

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Application)	FINDINGS OF FACT,
Of Nodak Mutual Insurance)	CONCLUSIONS OF LAW,
Company)	AND ORDER
)	
)	FILE NO. CO-16-603

I. PRELIMINARY STATEMENT

1. These Findings of Fact and Conclusions of Law are made in relation to the Plan of Mutual Property and Casualty Insurance Company Conversion and Minority Offering dated January 21, 2016 (the "Plan") adopted by Nodak Mutual Insurance Company ("Nodak") and the Application for Approval of a Plan of Mutual Property and Casualty Insurance Company Conversion and Minority Offering filed with the Commissioner on February 10, 2016 (the "Application").

2. On November 15, 2016, a hearing was held before the North Dakota Insurance Commissioner.

3. Appearing on behalf of Nodak were Scott H. Spencer, Stevens & Lee, Counsel to Nodak *pro hac vice*; Michael James (Jim) Alexander, Executive Vice President and CEO of Nodak; Jeffrey P. Waldron, Senior Managing Director of Griffin Financial Group, LLC ("Griffin"); and Trent Feldman, President of Feldman Financial Advisors, Inc. ("Feldman Financial").

4. Appearing for the Department were Sara Behrens, Legal Counsel; Edward Moody, Chief Examiner and Director of Company Licensing; and Paul Siebrasse,

Principal of RSM US LLP (“RSM”). Other members of the staff of the Department were present but did not examine witnesses or testify.

5. Notice of the hearing was provided in accordance with law.

II. FINDINGS OF FACT

These Findings of Fact are based upon the review of the contents of the Plan and the Application, including exhibits thereto, and the sworn testimony of Mr. Alexander, Mr. Waldron, Mr. Feldman, Mr. Moody and Mr. Siebrasse presented at the hearing.

The Application Process

1. Nodak is a North Dakota domiciled mutual insurance company.
2. The Application was filed with the Department on February 10, 2016.
3. The Application was filed pursuant to the provisions of N.D.C.C. § 26.1-12.2 et seq. (the “Conversion Law”).
4. The Application was supplemented on May 9, 2016, with the filing of two reports prepared by Feldman Financial, namely, a Conversion Valuation Appraisal Report (the “Feldman Company Valuation Report”), and a Subscription Rights Valuation Report (the “Feldman Subscription Rights Valuation Report”).
5. Feldman Financial constitutes the qualified independent expert retained to establish the dollar value of the capital stock for which subscription rights are granted under the Plan pursuant to N.D.C.C. § 26.1-12.2-03(4) of the Conversion Law, as well as the dollar value of a subscription right pursuant to N.D.C.C. § 26.1-12.2-03(5) of the Conversion Law.

6. Pursuant to N.D.C.C. § 26.1-12.2-02(5) of the Conversion Law, the Department retained the services of Paul Siebrasse of RSM to serve as a financial advisor to the Department and to assist in reviewing the plan of conversion and the independent valuations prepared by Feldman Financial.

7. Mr. Alexander's testimony established the following:

- a. The Board of Directors of Nodak (the "Nodak Board") adopted and approved the Plan by a unanimous affirmative vote at a meeting held on January 21, 2016.
- b. On January 21, 2016, Nodak had 27,915 eligible members. An eligible member is a member of Nodak Mutual Insurance Company whose policy was in force on January 21, 2016.
- c. Nodak mailed a notice required by N.D.C.C. § 26.1-12.2-02(3) of the Conversion Law to all the eligible members on February 11, 2016.
- d. Nodak mailed notice of the hearing required by N.D.C.C. § 26.1-12.2-02(6) of the Conversion Law to all the eligible members and all other Nodak members on October 24, 2016.

The Plan

8. The Plan provides for the formation of the following entities:

- a. Nodak will cause to be formed a mutual holding company called Nodak Mutual Group, Inc. ("Nodak Mutual Group").
- b. Nodak also will cause to be formed a stock holding company called NI Holdings, Inc. ("NI Holdings").

- c. Nodak Mutual Group will own at least 55% of the outstanding common stock of NI Holdings.
- d. Nodak Mutual Insurance Company will convert to stock form and will be renamed Nodak Insurance Company.
- e. NI Holdings will initially own 100% of the outstanding shares of Nodak Insurance Company.
- f. The policyholders of Nodak Insurance Company will be the members of Nodak Mutual Group.

9. The members of the Board of Directors of the Nodak Mutual Group will be selected in accordance with the Bylaws of Nodak Mutual Group which were unanimously approved by the Board of Directors of Nodak Mutual Insurance Company and are on file with the North Dakota Insurance Department. In accordance with the Bylaws:

- a. The Nodak Mutual Group Board will be comprised of 3 to 15 directors. The number will be set by a resolution of the Board of Directors.
- b. The North Dakota Farm Bureau ("Farm Bureau") shall designate individuals who shall be elected to the Board of Directors. The number of these designees shall be the closest whole number equal to or less than one-third of the number of directors.
- c. In their capacity as the members of Nodak Mutual Group, the policyholders of Nodak Insurance Company will have the exclusive right to elect the Board of Directors of Nodak Mutual Group.

- d. Any member may submit a nomination for director. The Board of Directors will make the nominations.

10. The Plan provides for the offering of common stock of NI Holdings in accordance with, among other things, the following:

- a. NI Holdings will offer 45% of its common stock for sale at \$10 per share.
- b. NI Holdings will offer between 7,650,000 and 10,350,000 shares, for total offering proceeds of between \$76,500,000 and \$103,500,000 with a midpoint of \$90,000,000.
- c. The amount of the offering is based upon 45% of the pro forma market value of NI Holdings and Nodak Insurance Company on a consolidated basis determined by the Feldman Company Valuation Report.
- d. The eligible members of Nodak will receive subscription rights to purchase shares of NI Holdings' common stock at \$10 per share. If an eligible member chooses to purchase shares of NI Holdings, they must purchase a minimum of 25 shares and are limited to a maximum of 5% of the shares offered. The rights must be redeemed on an all or none basis.
- e. The subscription rights will give preference to the eligible members to purchase shares over all other purchasers in the offering.
- f. If the eligible member chooses not to purchase shares of NI Holdings or makes no choice, the eligible member's subscription

rights will be redeemed for cash at a rate of \$0.67 per subscription right.

- g. Members who were not eligible members on January 21, 2016, may have the opportunity to purchase stock in the public offering.

11. The Feldman Company Valuation Report establishes the pro forma market value of NI Holdings and Nodak Insurance Company on a consolidated basis in accordance with N.D.C.C. § 26.1-12.2-03(4) of the Conversion Law. That value is a midpoint value of \$200,000,000, with a range of 15% above and 15% below such midpoint, being \$170,000,000 and \$230,000,000, respectively.

12. Feldman Financial and its principals have performed approximately 400 valuations of financial institutions in connection with their conversion from mutual to stock form.

13. Mr. Feldman's testified to the following:

- a. The valuation of Nodak was performed in accordance with accepted valuation techniques.
- b. Feldman Financial's valuation conclusion relies upon the comparative market method, which compares the value of Nodak with a selected group of 12 publicly traded insurance companies judged by Feldman to be a comparative peer group.
- c. The implied price-to-book value ratio of Nodak is a discount to the price-to-book value ratios of the peer group.

d. It is the opinion of Feldman Financial that its estimated pro forma market value will attract full subscription for the shares of NI Holdings to be offered in the offering.

14. Paul Siebrasse of RSM testified that he also conducted a valuation of NI Holdings. His valuation established the pro forma market value to be a range from \$185,000,000 to \$250,000,000 with a midpoint value of \$217,700,000.

15. The RSM Report states, "The results of our independent appraisal corroborate the reasonableness of the methodology applied and conclusions made by Feldman in establishing the Company's Pro Forma Market Value." See RSM Report p. 40. Mr. Siebrasse testified that nothing has occurred since the date of the RSM Report to cause him to alter the foregoing statement.

16. Mr. Alexander testified that Nodak does not intend to obtain an updated pro forma valuation in connection with the completion of its mutual to stock conversion. He testified that there have been no material developments since the date of the valuation that would call into question Feldman Financial's valuation conclusion.

17. Mr. Waldron, as the company's financial advisor, testified that there have been no material developments since the date of the valuation that would call into question Feldman Financial's valuation conclusion.

18. Mr. Feldman testified that nothing has been called to his attention since the date of the valuation that would call into question his valuation conclusion and that typically the valuation with a 15% upwards range and a 15% downwards range would be adequate to reflect all but the most unusual and significant events.

19. N.D.C.C. ch. 26.1-12.2 does not require Nodak's statutorily required pro forma valuation to be updated.

20. If the Plan is approved by the Commissioner, Nodak must then send out the Form of Proxy Statement, a draft of which is included as part of Nodak's Application. At least 10 percent of these proxy forms must be returned and at least two-thirds of those returned must vote for approval in order for the Plan to be approved.

Evaluation of the Effects of the Plan

21. Mr. Alexander's testimony established the following with respect to the proceedings of the Nodak Board:

- a. The Nodak Board periodically engages in strategic planning meetings.
- b. The Nodak Board first considered the concepts of mutual holding companies and conversion from mutual to stock form in 2012.
- c. Nodak retained the services of Griffin in 2013 to provide a strategic alternatives study.
- d. In February 2014, the Nodak Board considered the results of the Griffin strategic alternatives study.
- e. After the passage of the Conversion Law, the Nodak Board or a committee thereof or members of Nodak's management met several other times with Griffin.
- f. The Board unanimously adopted the Plan at a meeting held January 21, 2016.

22. The testimony of Mr. Waldron verified and corroborated the testimony of Mr. Alexander with respect to the proceedings of the Nodak Board. Mr. Waldron opined that the Nodak Board carefully and methodically considered all its strategic options over an extended period of time.

23. Mr. Alexander testified that the Nodak Board determined the Plan to be in the best interests of Nodak and its policyholders. Mr. Alexander explained these reasons for such determination:

- a. Nodak would remain an independent, well-capitalized company, with its headquarters in Fargo, North Dakota, and much of its workforce located there.
- b. Nodak maintains its mutual tradition through Nodak Mutual Group.
- c. Nodak retains ties to the Farm Bureau, through the continuation of the existing licensing and royalty agreement and the requirement for Farm Bureau nominees to be on the boards of Nodak Mutual Group and Nodak Insurance Company.
- d. Nodak expects to raise approximately \$90,000,000 of capital that would not otherwise be available. That capital will strengthen Nodak and its claims-paying ability to the benefit of its policyholders.
- e. Each eligible member will have an investment opportunity or will receive a cash payment in the redemption of their subscription rights.

24. Mr. Alexander testified that no prejudice will result to the Nodak members as a result of the Plan; to the contrary, he believes the members will benefit.

25. Mr. Waldron likewise testified that from a financial point of view no prejudice will result to the Nodak members as a result of the Plan; to the contrary, he believes the members will benefit.

26. No testimony or other evidence was offered that any prejudice would result to the members of Nodak from the Plan.

Subscription Rights

27. The Plan provides for the grant of subscription rights to eligible members in accordance with N.D.C.C. § 26.1-12.2-03(1)(c) of the Conversion Law. A distribution model was rejected as it is more effective for companies much larger than Nodak and would have required Nodak to raise capital in addition to providing stock to policyholders at no charge.

28. The Plan provides that each eligible member shall receive an equal number of subscription rights, determined by dividing the midpoint of the offering range of 9,000,000 shares by the number of eligible subscribers. This equals 322 subscription rights per eligible member.

29. Mr. Alexander testified that the equal, or per capita, allocation of subscription rights was determined to be fair and equitable to the eligible members because an equal allocation method is standard for mutual property and casualty insurance company conversions and each subscriber will have an adequate opportunity to purchase the stock of NI Holdings.

30. Mr. Waldron testified that he and other principals of Griffin have been involved in 12 of the 16 known mutual property and casualty insurance company conversions.

31. Mr. Waldron testified that to his knowledge a per capita allocation method of subscription rights was utilized in every other mutual property and casualty insurance company conversion and that in his opinion the equal allocation method is fair and equitable to the eligible members of Nodak.

32. N.D.C.C. § 26.1-12.2-03(1)(c)(2)(b) of the Conversion Law provides that the allocation of subscription rights on a per capita basis is entitled to a presumption that such method is fair, subject to a rebuttal of fairness by clear and convincing evidence.

33. No testimony or other evidence was offered in support of an alternative method of allocating subscription rights or that would indicate that the allocation of subscription rights on a per capita basis is not fair and equitable.

34. The Feldman Company Subscription Rights Valuation Report establishes the value of a subscription right under the Nodak Plan based upon the application of the Black-Scholes option pricing model.

35. N.D.C.C. § 26.1-12.2-03(5) of the Conversion Law provides that the value of a subscription right may be based upon the application of the Black-Scholes option pricing model.

36. The Feldman Company Subscription Rights Valuation Report determines that the value of a subscription right under the Nodak Plan is \$0.67 (67 cents) per right. RSM determined that the value of a subscription right is \$0.80 (80 cents) per right.

37. Mr. Feldman's testimony addressed the five inputs to the Black-Scholes option pricing model, being (a) the exercise price of option, which is \$10 per share; (b) the price of stock to be acquired under the option, which is also \$10 per share; (c) the term of the option, which is deemed to be 90 days under N.D.C.C. § 26.1-12.2-03(5) of the Conversion Law; (d) the risk-free rate of interest of 0.16% based on the three-month U.S. Treasury constant maturity yield as of December 31, 2015; and (d) stock price volatility rate of 33.57% based on the average stock price volatility for the comparative group companies for the year ending December 31, 2015.

38. Mr. Feldman testified that because the stock of NI Holdings is not currently traded, he assumed that the stock price volatility of the common stock of NI Holdings would be substantially similar to the stock price volatility of the companies in the Feldman Financial peer group.

39. N.D.C.C. § 26.1-12.2-03(5) of the Conversion Law provides that in connection with the determination of stock price volatility, the qualified independent expert may assume that the attributes of the converted stock company will be substantially similar to the attributes of the stock of the peer companies used to determine the estimated pro forma market value of the converted stock company.

40. Mr. Feldman's methodology regarding stock price volatility is consistent with the Conversion Law and is reasonable.

Capital and Surplus

41. Mr. Alexander testified that Nodak currently has adequate capital and surplus to support its operations and its AM Best "A" rating, and that Nodak Insurance

Company, as the converted company, will have sufficient capital and surplus to support its operations.

42. Mr. Moody for the North Dakota Insurance Department testified that Nodak has sufficient capital and surplus to support its operations, that it will have sufficient capital and surplus following the conversion, and that the Plan would not have a detrimental effect on the capital and surplus of Nodak.

Compliance with the Conversion Law

43. Mr. Moody for the North Dakota Insurance Department testified in part to the following:

- a. He was one of the North Dakota Insurance Department staff members who reviewed the documentation submitted with respect to the proposed conversion.
- b. The Plan complies with the requirements of N.D.C.C. ch. 26.1-12.2. The Plan sets forth all provisions that must be included pursuant to said chapter, and does not set forth any provision that is contrary to said chapter.

Insurance Policies

44. Mr. Alexander testified that adoption of the Plan and consummation of Nodak's conversion thereunder will not have any effect on the insurance coverage provided by Nodak. Insurance coverage under existing policies will continue in accordance with their respective terms and provisions. Adoption of the Plan and consummation of the conversion of Nodak thereunder will not affect premiums or

coverage and will not result in any cancellation or termination of any such policy. There will be no disruption in the insurance relationship of members of Nodak.

Public Comments

45. In addition to the mailing of notice of the Plan to eligible policyholders by Nodak (see ¶ [7(c)], supra), the Department published notice of the Plan together with copies of the Plan on the Department's website.

46. The Department received approximately eight written comments on the Plan prior to the hearing and numerous telephone calls.

47. Mr. Alexander testified that Nodak received approximately 27 inquiries, either written or by telephone, about the Plan.

48. The majority of comments were seeking clarification about the effects of the Plan on the inquiring person's insurance policy.

49. Approximately eight commenters expressed some level of concern about or disagreement with the Plan.

50. The Department received one written comment following the hearing which expressed disagreement with the Plan.

51. The North Dakota Insurance Department is aware of no objections to the Plan at this time which would be material to the factors found in N.D.C.C. § 26.1-12.2-02(4).

52. No objections to the proposed conversion were offered at the hearing.

53. Only one member of the public, an individual policyholder, made a comment at the hearing. That individual commented favorably about Nodak and voiced no concern or objection about the Plan.

III. CONCLUSIONS OF LAW

1. Nodak has properly filed all the materials required by N.D.C.C. § 26.1-12.2-02(2) of the Conversion Law.

2. Nodak has paid \$10,000 of the required \$200,000 filing fee pursuant to N.D.C.C. § 26.1-12.2-02(2)(f) of the Conversion Law and will be required to pay the remaining part of the filing fee in the amount of \$190,000 within 30 days of this Order.

3. The valuation of Nodak on a pro forma basis set forth in the Feldman Company Valuation Report complies with N.D.C.C. § 26.1-12.2-03(4) of the Conversion Law.

4. The valuation of the subscription rights set forth in the Feldman Subscription Rights Valuation Report complies with N.D.C.C. § 26.1-12.2-03(5) of the Conversion Law.

5. In consideration of the submissions and evidence offered by Nodak and the Department, and in accordance with N.D.C.C. § 26.1-12.2-02(4):

- a. Nodak's Plan complies with N.D.C.C. ch. 26.1-12.2.
- b. Nodak's Plan is fair and equitable to the converting mutual company, the members of the converting mutual company, and the eligible members of the converting mutual company.
- c. The Plan's method of allocating subscription rights is fair and equitable.
- d. The Plan will not otherwise prejudice the interest of the members of Nodak.

- e. Nodak Insurance Company, when converted in accordance with the Plan, will have the amount of capital and surplus that is reasonable for its future solvency.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, Nodak Mutual Insurance Company's Application for Approval of a Plan of Mutual Property and Casualty Insurance Company Conversion and Minority Offering is hereby **APPROVED**.

DATED this 28th day of December, 2016.



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