 20 days after the filing of any such petition for reconsideration, the Commissioner will render a written Order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings, which order will be served upon the Parties in the manner prescribed by K.S.A. § 77-531 and amendments thereto. In the event that the Commissioner grants any such petition, in whole or in part, the Commissioner will state, in the written Order, findings of fact, conclusions of law and policy reasons for the decision to the extent that it is an exercise of the Commissioner's discretion, to justify the Order. Any Order rendered upon reconsideration or any order denying a petition for reconsideration will state the agency officer to receive service of a petition for judicial review.
22. Judicial Review of the Final Orders. Any Party or Intervener may appeal from the Commissioner's Final Orders within the time provided, and pursuant to the procedures provided, by Chapter 77, Article 6, of the Kansas Statutes Annotated.

23. Experts Retained by the KID Testimonial Team. The KID Testimonial Team has retained and will retain, at the expense of Security Benefit, experts reasonably necessary to assist in the discharge of the KID Testimonial Team's duties in reviewing the proposed Plan. The KID Testimonial Team has retained and will retain, at the expense of the Investor, any attorneys, actuaries, accountants, and other experts not otherwise a part of the KID Testimonial Team's staff as may be reasonably necessary to assist the KID Testimonial Team in reviewing the proposed Acquisition of Control. The following constitute the experts thus far retained by the KID Testimonial Team:

- (a) Investment Banker: Keefe, Bruyette & Woods, Inc.
- (b) Actuaries: Tillinghast/Towers Watson
- (c) Financial Consultants: Huron Consulting

Security Benefit shall pay the fees and reasonable expenses of the KID Testimonial Team and the above experts that the KID Testimonial Team shall identify as attributable to the review of the Plan. The Investor shall pay the fees and reasonable expenses of the KID Testimonial Team and the above experts that the KID Testimonial Team shall identify as attributable to the review of the Form A. Security Benefit shall pay all other fees and expenses in connection with these proceedings. This Order is not intended to affect the allocation of the payment of fees pursuant to the Agreement, or as Security Benefit may otherwise agree.

24. Anticipated Schedule of Proceedings. The tentative schedule of proceedings, subject to change, will be provided by the Commissioner for the guidance of the Parties in an Order following a pre-hearing conference.

**IT IS HEREBY ORDERED THIS 22<sup>nd</sup> DAY OF March, 2010 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ \_\_\_\_\_  
John W. Campbell, General Counsel  
Kansas Insurance Department

**NOTIFICATION OF SERVICE**

A true and correct copy of the foregoing **PROCEDURAL AND SCHEDULING ORDER** dated [\_\_\_\_\_], 2010, has this \_\_\_\_ day of March 2010, been sent to the below identified counsel or parties.

/s/ \_\_\_\_\_  
Zachary J.C. Anshutz  
Kansas Insurance Department

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