



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

June 5, 2001

Ms. Dona D. Young
President and Chief Operating Officer
Phoenix Home Life Mutual Insurance Company
One American Row
Hartford, Connecticut 06115

Re: Opinion and Decision

Dear Dona:

We have discovered that the Opinion and Decision, dated as of June 1, 2001, approving the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company contains a typographical error at Paragraph 143. Please be advised that we hereby replace the erroneous number ".05%" in such paragraph with the intended "0.5%." A notification of this correction will also be posted on our website.

Please feel free to call me if you have any questions regarding the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin M. Rampe".

Kevin M. Rampe
First Deputy Superintendent

cc: Audrey Samers, Esq. (New York State Insurance Department)
Ms. Lorraine Gash (New York State Insurance Department)
Paul C. Meyer, Esq. (Clifford Chance Rogers & Wells LLP)
Earl S. Zimmerman, Esq. (Clifford Chance Rogers & Wells LLP)
Keith M. Andruschak, Esq. (Clifford Chance Rogers & Wells LLP)
Tracy Rich, Esq. (Phoenix Home Life Mutual Insurance Company)
Thomas M. Kelly, Esq. (Debevoise & Plimpton)

<http://www.ins.state.ny.us>

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| In the Matter of the | X | |
| Plan of Reorganization | : | |
| of | : | |
| PHOENIX HOME LIFE | : | <u>OPINION AND DECISION</u> |
| MUTUAL INSURANCE COMPANY | : | |
| from a Mutual Life Insurance Company | : | |
| into a | : | |
| Stock Life Insurance Company | X | |

The predecessor of Phoenix Mutual Life Insurance Company (“Phoenix Mutual”) was originally organized under the laws of the State of Connecticut in 1851 as a stock company under the name American Temperance Life Insurance Company. During 1889, it reorganized as a Connecticut mutual life insurance company. In 1992, Phoenix Mutual merged with Home Life Insurance Company, a New York mutual insurance company, with Phoenix Mutual as the surviving corporation. In connection with the merger, Phoenix Mutual redomesticated to the State of New York and changed its name to Phoenix Home Life Mutual Insurance Company (“Phoenix” or the “Company”). Phoenix has applied to the New York State Superintendent of Insurance (the “Superintendent”) to convert from a domestic mutual life insurance company to a domestic stock life insurance company (the “Reorganization”) in accordance with the provisions of Section 7312 of the New York Insurance Law (“Section 7312”) (McKinney 2000).¹

¹ Unless otherwise indicated, references or citations in the text of this Opinion and Decision to “Section ____” or “§_____” are to sections of the New York Insurance Law.

I. Legislative Background and Statutory Requirements

1. Section 7312 was enacted by the New York State Legislature in 1988 to permit domestic mutual life insurance companies to reorganize to stock company form, a process known as demutualization. According to the legislative findings that accompanied the law:

[I]t is in the interest of the state to maintain a financially sound and competitive life insurance industry in this state and to provide statutory authority for domestic mutual life insurance companies that find it in the best interest of the company and its policyholders to convert to stock form to do so pursuant to this legislation. In doing so, the legislature is cognizant that two separate state-appointed commissions examined, among other things, the issue of conversion from mutual form and both recommended that mutual life insurance companies should be allowed to demutualize. Each recognized that flexibility of corporate form can be an important factor in an environment of rapidly changing economic conditions.

Section 1 of L. 1988, ch. 683; amended L. 1988, ch. 684, § 1 (Sept. 1, 1988), *reprinted in* N.Y. Ins. Law § 7312 note (McKinney 2000) (legislative findings).

2. To ensure that the new statute was sufficiently flexible, the Legislature authorized several alternate methods of reorganization:

With the proposal of this legislation, the legislature provides for the demutualization of life insurance companies in accordance with provisions specific enough for the insurer to plan sufficiently for a major reorganization of its corporate form, and standards broad enough to assure the state that any such reorganization must be fair and equitable to its policyholders in both substance and detail. In setting forth several detailed methods of conversion, the legislature intends to give guidance to insurers seeking to reorganize by offering three specific conversion methods; by also authorizing any

fair and equitable method of reorganization approved by the superintendent of insurance, either completely different from the three specific methods enumerated or any variant thereof, the legislature recognizes the complexity of the process and the need for flexibility.

Id.

3. Regardless of the method of reorganization, the Legislature made plain that the Superintendent should have broad authority to interpret and apply the new law:

[N]otwithstanding the relative inexperience with life insurance company demutualizations, the legislature hereby recognizes that the state's authority is broad enough, in requiring that any reorganization be fair and equitable, to bring within the scope of its regulatory review and approval any concepts related to demutualization, unanticipated as of the effective date of this legislation, that could materially affect a reorganization.

Id.

4. A domestic mutual life insurance company seeking to reorganize under Section 7312 is required, by action of three-fourths of its entire board of directors, to adopt a plan of reorganization that is consistent with the provisions of the statute and that the board finds to be fair and equitable to the policyholders of the company. § 7312(e)(1).

5. The plan of reorganization must: (1) demonstrate a purpose and specify reasons for the proposed reorganization; (2) be in the best interest of the mutual life insurer and its policyholders; (3) be fair and equitable to policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; and (5) not substantially lessen competition in any line of insurance business. § 7312(c). The plan of reorganization must also set forth: (1) a demonstration of the purpose for the proposed

reorganization; (2) the form of the reorganization; (3) the proposed charter of the reorganized insurer set out in accordance with Section 1201 and proposed by-laws which provide for the removal of the word “mutual” from the name of the company; (4) the manner and basis by which the reorganization shall take place; (5) the consideration to be given to the policyholders in exchange for their policyholders’ membership interest or the manner of converting the policyholders’ membership interest into securities or other consideration; (6) the method of allocating the consideration among policyholders; (7) the method of operation of the participating business of the mutual life insurer comprised of its participating policies and contracts in force on the effective date of the reorganization; and (8) a plan of operation for the reorganized insurer, including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. § 7312(e).

6. Paragraph (4) of Section 7312(d) (“Method 4”) authorizes domestic mutual insurers to reorganize from mutual to stock form using:

(A) Any method approved by the superintendent under which the policyholders’ membership interest is converted into or exchanged for consideration determined by the superintendent to be fair and equitable to policyholders and meeting the requirements of this section; (B) the consideration to be given to policyholders is allocated among the policyholders in a manner which is fair and equitable; (C) unless the superintendent determines that it is in the policyholders’ interest to waive all or a part of this condition, the mutual life insurer does not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. . . . ; and (D) in determining whether any reorganization is fair and equitable, the superintendent shall be guided by the legitimate

economic interests of participating policyholders as delineated in this section.

7. Section 7312(e)(2) provides that the consideration to be given in exchange for the policyholders' membership interests may consist of "cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration." Further, Section 7312(e)(2) states that "[t]he consideration, if any, given to any class or category of policyholder need not be the same as the consideration given to any other class or category of policyholder."

8. The policyholders eligible to vote upon a proposed plan of reorganization and to receive consideration if the plan becomes effective are those whose policies or contracts are in force on the date the board of directors of the insurance company adopts the plan. § 7312(e)(3). Section 7312(a)(2) defines policyholder to mean "a person, as determined by the records of a mutual life insurer," who is deemed to be the "policyholder" of a life insurance policy, annuity contract, or accident and health insurance policy which the insurance company is authorized to sell pursuant to Section 1113(a).

9. Section 7312(h)(1) authorizes the Superintendent to appoint one or more qualified disinterested persons or institutions as consultants to advise him on any matters related to a proposed reorganization.

10. The Superintendent is required to hold a public hearing on the fairness of the terms and conditions of a proposed plan of reorganization, the reasons and purposes for the mutual life insurer to demutualize, and whether the reorganization is in the interest of the mutual life insurer and its policyholders and is not detrimental to the public. § 7312(i). The insurer is required to mail a notice of the time, place, and purpose of the hearing, and a notice of the date, time, and place for the policyholder vote on the plan, at least thirty days in advance to the last known address of each policyholder eligible to vote, as shown on the records of the company. The two notices may be combined and must include a copy of the plan and such explanatory information as the Superintendent may approve or require. § 7312(i), (k). In addition, the insurer is required to provide notice of the hearing, not less than fifteen days nor more than sixty days in advance, by publication in three newspapers of general circulation, at least one of which must be in the county in which the insurer has its principal office. § 7312(i).

11. Within sixty days after the conclusion of the public hearing, the Superintendent is required to approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate the New York Insurance Law, is fair and equitable to the policyholders and is not detrimental to the public, and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Superintendent deems reasonably necessary for its future solvency. § 7312(j). The Superintendent may not disapprove of a plan of reorganization for the reason that the mutual life insurer selected one of the methods provided for in Section 7312(d) rather than another. *Id.*

12. A proposed plan of reorganization must also be approved by the affirmative vote of two-thirds of all votes cast by policyholders entitled to vote. § 7312(k)(2). The Superintendent is required to appoint insurance department personnel or other disinterested persons as inspectors to supervise the policyholder vote. § 7312(k)(4).

13. A plan that has been approved by the Superintendent and policyholders will take effect in accordance with its terms on the date when a copy of the plan, with the approval of the Superintendent endorsed on it, and a certification by the inspectors of the results of the vote, have been filed in the office of the Superintendent “or on such later date, if any, as may have been specified in or determined in accordance with said plan or pursuant thereto.” § 7312(l).

II. Procedural History

14. In mid-2000, Phoenix informed the New York State Insurance Department (the “Department”) that it had determined to formulate a plan to convert from mutual to stock form pursuant to Section 7312. Subsequently, Phoenix advised the Department that, as part of its Plan of Reorganization (the “Plan”):² (1) Phoenix would create a new holding company, The Phoenix Companies, Inc., a Delaware corporation (the “Holding Company”), to own all of the common stock of the converted insurer; (2) Phoenix would compensate eligible policyholders for the loss of their membership interests in the mutual company with shares of Common Stock, cash and/or enhanced values credited to policies (“Policy Credits”); (3) Phoenix would operate the majority of its individual participating

² Except as otherwise indicated, any capitalized term has the meaning set forth in the Plan.

policies as a “closed block” (the “Closed Block”) to ensure that the reasonable dividend expectations of the owners of such policies would be met after the Reorganization; (4) the Holding Company would raise capital by means of an initial public offering (the “IPO”) of its common stock (“Common Stock”); (5) the Holding Company would, subject to certain restrictions and the prior approval of the Superintendent, raise additional capital by means of one or more other capital raising transactions (the “Other Capital Raising Transactions”), which might include an offering of: (A) preferred securities; (B) mandatorily convertible debt or preferred securities; (C) convertible debt or preferred securities; and/or (D) debt securities, as well as commercial paper issuances, bank borrowings, and/or (E) a private placement of Common Stock or any of the other securities mentioned in (A) through (D) above (or a combination of such offerings, issuances and bank borrowings); (6) Phoenix would, subject to the prior approval of the Superintendent, transfer to the Holding Company on the Plan Effective Date all of the issued and outstanding shares of capital stock that it owns in one or more of the following subsidiaries: (i) Phoenix Investment Partners, Ltd. (“PXP”), (ii) W.S. Griffith, Inc., (iii) PHL Associates, Inc., (iv) Main Street Management Company and (v) Phoenix Charter Oak Trust Company (collectively, the “Target Subsidiaries”) in exchange for the fair market value of any such Target Subsidiary transferred (the “Subsidiary Transfers”); and (7) not sooner than six months, but not later than twelve months, after the IPO, the Holding Company would establish a commission-free purchase and sale program (the “Purchase and Sale Program”) pursuant to which, subject to certain restrictions and the prior approval of the Superintendent, policyholders who receive Common Stock in

consideration of the Reorganization would be able to sell their shares or buy additional shares after the IPO on a commission-free basis.

15. In connection with the proposed Reorganization, the Superintendent appointed The Blackstone Group, L.P. (“Blackstone”) to serve as its financial consultants, Arthur Andersen LLP (“Arthur Andersen”) to serve as its actuarial consultants and Clifford Chance Rogers & Wells LLP (“Clifford Chance,” and collectively, with Blackstone and Arthur Andersen, the “Consultants”) to serve as its legal consultants. Subsequently, the Superintendent also appointed employees of the Department as inspectors responsible for monitoring the policyholder voting process and appointed Morrow & Co., Inc. to assist these inspectors.

16. Drafts of the Plan, Policyholder Information Booklets Parts One and Two, actuarial documents, and other related materials were reviewed and commented on by the Department and its Consultants. In addition, these documents and materials were the subject of meetings and discussions among the Department and its Consultants, and Phoenix and its advisers, including Tillinghast-Towers Perrin (“Tillinghast”) as actuarial advisers, Morgan Stanley & Co., Incorporated. (“Morgan Stanley”) as financial advisers and Debevoise & Plimpton (“Debevoise,” and collectively, with Tillinghast and Morgan Stanley, the “Advisors”) as legal advisers. Further, at the request of the Department and its Consultants, or upon their own initiative, Phoenix and its Advisors submitted additional documents, materials, and information concerning significant issues presented by the Plan and the transactions contemplated thereby.

17. On December 18, 2000 (the “Board Adoption Date”), the Board of Directors of Phoenix (the “Board”) unanimously adopted the Plan and various exhibits thereto. On December 28, 2000 and again on January 26, 2001, the Plan was amended and restated by Board action in accordance with Section 7312. (Hereafter, references to the Plan refer to the Plan (including the exhibits thereto) as amended and restated on January 26, 2001). As adopted, the Plan provided for, among other things, the formation of the Holding Company, payment of compensation to owners of policies that were in force as of the Board Adoption Date (“Eligible Policyholders”), the establishment of the Closed Block, the completion of the IPO, the possibility of Other Capital Raising Transactions and Subsidiary Transfers simultaneously with the effective date of the Reorganization and the establishment of the Purchase and Sale Program. In the certified resolutions adopting the Plan, the Board determined that:

- (1) the Plan is fair and equitable to policyholders of Phoenix (as contemplated by Section 7312(e) of the New York Insurance Law);
- (2) reorganization pursuant to Section 7312(d)(4) under the method described in the Plan is the most appropriate method of reorganization under Section 7312(d) for Phoenix to achieve the purposes set forth in Article I of the Plan for the reasons set forth in Section 3.2 of the Plan;
- (3) the Plan will not substantially lessen competition in any line of insurance business; and
- (4) the Plan is in the best interests of Phoenix and its policyholders.

18. A copy of the Plan (as amended and restated), all the exhibits to the Plan, the Board resolutions adopting the Plan and the amendments and restatements of the

Plan, Policyholder Information Booklets Parts One and Two, the Actuarial Contribution Memorandum, and related disclosure documents were formally submitted to the Department and its Consultants on February 9, 2001.

19. On February 9, 2001, Phoenix began mailing notice of the public hearing and the policyholder vote by first-class mail to all Eligible Policyholders. The notice advised Eligible Policyholders that the Superintendent would conduct a public hearing on the Plan on March 19, 2001 at the Sheraton New York Hotel and Towers, 811 7th Avenue, New York, N.Y. 10019, commencing at 10:00 a.m., and that Eligible Policyholders could vote on the Plan through April 2, 2001, by mail or by proxy; or in person at the statutory home office of Phoenix, 10 Krey Blvd., East Greenbush, New York on April 2, 2001, between 10:00 a.m. and 4:00 p.m. Each notice mailed to an Eligible Policyholder was accompanied by: a ballot; cards listing the Policies owned by such Eligible Policyholder, the number of shares of Common Stock initially allocated to such Eligible Policyholder, the form of compensation for which each such Policy would be eligible, and, for Eligible Policyholders eligible to receive Common Stock, an option to elect to receive cash in lieu of Common Stock subject to certain limitations; voting instructions; a set of general questions and answers; Policyholder Information Booklet Part One, containing a copy of the Plan and a summary of the Plan's exhibits; Policyholder Information Booklet Part Two, containing financial information about Phoenix and the proposed Reorganization, and a letter from the Department describing the reorganization process. For certain Eligible Policyholders for whom Phoenix could not obtain correct, current addresses, Phoenix mailed an abbreviated notice of the

proposed Reorganization to the last known address of such policyholders, advising them that if they received the notice, they could call a toll-free telephone number to obtain the complete set of policyholder disclosure materials.

20. Notice of the public hearing was published in the State Register on January 31, 2001, and in The New York Times (National Edition), USA Today and the St. Louis Post Dispatch on February 22, 2001.

21. The notice advised Eligible Policyholders that they could register with the Department by March 15, 2001 to make an oral statement regarding the proposed Reorganization at the public hearing and that they could submit written statements to the Department by no later than April 2, 2001. Telephone numbers for policyholders to obtain additional information and materials from Phoenix were included in the notice and Policyholder Information Booklet Part One. The notice, copies of the Plan and all exhibits to the Plan, including the Actuarial Contribution Memorandum, were made available for public inspection at the statutory home office of Phoenix during regular business hours and on the internet at the Company's website.

22. Phoenix completed its policyholder mailing on February 17, 2001. Phoenix certified, and submitted an affidavit from its transfer agent engaged to assist with the Reorganization, Equiserve Trust Company, that the mailing was completed by no later than thirty (30) days prior to the scheduled date of the public hearing and the close of the policyholder vote, and the required notices were given to each Eligible Policyholder at the last known address of such Eligible Policyholder, as shown on the books and records of the Company.

23. The Superintendent conducted the public hearing on March 19, 2001. In addition to officers of Phoenix, its Advisors, employees of the Department and its Consultants, approximately thirty (30) people attended. Five (5) witnesses presented oral statements and submitted written statements on behalf of Phoenix: Robert W. Fiondella, Chairman of the Board and Chief Executive Officer of Phoenix; Dona D. Young, President and Chief Operating Officer of Phoenix; Robert G. Lautensack, Senior Vice President and Chief Actuary of Phoenix; Duncan Briggs, Principal of Tillinghast and Douglas L. Brown, Managing Director of Morgan Stanley. Phoenix submitted copies of the policyholder mailings, the Plan documents, and certain other materials, affidavits, and Board resolutions as exhibits to the hearing record.

24. During their testimony, each of Mr. Fiondella, Ms. Young, Mr. Lautensack and Mr. Brown indicated that, due to recent changes in market conditions that occurred subsequent to the policyholder mailing, in order to offer Common Stock in the IPO at a price that Phoenix and Morgan Stanley deemed appropriate to facilitate the successful marketing of the IPO, Phoenix was considering adjusting the number of shares of Common Stock allocated to Eligible Policyholders pursuant to its authority under Section 10.2 of the Plan and that such adjustment would be subject to the prior approval of the Superintendent.

25. Each of Mr. Fiondella, Ms. Young, Mr. Lautensack and Mr. Brown also indicated that although, under the terms of the Plan, Phoenix could engage in Other Capital Raising Transactions at the same time as the IPO, the Company did not expect to raise additional capital through one or more Other Capital Raising Transactions.

26. Two people, one Phoenix policyholder and one member of the public who was not a Phoenix policyholder but identified himself as a “potential investor,” registered with the Department to speak at the hearing. Three people presented oral statements at the hearing, including the two people who registered in advance and an additional Phoenix policyholder who requested the opportunity to speak when he arrived at the hearing. One of the speakers also submitted written statements in support of his position. At the hearing, the Superintendent announced that the hearing record would be held open for written submissions until April 2, 2001 and that the Department would make the oral testimony presented at the hearing available on its internet website. The hearing ended after approximately two hours, and all persons who had registered or otherwise requested to speak at the hearing had the opportunity to do so.

27. The policyholder vote was completed on April 2, 2001. The inspectors of the Department certified that 200,528 Eligible Policyholders voted on the Plan and that 189,864 Eligible Policyholders, or approximately ninety-five percent (95%), voted in favor of the Reorganization.

28. The hearing record closed on April 2, 2001. The Department received a total of fourteen (14) letters and other written statements on the proposed Reorganization, as well as written responses by Phoenix and its Advisors to the letters received by the Department and the issues raised at the public hearing. All of these submissions were reviewed by the Department and its Consultants and were made part of the hearing record.

29. On May 18, 2001, Phoenix formally requested the Department's approval to reduce the number of shares of Common Stock allocated to Eligible Policyholders. On May 31, 2001, Phoenix began mailing notices to each Eligible Policyholder indicating the revised number of shares of Common Stock allocated to such Eligible Policyholder and explaining the reduction. This notice also indicated that this adjustment, in and of itself, would not change the value of compensation to be paid to Eligible Policyholders since one hundred percent (100%) of the value of Phoenix immediately prior to the IPO would still be distributed to Eligible Policyholders.

III. Purposes and Reasons for the Reorganization

30. The Plan states that the main purpose for the Reorganization is to change the structure of the Company in a way that will increase its potential for long-term growth and financial strength. The Plan provides that the Reorganization will facilitate Phoenix's ability to take advantage of changes in laws permitting affiliations between insurance companies and other types of financial institutions, such as banks. On November 12, 1999, President Clinton signed into law the Financial Services Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act." The Gramm-Leach-Bliley Act provides for significant, comprehensive changes in the financial services industry. Among other things, the Gramm-Leach-Bliley Act rescinds former restrictions on affiliations among insurance companies, banks, and securities firms. The Plan provides that by converting from mutual to stock form, Phoenix will have broader access to the capital markets and an acquisition currency in the form of its publicly-traded Common Stock. Using this broader access and new form of acquisition currency, the

Company maintains that it will be better able to take advantage of these legislative changes. The Board believes that this will enable Phoenix to acquire other companies more easily, raise capital more efficiently and remain a leader in helping people become financially secure. The Board also believes that a public structure will best enable Phoenix to accelerate its wealth management business strategy, to grow its existing business and to develop new business opportunities in the insurance and financial services industries. Conversely, if Phoenix were to remain a mutual company, the Board believes that Phoenix could be significantly disadvantaged relative to its competitors due to: (1) its inability to efficiently avail itself of the legislative changes discussed above; (2) the significant consolidation and globalization within the life insurance industry; and (3) the fact that many of Phoenix's competitors are currently stock companies.

31. Several policyholders objected to the Reorganization as a whole, alleging that the Reorganization would place the interests of shareholders of the Holding Company above the interests of policyholders of Phoenix. In enacting Section 7312, however, the Legislature expressly determined that domestic mutual life insurers should have the authority to reorganize as stock life insurers, provided that the interests of policyholders are also protected in the process. Objections to demutualization as a concept, without consideration of the specific facts and circumstances of a particular reorganization, are contrary to this legislative intent.

32. Moreover, the statements in the Plan and the other submissions made by Phoenix to the Department with respect to the purpose and reasons for converting to stock form are consistent with the finding of the Legislature that "flexibility of corporate

form can be an important factor in an environment of rapidly changing economic conditions.” Section 1 of L. 1988, ch. 683; amended L. 1988, ch. 684 §1 (Sept. 1, 1988), *reprinted in* N.Y. Ins. Law § 7312 note (McKinney 2000) (legislative findings).

IV. Major Features of the Plan of Reorganization

A. Policyholder Compensation

33. The Plan provides that, as part of the Reorganization, Policyholders’ Membership Interests will be extinguished and Eligible Policyholders will receive shares of Common Stock, cash, or Policy Credits. The aggregate amount of compensation to be paid to Eligible Policyholders will represent one hundred percent (100%) of the economic value of Phoenix immediately preceding the IPO.

(i) Amount and Allocation of Consideration

34. Regardless of the form in which compensation will be paid, the amount of compensation will be based upon the number of shares of Common Stock allocated to each Eligible Policyholder under the terms of the Plan. The value of compensation paid in the form of cash or credited in the form of Policy Credits will be calculated by multiplying the total number of shares allocated to each Eligible Policyholder by the price per share of Common Stock offered in the IPO (the “IPO Stock Price”).

35. As provided in the Plan and disclosed in Policyholder Information Booklets Parts One and Two, a total of one hundred twenty (120) million shares of Common Stock were initially intended to be allocated to Eligible Policyholders as compensation for the surrender of their Policyholders’ Membership Interests. As described above, at the public hearing Phoenix and its Advisors stated that Phoenix might exercise its right, pursuant to

Section 10.2 of the Plan and subject to the prior approval of the Superintendent, to adjust the number of shares of Common Stock finally allocated to Eligible Policyholders.

36. On May 18, 2001, Phoenix advised the Department that it intends to reduce the number of shares allocated to Eligible Policyholders from 120 million to approximately 58.4 million shares pursuant to Section 10.2 of the Plan. Phoenix and Morgan Stanley represented that such a reduction would be necessary in order to effect an IPO Stock Price that Phoenix and Morgan Stanley deemed appropriate to facilitate the completion of the IPO. Phoenix also indicated that such a reduction in the number of shares of Common Stock allocated to Eligible Policyholders is fair and equitable to its policyholders since the reduction, in and of itself, would not reduce the value of compensation to be paid to Eligible Policyholders. Finally, Phoenix represented that the reduction in the number of shares allocated to Eligible Policyholders would not reduce the threshold for cash elections (as discussed below) or the threshold for eligibility under the Purchase and Sale Program (as discussed below). As a result of the reduction, therefore, more Eligible Policyholders who elected to receive cash would be eligible to receive cash, and more Eligible Policyholders would be able to participate in the Purchase and Sale Program.

37. Phoenix and Morgan Stanley represented that the purpose of any reduction in the number of shares of Common Stock allocated to Eligible Policyholders would be to ensure that the price of the Common Stock offered in the IPO would be at least \$10.00 per share. Phoenix and Morgan Stanley also represented that single-digit stocks are superficially viewed as being associated with distressed stocks and that single-digit IPOs

often lead to the perception of a distressed offering, casting doubt on the depth of demand and distribution, which impacts after-market performance. Phoenix and Morgan Stanley represented that this negative perception of single-digit IPOs might adversely impact the demand for Common Stock issued in the IPO, which, in turn, would negatively affect the value of shares distributed to Eligible Policyholders.

38. An adjustment of the number of shares allocated to Eligible Policyholders is expressly permitted by the Plan in accordance with Section 10.2. The possibility of such adjustment was disclosed to Eligible Policyholders in numerous and prominent areas within the materials distributed to Eligible Policyholders and the likelihood of a reduction in the number of shares allocated to Eligible Policyholders was discussed during testimony at the public hearing. In addition, such reduction would not, in and of itself, reduce the value of compensation distributed to Eligible Policyholders. Therefore, the Superintendent concludes that the reduction proposed by Phoenix is fair and equitable to policyholders.

39. Initially, as set forth in the Plan and disclosed to Eligible Policyholders in Policyholder Information Booklets Parts One and Two, Phoenix expected to allocate to each Eligible Policyholder a fixed component of compensation (“Fixed Component”) equal to thirty-seven (37) shares of Common Stock, with the aggregate of all Fixed Components representing approximately fifteen percent (15%) of the originally intended one hundred twenty (120) million shares. As a result of the adjustment of the number of shares allocated to Eligible Policyholders (as discussed above), each Fixed Component will be eighteen (18) shares of Common Stock, with the aggregate of all Fixed

Components representing approximately fifteen percent (15%) of the approximately 58.4 million total shares allocated to Eligible Policyholders after the adjustment.

40. Each Eligible Policyholder will be allocated a single Fixed Component regardless of the number or face amount of the Policies such Eligible Policyholder owns. Prior to the Reorganization, each Eligible Policyholder was entitled to a single vote in the election of directors to the Board, regardless of the number or face amount of the Policies such policyholder owns. Phoenix has represented to the Department, and disclosed to Eligible Policyholders in Policyholder Information Booklet Part One, that the Fixed Component is primarily intended: (1) to compensate Eligible Policyholders for the extinguishment of their right to vote; and (2) to ensure that all Eligible Policyholders will receive at least a minimum amount of compensation, since not every Eligible Policyholder will be allocated a Variable Component (as described below).

41. In addition, each Owner of a Qualifying Policy may be allocated a variable component of compensation (“Variable Component”), representing in the aggregate the remainder (after the allocation of Fixed Components) of the shares allocated to Eligible Policyholders. For purposes of the Plan, a Qualifying Policy is defined as a Participating Policy that is deemed to be in effect based on the Company's records, as determined in accordance with certain rules contained in the Plan, on the Board Adoption Date and that is owned by an Eligible Policyholder on the Board Adoption Date. A Participating Policy, in turn, is defined as a Policy that: (1) provides for the right to participate in the divisible surplus of the Company if and to the extent that dividends are apportioned on the Policy; (2) does not by its terms provide that it is non-participating; or (3) is a

supplementary contract, unless the supplementary contract (i) provides by its terms that it is non-participating and (ii) was assumed by assumption reinsurance by the Company.

42. The Variable Component for a Qualifying Policy is calculated by taking into account, among other things, the estimated past and expected future contribution to the surplus of Phoenix of such Qualifying Policy. If the contribution of each of the Qualifying Policies owned by an Eligible Policyholder is negative or zero, such Eligible Policyholder will be allocated only a Fixed Component. Allocation of the aggregate Variable Component to each Qualifying Policy is governed by the Plan and the Actuarial Contribution Memorandum.

43. Several policyholders objected to the methods used to calculate the Variable Component. They argued that the Plan was unfair since: (1) the Variable Component allocated to certain “large” Policies (*i.e.*, Policies with relatively large face and/or cash values) was not necessarily proportionately greater than the Variable Component allocated to smaller Policies; and (2) the Variable Component allocated to certain older Policies was not necessarily proportionately greater than the Variable Component allocated to more recently issued Policies. Notwithstanding these objections, the allocation of the Variable Component to each Policy was based upon a reasonable formula for estimating historic and future contributions to surplus that is substantially similar to the formula used in most prior demutualizations. Furthermore, the face value and age of a particular Policy are not necessarily indicative of such Policy's contribution to surplus. Large face values and substantial in-force durations may be offset by other factors, including, among other things, additional policy benefits and lower premiums.

The Superintendent concludes that the allocation formula used by Phoenix to determine the Variable Component is fair and equitable to policyholders.

(ii) Payment of Compensation

44. The Plan provides that payment of compensation, whether by delivery of cash, the crediting of Policy Credits or the delivery of book-entry statements reflecting the ownership of Common Stock, will be completed no later than forty-five (45) days after the Plan Effective Date, unless the Superintendent approves a longer period for such payment. Pursuant to the Plan, in the event an Eligible Policyholder who will receive compensation in the form of Common Stock desires to sell his or her Common Stock before such Eligible Policyholder receives a book-entry statement, such Eligible Policyholder may call Phoenix's "Demutualization Information Center" beginning on the twentieth day after the IPO, and Phoenix shall use its best efforts to accommodate such Eligible Policyholder.

45. The Superintendent concludes that the delivery of compensation to Eligible Policyholders in the Reorganization as set forth in the Plan is fair and equitable to policyholders.

(iii) Form of Compensation

(a) Policyholders Required to Receive Policy Credits

46. The Plan provides that certain Eligible Policyholders are required to receive their consideration in the form of Policy Credits, which are an enhancement of Policy values. These Eligible Policyholders include the owners of:

- (1) individual retirement annuities or tax sheltered annuities, in each case issued to an individual owner;
- (2) individual annuity contracts issued under tax-qualified plans directly to the plan participant;
- (3) individual life insurance policies issued under tax-qualified plans directly to the plan participant; and
- (4) life or health insurance funding accounts or guaranteed life insurance funding accounts.

These policyholders are required to receive Policy Credits in order to avoid unfavorable tax consequences to them that would result from the receipt of compensation in the form of cash or Common Stock.

47. The value of the Policy Credits to be provided to each Eligible Policyholder required to receive Policy Credits under the Plan will equal the number of shares of Common Stock allocated to such Eligible Policyholder multiplied by the IPO Stock Price.

48. The specific form of the Policy Credits to be provided under the Plan will be as follows, depending on the Policy type:

Type of Policy

Type of Policy Credit

(1) Individual or joint participating whole life Policies

A credit of paid-up additions that will increase the cash value and death benefit of the Policies

(2) Certain supplementary contracts that are in the course of installment payments

A credit in the form of additional interest

(3) Certain supplementary contracts that are in the course of installment payments and that do not provide for additional interest

An increase in the installment payment amount

(4) Certain Policies that are in the course of annuity payments

If the Policy does not have a defined account value, a credit of dividends under the Policy, otherwise an increase in the amount of the payments distributed

(5) Other individual or joint life Policies, including annuities

If the Policy has a defined account value, an increase in the account value, to which Phoenix will apply no sales, surrender or similar charges, or that will be further increased in value to offset any such charges

If the Policy does not have a defined account value, a credit of dividends under the Policy

49. Since mandatory Policy Credits for certain Policies are intended solely to protect certain Eligible Policyholders from potentially adverse tax consequences, the Superintendent concludes that such mandatory Policy Credits are fair and equitable to policyholders.

(b) Policyholders Required to Receive Cash

50. The Plan provides that certain Eligible Policyholders are required to receive their compensation in the form of cash. These Policyholders include:

- (1) policyholders whose mailing addresses are located outside the United States and who are not required to receive their compensation in the form of Policy Credits; and
- (2) policyholders for whom Phoenix makes a good faith determination, subject to the approval of the Superintendent, that it would not be reasonably feasible or appropriate to provide compensation in the form of Common Stock.

51. Phoenix has approximately 3,400 policyholders for whom current addresses cannot be determined. This represents approximately seven tenths of one percent (0.7%) of all Eligible Policyholders. Throughout the current Reorganization process, Phoenix has made various efforts to locate these Eligible Policyholders. These efforts included, among other things, engaging third-party vendors that search credit databases for addresses.

52. The Department and its Consultants have considered the efforts of Phoenix to locate its “lost” policyholders, as well as the costs and benefits of requiring these and certain other classes of Eligible Policyholders to receive compensation in the form of

cash. The Department noted that Phoenix was able to locate all but approximately 3,400 Eligible Policyholders (approximately 0.7%).

53. In addition, Eligible Policyholders whose mailing addresses are located outside of the United States could receive Common Stock only if Phoenix were to comply with the applicable securities laws of the countries of residence of such policyholders, which could require the registration of Common Stock in other countries, resulting in a significant cost to Phoenix and a delay in the Reorganization.

54. For these reasons, the Superintendent concludes that paying cash to these groups of policyholders is fair and equitable.

(c) Stock Default or Cash Election

55. Eligible Policyholders who are not required by the terms of the Plan to receive cash or Policy Credits will receive compensation in the form of Common Stock, unless they elected to receive cash by returning a "Compensation Preference Card" to Phoenix by April 2, 2001. Eligible Policyholders who are allocated sixty (60) or fewer shares of Common Stock, and who elected to receive their compensation in the form of cash, will receive cash. Eligible Policyholders who are allocated greater than sixty (60) shares of Common Stock, and who elected to receive their compensation in the form of cash, will receive cash only if Phoenix has sufficient funds available and chooses to distribute cash to Eligible Policyholders who are allocated more than sixty (60) shares of Common Stock. Each Eligible Policyholder who receives their compensation in the form of cash will receive an amount of cash equal to the number of shares of Common Stock allocated to such Eligible Policyholder multiplied by the IPO Stock Price.

56. Phoenix and Morgan Stanley represented to the Department that a default to Common Stock is in the best interests of Phoenix's policyholders since it will enable more policyholders to benefit from any increase in the post-IPO trading price of Common Stock. Phoenix and Morgan Stanley also noted that a default to Common Stock, as opposed to cash, would reduce the Company's need for cash at the time of the IPO.

57. Phoenix and Morgan Stanley also represented that the limitation on cash-outs to Eligible Policyholders allocated more than sixty (60) shares of Common Stock would benefit all policyholders as a whole. Among other things, such limitations would: (1) enhance the flexibility of Phoenix in the event of difficult market conditions and/or a larger than anticipated level of cash elections; (2) enhance the IPO Price and reduce IPO execution risk; and (3) result in significant administrative expense savings by cashing-out individual and small group Eligible Policyholders first.

58. For the reasons stated above, the Superintendent concludes that the stock default and limitation on cash-outs is fair and equitable to policyholders.

B. Policyholder Eligibility

(i) General

59. Consistent with Section 7312(e)(3), the Plan provides that "Eligible Policyholders" are those policyholders of Phoenix who were the owners on the Board Adoption Date of one or more Policies deemed to be in-force on the Board Adoption Date, based on the records of the Company and as determined in accordance with certain rules contained in the Plan. The Plan also provides that a Policy will not be deemed to have matured by death as of any date unless notice of such death has been received by

Phoenix on or prior to the Board Adoption Date, as shown on the records of the Company. In accordance with Section 7312 and the Plan, Eligible Policyholders are entitled to vote on the Plan and receive compensation if the Plan becomes effective.

(ii) Group Policies and Contracts

60. In general, the Plan provides that the Owner of a Policy that is a group insurance policy or group annuity contract is the person specified in the policy or contract as the policy or contract holder. For certain group policies and contracts, however, persons other than the named policyholder are treated as the Owners for purposes of the Plan. For certain group universal life insurance policies, each certificate issued to any person who exercised a paid-up insurance option is treated as a separate Policy and the certificate holder is treated as the Owner. For group insurance policies or group annuity contracts, issued or deemed issued to a trust established by or on behalf of Phoenix, that provide coverage to the employees, participants, or members of more than one employer or entity, each certificate issued under the policy or contract is treated as a separate Policy and the certificate holder is treated as the Owner. For group annuity contracts, issued or deemed issued to a trust established by or on behalf of Phoenix, each certificate issued under the contract that is qualified or intended to be qualified as an individual retirement account, a tax-sheltered annuity, or a tax-deferred annuity is treated as a separate Policy and the certificate holder is treated as the Owner.

61. For these group policies and contracts, Phoenix has represented to the Department that: (1) exercise of the coverage options causes the certificate holders to cease to be treated by the Company, for purposes of experience calculation, premium

collection, or other aspects of policy administration, as part of the group policy, or (2) the named policyholder functions only as a passive vehicle for holding the group policy, whereas the certificate holders or participating employers, plans, or entities are effectively treated by the Company as, and exercise rights consistent with being, individual policy owners.

(iii) Phoenix and its Subsidiaries as Policyholders

62. To avoid any conflict of interest, the Plan provides that if the Company or any of its subsidiaries in which it owns a majority interest owns a Policy otherwise eligible for consideration, no consideration will be allocated or paid with respect to such Policy, unless the consideration is required to be used in whole or in part for the benefit of participants or employees who are covered under a Phoenix ERISA Plan funded by that Policy.

63. With respect to any Phoenix ERISA Plans that are Eligible Policyholders, Phoenix has applied to the United States Department of Labor for an exemption (the “DOL Exemption”) from Section 406 of ERISA and Section 4975 of the Internal Revenue Code. In the event that Phoenix does not obtain the DOL Exemption prior to the Plan Effective Date, the Plan permits Phoenix to delay payment of compensation to such Eligible Policyholders who are subject to such provisions and place such compensation in escrow or establish some other similar fiduciary arrangement to hold such compensation until such time as it can be distributed.

(iv) Policyholders of Phoenix's Stock Subsidiaries

64. According to the Plan, the owners of policies issued by the wholly-owned stock subsidiaries of Phoenix -- including PHL Variable Insurance Company, Phoenix Life and Annuity Company, Phoenix National Insurance Company, Phoenix Life and Reassurance Company of New York and AGL Life Assurance Company -- are not eligible to vote or receive compensation in the Reorganization, because those subsidiaries are already stock insurance companies and the provisions of Section 7312 apply only to domestic mutual life insurers converting to stock form.

65. The Superintendent has carefully reviewed the criteria Phoenix established with respect to eligibility to vote on the Plan and eligibility to receive compensation in the Reorganization and concludes that these eligibility criteria are fair and equitable.

C. Opinions as to Fairness to Policyholders

(i) Actuarial Opinions

66. Phoenix received and submitted to the Department an opinion dated December 18, 2000 from Mark A. Davis and Duncan M. Briggs, each a principal with Tillinghast (the "Davis-Briggs Opinion"), stating that the allocation of consideration to Eligible Policyholders as set forth in the Plan is fair and equitable to the policyholders of Phoenix as required by Section 7312. The Davis-Briggs Opinion states, in relevant part:

the plan for allocation of consideration to Eligible Policyholders set forth in Article VII of the Plan (including the Actuarial Contribution Memorandum attached thereto as Exhibit D) is based on actuarially sound methods and assumptions and produces an allocation of consideration that is fair and equitable to Eligible Policyholders.

67. Arthur Andersen reviewed the Actuarial Contribution Memorandum and the Davis-Briggs Opinion and, based upon the independent analysis of Arthur Andersen, concurred with the Davis-Briggs Opinion. Darryl G. Wagner, a partner with Arthur Andersen, issued an opinion (the “Wagner A/C Opinion”) to the Department dated March 26, 2001, certifying that the methods set forth in the Plan and the Actuarial Contribution Memorandum allocate the consideration to be given to policyholders among policyholders in a fair and equitable manner. The Wagner A/C Opinion was based on, among other things, a review of detailed information underlying Phoenix's allocation methods, a comparison of the methods used in the allocation of compensation to be paid by Phoenix to allocation methods that have been used in comparable demutualizations and an examination of relevant actuarial literature that describes recommended methods of allocation and sets forth underlying principles.

68. Phoenix will submit a reaffirmation of the Davis-Briggs Opinion as of the Plan Effective Date, taking into account, among other things, the reduction in the number of shares allocated to Eligible Policyholders (as discussed above).

(ii) Financial Opinions

69. Phoenix also received an opinion from Morgan Stanley, dated December 18, 2000 (the “MS Fairness Opinion”), that the exchange of the aggregate Policyholders’ Membership Interests in Phoenix for shares of Common Stock, cash, and Policy Credits in accordance with the Plan “is fair from a financial point of view to policyholders who are Eligible Policyholders taken as a group.”

70. Phoenix will submit a reaffirmation of the MS Fairness Opinion as of the Plan Effective Date, taking into account, among other things, the final IPO Price.

71. Several policyholders objected to Phoenix's reliance on the MS Fairness Opinion citing a potential conflict of interest arising from Morgan Stanley's role as financial advisor to the Company and managing underwriter for the IPO. It is customary, however, for investment banking firms to act as underwriters and, at the same time, provide financial advice and services, such as rendering fairness opinions, to financial institutions, including insurance companies reorganizing from mutual to stock form. Furthermore, Morgan Stanley's potential conflict of interest was disclosed to Eligible Policyholders as a risk factor in Policyholder Information Booklet Part One.

72. The Department also received an opinion from Blackstone, dated June 1, 2001 (the "Blackstone Fairness Opinion"), to the effect that the Plan, taken as a whole, is fair to Eligible Policyholders, as a group, from a financial point of view. Blackstone performed various financial analyses and reviewed various financial materials relating to Phoenix, the Plan and the Reorganization, as it deemed appropriate. Among other things, Blackstone reviewed the Plan, Policyholder Information Booklets Parts One and Two (including the exhibits, financial statements, and opinions), the Registration Statement and preliminary prospectus prepared in connection with the IPO, Phoenix's strategic business plan for 2001-2005, and annual statements as filed by Phoenix with the Department.

73. The Department will receive a reaffirmation of the Blackstone Fairness Opinion as of the Plan Effective Date, taking into account, among other things, the final IPO Price.

(iii) Legal Opinions

74. Phoenix submitted to the Department: (1) a legal opinion by Debevoise (the “Debevoise Opinion”) and (2) a certification by Tracy L. Rich, Senior Vice President and General Counsel of Phoenix (the “General Counsel Certification”), each of which concludes that the provisions of the Plan are consistent with the requirements of Section 7312 and do not otherwise violate provisions of the New York Insurance Law. The Department will receive a reaffirmation of the Debevoise Opinion and the General Counsel Certification as of the Plan Effective Date.

D. The IPO

75. The Plan provides that it will become effective on the date on which the closing of the IPO and any one or more Other Capital Raising Transactions occur (the “Plan Effective Date”). The Plan also provides that the Plan Effective Date will not occur later than the first anniversary of the date the Plan is approved by the Superintendent pursuant to Section 7312(j). Under the Plan, this one-year period may be extended for one or more additional periods if requested by the Board and approved in advance by the Superintendent.

76. The Superintendent concludes that this time frame affords Phoenix ample flexibility to address market conditions in connection with its conducting an IPO and one or more Other Capital Raising Transactions, and is also fair and equitable to the

policyholders of Phoenix who will not be required to surrender their Policyholders' Membership Interests until the Company is in a position to: (1) raise sufficient capital to fund the payment of consideration in the form of cash and Policy Credits; and (2) encourage and assist in the establishment of a public market for the Common Stock for the benefit of, among others, Eligible Policyholders receiving compensation in the form of Common Stock.

(i) Terms of the IPO

77. In Policyholder Information Booklet Part Two, Phoenix stated its initial intention to offer publicly up to an aggregate of approximately 59.0 million shares of Common Stock, and up to an additional 8.9 million shares that would become issuable upon exercise of the underwriters' option to purchase additional shares. Assuming a then-anticipated price range of between \$9 and \$16 per share, the Company also stated its intention to raise net proceeds of approximately between \$502 million and \$892 million (or \$577 million and \$1,026 million if the underwriters' option to purchase additional shares are exercised in full).

78. On May 25, 2001, Phoenix filed an amendment to the Registration Statement with the SEC in which it stated its revised intention to offer publicly up to an aggregate of approximately 48.8 million shares of Common Stock, and up to an additional 7.3 million shares that would become issuable upon exercise of the underwriters' option to purchase additional shares. Assuming a per share price of \$15.75 (the mid-point of the Company's revised price range of between \$14.50 and \$17.00 per share), the Company also stated its intention to raise net proceeds of approximately \$727

million (or \$836 million if the underwriters' option to purchase additional shares are exercised in full).

(ii) State Farm

79. On March 29, 2001, Phoenix advised the Department that State Farm Mutual Automobile Insurance Company ("State Farm") had expressed an interest in purchasing Common Stock in the IPO at the IPO Stock Price resulting in State Farm owning up to four and nine-tenths percent (4.9%) of the issued and outstanding Common Stock immediately after the IPO.³ Due to certain limitations set forth in the Federal securities laws, Phoenix and State Farm are prohibited from entering into a binding agreement with respect to such purchase of shares prior to the effective date of the Registration Statement. Morgan Stanley has indicated that it will reserve for possible sale to State Farm 5,145,000 shares of Common Stock (or 5,503,700 shares if the underwriters exercise in full their option to purchase additional shares), although neither Phoenix nor Morgan Stanley has any obligation to sell any shares to State Farm in the IPO.

80. Nevertheless, in anticipation of such purchase, on May 18, 2001, State Farm and Phoenix entered into a Standstill Agreement (the "Standstill Agreement") pursuant to which, among other things, State Farm agreed that in the event that it does purchase Common Stock in the IPO, it shall not, subject to certain limited exceptions, sell

³ Phoenix also advised that it was entering into several agreements (unrelated to the IPO) with affiliates of State Farm pursuant to which, among other things, for a period of ten years Phoenix would provide certain services for State Farm and State Farm would market and sell certain of Phoenix's products.

such Common Stock for a period of two years thereafter without the prior written consent of Phoenix. The Standstill Agreement also provides that, in the event that State Farm chooses not to purchase Common Stock in the IPO, State Farm will be prohibited, without the prior written consent of Phoenix, for a period of two years thereafter from acquiring, announcing its intention to acquire, or agreeing to acquire, directly or indirectly, beneficial ownership of any voting securities of Phoenix. Furthermore, the Standstill Agreement contains covenants to the effect that Phoenix and State Farm will comply with the limitations set forth in Section 7312(v) which provides, in relevant part, that no person or entity “shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of [a] reorganized insurer or of any institution which owns a majority or all of the voting securities of [such] reorganized insurer, without the prior approval of the superintendent.”

81. Phoenix and Morgan Stanley represented to the Department that State Farm’s interest in purchasing approximately 10% of the IPO represents a significant anchor order for the IPO and that the State Farm arrangement would help to ensure that Phoenix meets its capital-raising needs and completes the IPO successfully. In addition, Phoenix and Morgan Stanley noted that the interest expressed by State Farm could provide a signal to other potential investors in the IPO that the IPO pricing range is fair. Finally, Phoenix and Morgan Stanley concluded that the State Farm arrangement has substantial benefits and minimal risks.

82. Based upon the foregoing, the Superintendent concludes that the State Farm arrangement is in the best interests of Phoenix and is fair and equitable to policyholders.

(iii) Timing of the IPO

83. In late April, Phoenix advised the Department that its first quarter financial results for 2001 were significantly worse than its comparable results for the first quarter of 2000. Phoenix and Morgan Stanley explained that one of the two most significant aspects of such deteriorating results was the taking by Phoenix of non-recurring extraordinary charges related to: (1) a write-down for venture capital losses resulting partially from a change in the method of accounting used by Phoenix to value its venture capital investments (*i.e.*, eliminating a one fiscal quarter lag in reporting such valuations)⁴; (2) expenses related to the privatization of PXP (as described below); (3) expenses related to an early retirement program instituted by Phoenix in order to streamline its operations; and (4) expenses related to the Reorganization. Phoenix and Morgan Stanley also advised that, because a significant portion of PXP's revenues are derived from asset-based fees, the other most significant factor in the decline in the financial results of Phoenix was the decline in fee revenues from PXP's investment management and variable annuity business, which resulted primarily from the general down-turn in equity markets since the first quarter of 2000 (thereby affecting most similarly situated asset management companies in the same manner).

84. Phoenix and Debevoise noted that the disclosures related to Phoenix's financial performance contained in Policyholder Information Booklet Part Two were

⁴ This change in accounting methodology was approved by PriceWaterhouseCoopers, Phoenix's independent public accountants.

based upon results as of September 30, 2000. However, Phoenix and Debevoise represented to the Department that, as of February 9, 2001 (the date on which the Policyholder Information Booklets were distributed to Eligible Policyholders) such results were based upon the most recent available information. Phoenix and Debevoise also noted that Policyholder Information Booklet Part Two expressly states that the information contained therein “is accurate [only] as of the date of Policyholder Information Booklet Part [Two],” and that, therefore, “the accuracy of and completeness of disclosures contained in Policyholder Information Booklet Part Two [could] not be impeached by subsequent developments.” Furthermore, Policyholder Information Booklet Part Two stated that “third quarter 2000 information is not necessarily indicative of the results to be expected for the full year.” Finally, Phoenix and Debevoise represented to the Department that financial information was required to be distributed to Eligible Policyholders in advance of any vote on the Plan, which could be significantly in advance of the IPO (which, under the Plan, can occur up to one year following the Superintendent’s approval of the Plan). Therefore, the Superintendent concludes that the disclosures contained in Policyholder Information Booklet Part Two were adequate to give Eligible Policyholders the opportunity to make an informed decision on whether or not to approve the Reorganization.

85. In light of the deterioration of Phoenix’s reported financial results, Phoenix and Morgan Stanley advised the Department that they, together with the Board, had carefully examined the possibility of delaying the IPO. Phoenix and Morgan Stanley determined that the IPO should proceed as scheduled because, among other things,

Phoenix and Morgan Stanley believe: (1) that the market is currently receptive to initial public offerings and such market receptivity may not improve, or may even deteriorate, in the foreseeable future; (2) that the market conditions for life insurance company stocks are currently relatively favorable and may not improve from current levels or may even begin to decline; (3) that any near-term improvement in Phoenix's financial performance (including its return on equity) or life insurance or broader equity market valuations might not translate into a material improvement in Phoenix's IPO valuation; and (4) in completing the IPO at this point in time, Phoenix would have acquisition currency that would significantly improve the Company's flexibility, competitive position relative to other stock life insurance companies and potential for growth at the earliest opportunity.

(iv) Alternatives to the IPO

86. Several policyholders objected to the method chosen for the Reorganization on the basis that using an initial public offering to compensate policyholders is dilutive of the value of Policyholders' Membership Interests. In addition, such policyholders maintained that an IPO Stock Price that would represent less than the "book value" of Phoenix would result in Eligible Policyholders receiving less than fair value for the surrender of their Policyholder Membership Interests. Finally, such policyholders suggested that "fair value" is actually greater than book value since it should include a "control premium" as might be offered to a selling shareholder in a public auction of Phoenix to the highest bidder.

87. Although Section 7312(d)(1) permits the acquisition of a reorganized insurer by an unrelated entity, it does not require such an acquisition or an auction of the

company to the highest bidder. Moreover, Section 7312(j) expressly prohibits the Superintendent from disapproving a plan of reorganization for the reason that the insurer selected one of the methods provided for in the statute rather than another. Furthermore, in Policyholder Information Booklet Part One, Phoenix disclosed to Eligible Policyholders that, although one hundred percent of the value of Phoenix at the time of the Reorganization will be distributed to Eligible Policyholders, “there is no assurance that the IPO Stock Price multiplied by the number of shares of Common Stock allocated to Eligible Policyholders (the aggregate compensation) will be equal to or greater than Phoenix’s statutory surplus, net asset value or book value immediately prior to the IPO.”

E. Other Capital Raising Transactions

88. In the Plan, and as disclosed to Eligible Policyholders in Policyholder Information Booklets Parts One and Two, Phoenix indicated that the Board may decide that, because of: (1) market conditions; (2) the amount of cash needed to satisfy cash elections, fund Policy Credits and/or pay fair market value in respect of the Subsidiary Transfers; and (3) other factors, it may be in the best interests of the Company and its policyholders to raise capital through one or more Other Capital Raising Transactions at the same time as and in addition to the IPO. The Plan provides that the total proceeds raised in all Other Capital Raising Transactions shall not exceed twenty percent (20%) of the combined total proceeds raised in the IPO and all such Other Capital Raising Transactions.

89. On April 27, 2001, Phoenix advised the Department that it had reconsidered its preliminary decision not to pursue any Other Capital Raising

Transactions as discussed at the public hearing. Phoenix advised that it might effect an Other Capital Raising Transaction on the Plan Effective Date in the form of a bank borrowing (the "Bank Loan"). Under the terms of such Other Capital Raising Transaction, in the event that the Holding Company does not raise sufficient capital in the IPO to satisfy all of the cash obligations set forth in the Plan (including the Subsidiary Transfers), the Holding Company would have the right to draw down up to \$100 million under a reducing revolving credit facility (the "Facility") to be provided by Fleet National Bank ("Fleet"). The Facility provides that Fleet's commitment to make loans to the Holding Company will commence on the Plan Effective Date and terminate two (2) business days thereafter, and that the Holding Company is obligated to repay at least eighty percent (80%) of the principal amount of all loans made by Fleet to the Holding Company under the Facility within five (5) business days after the Plan Effective Date. The remainder of such principal plus accrued interest thereon would be due and payable on March 1, 2002. Loans under the Facility would bear interest at a rate per annum (at Phoenix's option) equal to either: (1) a floating rate of the London Interbank Offered Rate plus forty basis points (.40%); or (2) a fixed rate based upon the higher of: (i) the Federal Funds Rate then in effect plus fifty basis points (0.50%); or (ii) the rate announced by Fleet from time to time as its prime commercial lending rate.

90. As a condition precedent to the Bank Loan, the Facility requires that the Board must declare a dividend from Phoenix to the Holding Company of at least \$102 million (the "Dividend") shortly after the Plan Effective Date.

91. Phoenix and Morgan Stanley represented to the Department that the Bank Loan would provide the Holding Company with liquidity in the event that the IPO does not raise sufficient funds to cover all expenses related to the Reorganization and Subsidiary Transfers. Phoenix and Morgan Stanley also represented that the Facility will provide the Holding Company with the financial flexibility to meet its capital needs through a combination of equity and debt. Finally, Phoenix and Morgan Stanley noted that the Bank Loan would not materially affect the Holding Company's capital structure and would be a more tax efficient resource for the Holding Company than selling additional equity.

92. The Superintendent considered the impact of the Dividend on Phoenix and the likelihood that the Holding Company would repay the Bank Loan using the proceeds of the Dividend. In that regard, the Superintendent notes that, pursuant to Section 4207, Phoenix would be permitted to declare and pay dividends to the Holding Company without notification to, or the prior approval of, the Department in an aggregate amount of up to approximately \$132 million in 2001 based upon the statutory surplus of Phoenix at December 31, 2000 as reported in its Annual Statement for fiscal year 2000. The Superintendent concludes that the Facility, the Bank Loan and the Dividend are consistent with the Plan, are not in violation of the Insurance Law and are fair and equitable to Phoenix and its policyholders.

F. Subsidiary Transfers

93. The Plan provides for, and Phoenix disclosed to Eligible Policyholders in the Policyholder Information Booklets, that Phoenix may decide to transfer from Phoenix

to the Holding Company all, but not less than all, of the issued and outstanding shares of capital stock it owns in any one or more of the Target Subsidiaries.

94. If the Subsidiary Transfers were to occur subsequent to the Reorganization, they would involve transactions “within a holding company system,” as defined in Article 15 of the New York Insurance Law, and would be expressly governed by the provisions of Section 1505. Although the Subsidiary Transfers would actually occur simultaneously with the Reorganization, the Department believes that Section 1505 provides the appropriate guidance for an analysis of the transactions.

95. Under Section 1505, the terms of any transaction within a holding company system must be “fair and equitable.” The Department interprets such requirement to mean that the terms must reasonably resemble those that would result from arms-length negotiations between unaffiliated parties. In accordance with the Plan and consistent with Section 1505, therefore, the Department has required that the Subsidiary Transfers may only be made in exchange for consideration equal to the fair market value of each Target Subsidiary transferred, and the final terms of any Subsidiary Transfer will be subject to the approval of the Superintendent.

96. On March 16, 2001, Phoenix notified the Department that it intended to proceed with the Subsidiary Transfers thereby transferring all of the Target Subsidiaries to the Holding Company on the Plan Effective Date.

97. In Policyholder Information Booklet Part Two, Phoenix represented that the Subsidiary Transfers will have a positive impact on the financial strength of the Holding Company and its subsidiaries and potentially on the IPO Stock Price as well. Phoenix

also represented that additional benefits of the Subsidiary Transfers may include a more favorable risk-based capital ratio for Phoenix and a more steady and stable earnings stream to Phoenix. In addition, Phoenix stated that the separation of the life insurance operations from the asset management operations resulting from the transfer of PXP to the Holding Company may facilitate a higher valuation of the asset management operations by IPO investors. Also, in Policyholder Information Booklet Part Two, Phoenix noted that the execution of the Subsidiary Transfers may increase the required size of the IPO, and, depending on the pricing of the IPO, such increase may dilute the Holding Company's earnings per share. Nevertheless, Phoenix maintained that the benefits of the Subsidiary Transfers described above outweigh the risk of any dilution caused by the increased size of the IPO and the Other Capital Raising Transaction.

98. For the reasons stated above, and since the Subsidiary Transfers will result in significant additional capital being contributed by the Holding Company to Phoenix, which will improve Phoenix's claims paying ability and financial strength, the Superintendent concludes that permitting Phoenix to effect the Subsidiary Transfers would be in the best interests of Phoenix and its policyholders provided that they are: (1) fair and equitable to Phoenix as though governed by Section 1505, which would require that the consideration to be paid to Phoenix be equal to the fair market value of the Target Subsidiaries; and (2) are effected on terms and subject to conditions approved by the Superintendent.

G. Subscription Rights

99. A domestic mutual life insurance company reorganizing under Method 4 is not required to provide subscription rights to its policyholders. The Plan does not include subscription rights or alternative methods for policyholders to purchase additional Common Stock at the IPO Price. Phoenix and Morgan Stanley represented that, while subscription rights may offer additional benefits to policyholders, such benefits are outweighed by the fact that subscription rights: (1) would cause certain institutional investors, whose ownership is necessary to ensure an orderly trading market, to acquire fewer shares of Common Stock; (2) would make the IPO process more expensive as a result of the extra costs of mailing materials to policyholders and administering subscription rights requests; (3) could result in a loss of value to all Eligible Policyholders, due to, among other things, the risk of a lower price from a less successful IPO marketing effort; and (4) based upon historical precedent, would likely only be exercised by a small number of financially sophisticated policyholders at the expense of all other policyholders. At the public hearing, Phoenix and Morgan Stanley stated that they had considered a subscription rights offering and reiterated that such an offering would not be a part of the Reorganization due to the potential complications and expenses discussed above.

100. Certain policyholders have stated that the absence of subscription rights under the Plan is unfair. A subscription rights program, however, would add significant complexity, marketing risk and cost to the IPO. Further, policyholder participation in subscription rights offerings historically has been, and would be likely to remain, very

low. For the reasons stated by Phoenix and Morgan Stanley, the Superintendent concludes that, under the circumstances of the Reorganization, the Plan is fair and equitable to policyholders without the inclusion of a subscription rights program.

H. “Top-Up” Mechanism

101. Section 7312 neither contemplates nor prohibits use of a mechanism to increase consideration paid to policyholders receiving cash or policy credits in the event of an appreciation in the trading price of the common stock of a reorganized insurer or its new holding company shortly after the IPO (commonly referred to as a “top-up”). Phoenix and Morgan Stanley represented that: (1) a top-up mechanism would benefit policyholders receiving cash or Policy Credits at the expense of policyholders receiving Common Stock; and (2) the top-up mechanism would probably not be well-received by institutional investors, reducing demand for Common Stock in the IPO. Phoenix and Morgan Stanley also noted that under the Plan the default form of compensation is Common Stock, so a substantial majority of Eligible Policyholders will have the opportunity to participate in the performance of the Common Stock after the IPO.

102. The Superintendent concludes that, under the circumstances of the Reorganization, the Plan is fair and equitable to policyholders without inclusion of a top-up mechanism.

I. Pricing of the IPO and Other Capital Raising Transactions

103. The Plan requires that the final pricing decision on the IPO and any Other Capital Raising Transactions be made by the pricing committee of the Board and the pricing committee of the board of directors of the Holding Company, respectively,

subject to ratification by each board of directors, respectively. The Plan provides that the majority of the members of the pricing committees will consist of directors who are not officers or employees of Phoenix or the Holding Company. In addition, employees, officers, directors of, or legal counsel to any of the underwriters for the IPO or any Other Capital Raising Transactions are prohibited from serving on the pricing committees.

104. On March 7, 2001, Phoenix advised the Department that the members of the pricing committees will consist of Robert W. Fiondella, Chairman of the Board and Chief Executive Officer of Phoenix, Dona D. Young, President and Chief Operating Officer of Phoenix, Sal H. Alfiero, J. Carter Bacot, John W. Johnstone, Jr., Robert F. Vizza and Robert G. Wilson. A majority of these persons are not officers or employees of Phoenix or the Holding Company and none of these persons is an employee, officer, director of, or legal counsel to, any of the underwriters for the IPO.

105. The Plan provides that the final terms of the IPO and any Other Capital Raising Transactions will be subject to the approval of the Superintendent, and written confirmation thereof must be delivered to Phoenix or its underwriters prior to the IPO. The Plan also requires Phoenix and the Holding Company to use their best efforts to ensure that the managing underwriters for the IPO and any Other Capital Raising Transactions conduct the offering process in a manner that is generally consistent with customary practices for similar offerings and afford to the Department and its financial consultants reasonable access to observe the offering process. Phoenix has advised the Department that Morgan Stanley will serve as the managing underwriter for the IPO.

106. The Plan provides that Phoenix and the Holding Company will not enter into an underwriting agreement until the Department has received written confirmation (the “IPO Letter”) from Morgan Stanley to the effect that Phoenix, the Holding Company, and Morgan Stanley have complied in all material respects with the foregoing requirements concerning the IPO and any Other Capital Raising Transactions.

107. Blackstone will deliver an opinion, dated as of the closing of the IPO, to the effect that the procedures employed by the underwriters in conducting the IPO were generally consistent with customary practices for initial public offerings to the extent reasonably comparable to the IPO (the “Blackstone IPO Procedures Opinion”).

J. Use of Proceeds

108. The Plan provides that if there is an IPO and one or more Other Capital Raising Transactions, the net proceeds will be used in the following order of priority:

- (1) the Holding Company will contribute to Phoenix the amount paid by Phoenix to fund cash payments and Policy Credits to Eligible Policyholders;
- (2) the Holding Company will contribute to Phoenix the amount required to pay fees and expenses incurred by Phoenix related to the reorganization, including those fees and expenses incurred by the Department and its Consultants; and
- (3) if any of the Subsidiary Transfers occur, the Holding Company will contribute to Phoenix, as consideration for the shares of common stock of the Target Subsidiaries transferred by Phoenix to the Holding Company, consideration equal to the fair market value of those Target Subsidiaries transferred on the Plan Effective Date.

109. If any additional proceeds are raised in the IPO and one or more Other Capital Raising Transactions, net of underwriting commissions and related expenses,

such net proceeds will be contributed to Phoenix to be used for general corporate purposes.

K. Purchase and Sale Program

110. The Plan provides for the establishment of the Purchase and Sale Program by the Holding Company not sooner than six months and not later than twelve months after the Plan Effective Date for Eligible Policyholders who receive Common Stock in consideration of the reorganization, subject to certain limitations, to either: (1) sell their shares of Common Stock; or (2) buy additional Common Stock on a commission-free basis. The Purchase and Sale Program must continue for 90 days after its inception, and may be extended by the Board of Directors of the Holding Company if it determines that such extension is appropriate and in the best interests of the Holding Company and its stockholders.

111. Purchases under the Purchase and Sale Program may be made at any time beginning on the first trading day following the inception of the Purchase and Sale Program. Only Eligible Policyholders who receive fewer than 100 shares of Common Stock may purchase additional shares of Common Stock through the Purchase and Sale Program. Eligible Policyholders must purchase such number of additional shares as would bring their ownership to 100 shares of Common Stock. Under the Purchase and Sale Program, Eligible Policyholders may make such purchases without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses.

112. Sales under the Purchase and Sale Program may be made at any time beginning on the first trading day following the inception of the Purchase and Sale Program. Only Eligible Policyholders who receive fewer than 100 shares of Common Stock may sell their shares of Common Stock through the Purchase and Sale Program, and each eligible policyholder must sell all, but not less than all, of his or her shares of Common Stock in order to participate in the Purchase and Sale Program. Under the Purchase and Sale Program, Eligible Policyholders may make such sales without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses.

113. Phoenix advised the Department that it will develop detailed procedures for the Purchase and Sale Program after the Plan Effective Date, which procedures will be subject to the prior approval of the Superintendent. In Policyholder Information Booklet Part One, Phoenix stated that it would provide such approved procedures to Eligible Policyholders not later than seven (7) days prior to the inception of the Purchase and Sale Program.

L. The Closed Block

(i) General

114. Section 7312(d) permits a domestic life insurance company converting from mutual to stock form to operate its participating policies and contracts in force on the effective date of the reorganization as a “closed block,” for the exclusive benefit of those policies and contracts and for dividend purposes only. If a closed block is used, Section 7312 requires the insurer to fund the closed block with assets in an amount

which, together with anticipated revenue from the business included in the closed block, is reasonably expected to be sufficient to support the business, including, but not limited to, provisions for payment of claims, certain expenses, and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such scales continues, and for appropriate adjustments in such scales if the experience changes.

115. Section 7312(d) provides that if a closed block is used, the assets funding the closed block must be determined as of the December 31 preceding the date on which the plan of reorganization was adopted (the “Statement Date”) and brought forward to the effective date of the reorganization, using methods which would have been used had the closed block been established on the statement date with appropriate recognition of new business issued. The statute also provides that none of the assets funding the closed block, including the revenue therefrom, may revert to the benefit of the stockholders of the reorganized insurer.

(ii) Establishment of the Closed Block

116. In accordance with Section 7312(d), Phoenix will establish the Closed Block to ensure that the reasonable dividend expectations of policyholders who own Policies included in the Closed Block will be met. The Policies included in the Closed Block (the “Closed Block Business”) will generally consist of all classes of United States dollar denominated Policies for which Phoenix had an experience-based divided scale in effect for 2000, but only to the extent that such Policies were in force on any date between the Statement Date and the Plan Effective Date. The Closed Block Business will include approximately 450,000 Policies. Assets of the Company totaling

approximately \$7 billion will be allocated to the Closed Block as of the Statement Date and brought forward to the Plan Effective Date in accordance with the Plan. Phoenix and Tillinghast have represented to the Department, in various disclosures and memoranda, that this amount is reasonably sufficient to support the Closed Block Business (as described in the Closed Block Memorandum).

117. The Department and Arthur Andersen have determined that the Closed Block funding is reasonable and sufficient for purposes of Section 7312(d)(5)(B), which provides that “such closed block shall be allocated assets of the mutual life insurer in an amount which together with anticipated revenue from such business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for payment of claims, expenses and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience changes.”

(iii) Operation of the Closed Block

118. After the Statement Date, insurance and investment cash flows from operations of the Closed Block Business, the assets funding the Closed Block, the cash allocated to the Closed Block, and, as described in the Closed Block Memorandum, all other assets acquired by or allocated to the Closed Block will be received by or withdrawn from the Closed Block in accordance with the principles set forth in the Plan.

119. The Closed Block will be charged for only the level of expenses that has been provided for in the funding of the Closed Block, as described in the Plan. Since expenses are under the control of the Company and because their allocation among

different businesses is a discretionary matter, charging the Closed Block only with what was provided for in the funding insulates the policyholders comprising the Closed Block Business from cost increases and allocation changes. Although these policyholders will not benefit from future expense savings, they are protected from the risk of future expense increases arising from, among other things: (1) an increase in unit costs because of high lapse rates and a resulting smaller amount of business in force; (2) inadequate expense management by the Company; or (3) a reallocation of overhead expenses among lines of business.

120. None of the assets allocated to the Closed Block, including the revenue therefrom, will revert to the benefit of the Holding Company or its stockholders. The Closed Block will continue in effect until the last Policy in the Closed Block is no longer In Force.

121. The assets in the Closed Block will be managed and reinvested in accordance with the Plan and the Closed Block Investment Guidelines filed with and approved in advance by the Superintendent. Generally, the Closed Block assets may be reinvested in the same asset classes that are allowed for investments made on behalf of the general account of Phoenix. Except in certain limited circumstances, the Closed Block may not invest directly or indirectly in: (1) real property; or (2) debt, common or preferred stock, or other equity securities issued by Phoenix or any of its affiliates.

122. The investment policy of the Closed Block will be subject to an annual review completed by a qualified actuary and a qualified investment professional, appointed by the Board of Phoenix. The actuary and the investment professional will

present an annual report on Closed Block investment activities to the Board. In addition, the actuary, with reliance on the investment professional, will provide an annual opinion on certain investment aspects of the Closed Block. Copies of the opinion and the report will be submitted to the Superintendent. In addition, after the Plan Effective Date, Phoenix will submit supplemental financial and investment schedules for the Closed Block with each of its annual financial statements.

(iv) Policy Benefits and Dividends

123. The establishment and operation of the Closed Block will not modify or amend the provisions of the Policies included therein. Phoenix will continue to pay guaranteed benefits under all Policies in accordance with their terms, including the Policies included in the Closed Block. If the assets allocated to the Closed Block, the investment cash flows from those assets, and the revenues from the Policies included in the Closed Block prove to be insufficient to pay the benefits guaranteed under the Policies included in the Closed Block, Phoenix will be required to make such payments from its general funds.

124. Similarly, all Participating Policies that are part of the Closed Block Business will continue to be Participating Policies eligible for dividends. Dividends will be apportioned annually by the Board or a Board committee in accordance with applicable law and in a manner consistent with the objective of minimizing tontine effects and exhausting the assets of the Closed Block with the final payment made to the last Policy included in the Closed Block. Dividends may vary from time to time -- as they do currently -- reflecting changes in investment income, mortality, persistency, and

other experience factors. To the extent that, over time, cash flows from the assets allocated to the Closed Block and claims and other experience relating to the Closed Block Business are, in the aggregate, more or less favorable than assumed in establishing the Closed Block, total dividends paid to Closed Block policyholders in the future may be greater or less than the total dividends that would have been paid to these policyholders if the policyholder dividend scales in effect for 2000 had been continued. Although dividends are not guaranteed, Phoenix could choose to support the payment of dividends on Policies in the Closed Block from the general funds of the Company.

125. The Plan requires Phoenix to submit to the Superintendent every five years following the Plan Effective Date an opinion of an independent actuary as to the compliance by the Company with Plan provisions for setting dividend scales on Closed Block Policies.

(v) Other Participating Policies

126. Certain classes of individual Participating Policies will be excluded from the Closed Block but will remain eligible to receive dividends in accordance with their terms. The Plan requires the Company to establish baseline financial objectives for each such class of Policies, a basis for measuring deviations from such objectives, and a method by which such deviations will be reflected in the financial treatment of Policies within each such class. The Plan also establishes procedures by which the Superintendent will monitor the compliance of Phoenix with the requirements applicable to these Participating Policies excluded from the Closed Block.

(vi) Actuarial Opinions

127. The Davis-Briggs Opinion, which Phoenix received and submitted to the Department, states that:

- (1) the objective of the Closed Block as being for the exclusive benefit of the policies included therein for policyholder dividend purposes only as set forth in Article VII of the Plan is consistent with Section 7312;
- (2) the operations of the Closed Block as set forth in Article VIII of the Plan and described in the Closed Block Memorandum, including the determination of the required initial funding and the manner in which cash flows are charged and credited to the Closed Block, are consistent with the objectives of the Closed Block;
- (3) Phoenix's assets set aside as of December 31, 1999 (including subsequent adjustments as provided for in the Closed Block Memorandum) to establish the Closed Block, as set forth in Article VIII of the Plan (including the Closed Block Memorandum) are adequate because they are expected to produce cash flows which, together with anticipated revenues from the Closed Block Business, are reasonably expected to be sufficient to support the Closed Block Business including, but not limited to, provisions for the payment of claims and certain expenses and taxes, and to provide for continuation of dividend scales payable in 2000, if the experience underlying such scales continues; and
- (4) the Plan is consistent with the objective of the Closed Block as it provides a vehicle for Phoenix's management to make appropriate adjustments to future dividend scales, where necessary, if the underlying experience changes from the experience underlying such dividend scales.

128. The Department also received an opinion from Darryl G. Wagner, a partner with Arthur Andersen, dated March 26, 2001, certifying, in accordance with Section 7312(h)(3), that the assets allocated to the Closed Block as of January 1, 2000 (including provision for subsequent adjustments) are in an amount which together with anticipated

revenue from the Closed Block Business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for the payment of claims, investment transaction expenses and taxes, and to provide for continuation of dividend scales payable in 2000 if the experience underlying such scales continues, and for appropriate adjustment in such scales if the experience changes. In arriving at this opinion Mr. Wagner relied on, among other things, modeling of the business to be included in the Closed Block performed by Arthur Andersen staff under his direction, as well as other actuarial analyses and projections performed by him or under his direction.

129. The Superintendent concludes that the establishment, funding and proposed operations of the Closed Block are fair and equitable to policyholders.

M. Restrictions on Acquisition of Securities By Phoenix Personnel

(i) General

130. Section 7312(w) provides that prior to and for a period of five years following the date when the distribution of consideration to policyholders in exchange for their membership interests is completed, no officer, director, or employee of the mutual insurer or the reorganized insurer, including family members and their spouses, may directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of any securities of the reorganized insurer or its new holding company unless the acquisition is: (A) made pursuant to a stock option plan approved by the Superintendent; (B) made pursuant to the plan of reorganization; (C) made by employees, including their family members and their spouses, from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase; or (D) made by officers or directors,

including their family members and their spouses, at least two years after the IPO from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase.

131. The Plan expressly incorporates these restrictions. From the Adoption Date until the Plan Effective Date and thereafter until the fifth anniversary of the Plan Effective Date, no officer, director, or employee of Phoenix, the Holding Company, or any Company Affiliate -- defined as an individual or entity controlling, controlled by, or under common control with the Phoenix or Holding Company within the meaning of Section 1501 -- including their family members and spouses, may directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of securities of Phoenix or the Holding Company except for acquisitions made: (1) pursuant to the equity compensation plans approved in advance by the Superintendent and attached as exhibits to the Plan (Exhibit J, the “Stock Incentive Plan” and Exhibit I, the “Directors Stock Plan”) or pursuant to certain additional equity compensation plans or arrangements (the “Other Stock-Based Compensation Plans”) identified in Exhibit N to the Plan; (2) as an Eligible Policyholder pursuant to the Plan (provided that acquisitions made through the Purchase and Sale Program are subject to clauses (3) and (4) below); (3) by non-officer employees of Phoenix, the Holding Company, or any Company Affiliate, including their family members and their spouses, through the Purchase and Sale Program or from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase; or (4) by officers or directors of Phoenix, the Holding Company, or any Company Affiliate, including their family members and their spouses, at least two

years after the Plan Effective Date through the Purchase and Sale Program or from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase.

(ii) The Stock Incentive Plan

132. The Stock Incentive Plan permits the Compensation Committee of the board of directors of the Holding Company to grant stock options for the purchase of Common Stock to officers (including officers who are directors), employees, and insurance agents of Phoenix, the Holding Company, and their affiliates after the first anniversary of the Plan Effective Date.

133. The maximum number of shares of Common Stock that may be subject to options granted under the Stock Incentive Plan with respect to any person who on April 17, 2000 (the date on which the Board announced its intention to formulate a plan of reorganization) was, or at any time thereafter became or becomes, an officer, director, employee or agent of the Holding Company and/or any of its subsidiaries other than PXP (including, without limitation, any such officer, director, employee or agent who on April 17, 2000 was also, or at any time thereafter also became or becomes an officer, director or employee of PXP), when added to the aggregate number of shares that are or may be subject to options or other grants under the Directors Stock Plan (as described below), shall not exceed 5% of the total number of shares of Common Stock outstanding immediately after the Plan Effective Date. The maximum number of shares issuable under the Stock Incentive Plan with respect to any officer or employee of PXP (excluding any such person described in the immediately preceding sentence), shall not exceed 1%

of the total number of shares of Common Stock outstanding immediately after the Plan Effective Date.

134. The Stock Incentive Plan provides that the options will vest in three equal installments on the first three anniversaries of the date of the grant, provided, however, that no option may be exercised prior to the second anniversary of the Plan Effective Date. Options granted under the Stock Incentive Plan are also subject to special vesting provisions following a recipient's death, disability, approved retirement, or following a divestiture of business or change of control.

135. The maximum number of shares that may be subject to award under the Stock Incentive Plan is 75% of the shares available under the Stock Incentive Plan prior to the second anniversary of the Plan Effective Date, 85% prior to the third anniversary of the Plan Effective Date, and 100% thereafter.

136. The Compensation Committee may delegate its authority under the Stock Incentive Plan to the Chief Executive Officer ("CEO") of the Holding Company to grant stock options to individuals below the rank of Senior Vice President. The CEO's authority, however, is limited to granting options to purchase shares not exceeding 1.5% of the total number of shares authorized for issuance under the Stock Incentive Plan. Further, no individual may receive during any twelve-month period more than 5% of the total number of shares as to which the CEO is authorized to award options.

137. No amendment to the Stock Incentive Plan may be effective prior to the fifth anniversary of the Plan Effective Date without the prior approval of the Superintendent.

138. Several policyholders objected to the Reorganization on the basis that it would unjustly enrich management of Phoenix at the expense of Phoenix and its policyholders. Unlike initial public offerings conducted by many companies in which the primary limitations on equity awards, grants, options and other forms of compensation to management are the fiduciary obligations of such companies' boards of directors, Section 7312(w), as noted above, provides the Department with considerable authority to limit the amount and restrict the timing of equity compensation that Phoenix would be authorized to pay to its officers, directors and employees. Further, as discussed above, the Stock Incentive Plan contains strict limitations on the amount and timing of such compensation. Finally, since the value of any equity-based compensation to Phoenix's management should be a function of the performance of Phoenix and its affiliates, the equity-based compensation available to management under the Stock Incentive Plan should be an added incentive for management to act in the best interests of Phoenix.

139. The Superintendent notes that in connection with prior demutualizations of New York insurers, the Department has limited the total number of shares available under similar stock incentive plans to five percent (5%) of the number of shares outstanding immediately after the applicable initial public offering. Phoenix represented to the Department that the Reorganization is distinct from prior New York demutualizations primarily as a result of PXP having been a publicly traded company prior to January 12, 2001, the date on which Phoenix acquired the approximately forty percent (40%) interest in PXP that it did not then own from public shareholders (the "Going Private Transaction"). Phoenix advised that prior to the Going Private Transaction, many key

PXP employees were partially compensated with options to purchase, and grants and awards of, PXP's publicly traded common stock. Since, subsequent to the Going Private Transaction, Phoenix owns all of the issued and outstanding shares of PXP's common stock, such PXP equity-based compensation is no longer available. Phoenix maintained that in order to retain key employees at, and to attract new employees to, PXP, it would need the flexibility to offer such employees equity-based incentive compensation.

140. For the reasons cited by Phoenix, the Superintendent concludes that the equity-based compensation available under the Stock Incentive Plan, including the additional one percent (1%) only available to officers and employees of PXP, is fair and equitable to Phoenix and its policyholders.

(iii) The Directors Stock Plan

141. The Directors Stock Plan permits the board of directors of the Holding Company to pay, in the form of Common Stock, up to one-half of the fees payable to the non-employee directors of the Holding Company for services rendered after the first anniversary of the Plan Effective Date. Any stock paid in lieu of fees may not be sold prior to the second anniversary of the Plan Effective Date. In addition, beginning on the first anniversary of the Plan Effective Date, stock options for the purchase of Common Stock may be granted to directors of the Holding Company, but prior to the fifth anniversary of the Plan Effective Date such options may only be granted in lieu of certain cash fees that would otherwise be payable. Options to purchase Common Stock are immediately vested, provided, however that they may not be exercised prior to the second anniversary of the Plan Effective Date.

142. Under the Directors Stock Plan, any eligible director may elect to receive all or a portion of the fees that would otherwise be paid in cash with respect to services rendered after the second anniversary of the Plan Effective Date in the form of Common Stock. Also, eligible directors may elect to defer the receipt of any shares issued in lieu of cash fees until after their service with the Board of Directors terminates. Cash dividends on the deferred shares will be applied to purchase additional deferred shares at fair market value which will be credited to a stock account.

143. The total number of shares of Common Stock issuable under the Directors Stock Plan in lieu of fees cannot exceed 500,000 shares and, the total number of shares of Common Stock that may be subject to options granted under the Directors Stock Plan will be limited to .05% of the total number of shares of Common Stock outstanding immediately after the Plan Effective Date. As discussed above, the aggregate number of shares that are or may be subject to options or other grants under Directors Stock Plan are counted toward the aggregate six percent (6%) limitation on shares issuable under the Stock Incentive Plan.

144. No amendment to the Directors Stock Plan may be effective prior to the fifth anniversary of the Plan Effective Date without the prior approval of the Superintendent.

(iv) Other Stock-Based Plans

145. The Plan provides that, subject to certain limitations, officers, employees, and insurance agents of Phoenix, the Holding Company, and any of their affiliates may acquire shares of Common Stock under certain stock-based compensation plans other

than the Stock Incentive Plan and the Directors Stock Plan. These other stock-based compensation plans (the “Covered Plans”) consist of four existing employee benefit plans qualified under Section 401(a) of the Internal Revenue Code and listed on Exhibit N to the Plan.

146. At any time on or after the Plan Effective Date, the Holding Company, the Company and their affiliates (the “Covered Employers”) may each give non-officer participants the ability to allocate (to the extent otherwise allocable by participants under the terms of the applicable Covered Plan) all or any portion of their current account balances and new contributions under the Covered Plans to a Common Stock fund maintained by any Covered Employer, provided, that no such contributions may be made in or earmarked for investments in Common Stock prior to the second anniversary of the Plan Effective Date.

147. At any time on or after the second anniversary of the Plan Effective Date, the Covered Employers may each give officer participant the ability to allocate (to the extent otherwise allocable by participants under the terms of the applicable Covered Plan) all or any portion of their current account balances and new contributions under the Covered Plans to a Common Stock fund maintained by any Covered Employer, provided, that no such contributions may be made in or earmarked for investments in Common Stock.

148. At any time on or after the Plan Effective Date, the Covered Employers may each provide to or on behalf of any non-officer participant all or any portion of their

matching contributions under the Covered Plans as contributions to a Common Stock fund maintained by any Covered Employer.

149. At any time on or after the second anniversary of the Plan Effective Date, the Covered Employers may each provide to or on behalf of any officer participant all or any portion of their matching contributions under the Covered Plans as contributions to a Common Stock fund maintained by any Covered Employer.

150. The Plan provides that Common Stock provided under the Covered Plans will be valued as of the applicable date at the then fair market value of the Common Stock. Thus, when Common Stock is issued in lieu of cash compensation or allocated under any of the Covered Plans, the fair market value will be used as the basis for determining the number of shares to be issued or allocated. For these purposes, “fair market value” (i) in the case of any transaction or series of transactions actually effected in an open market transaction, means the value determined based on such transaction(s) and (ii) in all other cases, has the meaning set forth in the Stock Incentive Plan.

151. Amendments to the Covered Plans are permitted only to the extent necessary to implement the restrictions contained in Exhibit N to the Plan. However, prior to the fifth anniversary of the Plan Effective Date, no other amendment, revision, or change in plan administration with respect to the acquisition of stock to any Other Stock-Based Compensation Plan will become effective without the prior approval of the Superintendent.

152. The Superintendent is of the view that the Stock Incentive Plan, the Directors Stock Plan, and the Covered Plans are in compliance with Section 7312(w),

contain terms and provisions that are comparable to those of other large public companies, and are generally consistent with the equity compensation plans of other mutual insurers that recently converted to stock form.

V. Future Operations and Solvency

153. Section 7312(e)(1)(H) requires a domestic mutual life insurance company converting to stock form to submit with its plan of reorganization, among other things, a plan of operation for the reorganized insurer, including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any participating business. Phoenix submitted a plan of operation and actuarial projections (the “Plan of Operation”) as Exhibit K to the Plan. The Plan of Operation contemplates the continuation of the current operations of Phoenix. Subsequent to the Plan Effective Date, Phoenix expects to issue both non-participating and participating policies and contracts, and it has applied to the Department for a permit pursuant to Section 4231 authorizing it to issue participating policies and contracts in New York as a stock life insurance company. The Department expects that this permit will be issued on the Plan Effective Date or shortly thereafter.

154. Section 7312(c)(5) requires that a plan of reorganization must not substantially lessen competition in any line of business. Since the Reorganization of Phoenix does not involve a business combination or other potentially anti-competitive transaction, but only the reorganization of Phoenix from a mutual life insurer to a stock life insurer, the Superintendent concludes that the Reorganization will not substantially lessen competition in any line of business.

155. Section 7312(j) requires the Superintendent to make certain findings before approving a proposed plan of reorganization, including a finding that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Superintendent deems to be reasonably necessary for its future solvency. The Annual Statement of Phoenix as of March 31, 2001 reported total surplus of approximately \$1.118 billion, and an asset valuation reserve of approximately \$238.4 million. The Plan of Operation contains projections of the total capital of Phoenix and surplus for the years 2000 through 2010. The Plan provides that new capital raised in the Reorganization will be contributed to Phoenix, which would enhance the Company's statutory risk-based capital ratio. Based upon these facts and submissions and an analysis thereof, the Superintendent is satisfied that Phoenix will have an amount of capital and surplus after the Reorganization reasonably necessary for its future solvency.

VI. Corporate Governance

156. As required by Section 7312(e)(1)(C), the Company has submitted a proposed charter and by-laws of Phoenix as a domestic stock life insurance company set out in accordance with Article 12 of the New York Insurance Law.

157. Phoenix also submitted copies of the proposed amended and restated certificate of incorporation and by-laws of the Holding Company (the "Charter and By-Laws"). These documents contain a number of "anti-takeover" provisions including, among other things, a classified board of directors, advance notice requirements for stockholder proposals, supermajority voting for certain business combinations and amendments to the Charter and By-Laws, and prohibitions on stockholder actions by

written consent, removing directors without cause, or calling a special meeting of stockholders. Phoenix also adopted a shareholder rights plan, or “poison pill,” which would serve to discourage a hostile acquirer from purchasing fifteen percent (15%) or more of the outstanding shares of the Common Stock.

158. Phoenix and Debevoise maintain that: (1) none of these provisions, individually or in the aggregate, prohibit an acquisition of Phoenix; (2) such provisions, individually and in the aggregate, are now common in the charters and by-laws of public companies; and (3) the validity of these provisions has been upheld under Delaware law. Phoenix maintains that these provisions ensure that any potential acquirer must negotiate an acquisition with the board of directors of the Holding Company and allow such board of directors time to consider all options in the best long-term interests of the stockholders.

159. Phoenix and Morgan Stanley have represented to the Department that the anti-takeover provisions will not adversely affect the market for the IPO, the IPO Stock Price or the trading price of the Common Stock subsequent to the IPO.

160. In further support of the anti-takeover provisions contained in the Charter and By-Laws, Phoenix submitted the Debevoise Opinion to the Department which concludes that the Charter and By-Laws do not violate the Delaware General Corporation Law.

161. The Department and its Consultants have determined that the anti-takeover provisions of the Charter and By-Laws are comparable to those of other recently-demutualized insurers and other large publicly-traded financial services companies.

VII. Tax Matters

162. The Plan requires Phoenix to secure either rulings from the IRS or favorable opinions of Debevoise or another nationally-recognized independent tax counsel, dated as of the Plan Effective Date, that, for Federal income tax purposes, as a result of consummation of the Plan:

- (1) policies issued by Phoenix prior to the Plan Effective Date will not be deemed newly issued, issued in exchange for existing policies or newly purchased for any material federal income tax purpose; and
- (2) the crediting of consideration in the form of Policy Credits, will not result in a distribution to an employee or beneficiary that is subject to withholding, adversely affect the favorable tax status of certain Policies, nor result in the imposition of certain penalties for the holders of such Policies; and
- (3) the conversion of Phoenix from a mutual life insurance company into a stock life insurance company under Section 7312 will qualify as a reorganization under the Code and Phoenix will be a party to the reorganization within the meaning of the Code; and
- (4) the Holding Company will not recognize any gain or loss for federal income tax purposes as a result of its issuance of Common Stock, its receipt of shares of Company Common Stock, its cancellation, for no consideration, of its Common Stock previously issued to Phoenix and held by Phoenix immediately prior to the Plan Effective Date, or its sale of shares of Common Stock in the IPO for cash.

163. Phoenix received an opinion from Debevoise, dated December 18, 2000 and reaffirmed on February 9, 2001 (the “Tax Opinion”) to the effect set forth above. Debevoise will further reaffirm the Tax Opinion as of the Plan Effective Date.

VIII. Department of Labor Exemption

164. The Plan requires Phoenix to apply for the DOL Exemption from any sanctions that might otherwise result, pursuant to Section 406 of the Employee Retirement Income Security Act, 29 U.S.C. § 1106(a), and Section 4975 of the Internal Revenue Code, with respect to receipt of consideration by qualified employee benefit plans. Notice of the proposed DOL Exemption was published, as required, in the Federal Register on April 16, 2001 and thereafter was mailed to interested persons for comment.

IX. Securities Laws Matters

165. Phoenix applied to the SEC for “no-action” relief to the effect that the consummation of the Reorganization, particularly the issuance of Common Stock to Eligible Policyholders without the registration of such Common Stock and the institution of the Purchase and Sale Program, would not contravene applicable Federal securities laws. On May 31, 2001, Phoenix obtained such no-action relief from the SEC.

X. Expenses

166. Consistent with the authority conferred by Section 7312(d)(4)(C), the Superintendent determined that it is in the interests of the policyholders for Phoenix to pay for the costs and expenses of the proposed reorganization. Accordingly, pursuant to Section 7312(p), Phoenix furnished the Superintendent with an undertaking, satisfactory to the Superintendent, committing to pay for all of the costs and expenses incurred in the reorganization, including those incurred by the Department’s Consultants.

XI. Notice of Pendency

167. Section 7312(q) requires a domestic mutual life insurance company converting to stock form to send notice of the pendency of its plan of reorganization and the effect thereof, in a form approved by the Department, to all persons to whom the insurer delivers one or more policies, contracts, or certificates issued after the date on which the plan of reorganization is adopted and before the effective date of the plan. The notice must inform such persons that they may rescind the policy, contract, or certificate and obtain a refund of any amounts paid with respect thereto by providing written notice to the insurer or its agent within 10 days of receipt of the notice of pendency.

168. The Department approved a form of notice for use and, as mentioned above, has required Phoenix to submit the General Counsel Certification, dated as of the Plan Effective Date, that the Company complied in all respects with the requirements of Section 7312 (including Section 7312(q)).

Conclusions and Decision

169. Based upon the foregoing, a review of the Plan, including the exhibits thereto, the opinions and certifications of the Consultants of the Department, such other documents and information as deemed appropriate, and in reliance upon the agreements, the accuracy of the representations, and fulfillment of the commitments made by Phoenix and the Holding Company, it is hereby concluded, decided, or directed as follows:

170. The Plan demonstrates a purpose and specifies reasons for the proposed reorganization sufficient to comply with Section 7312(c)(1).

171. The reorganization of Phoenix from a mutual insurance company to a stock life insurance company, as set forth in the Plan, is in the best interests of Phoenix and its policyholders, in compliance with Section 7312(c)(2).

172. The provisions of the Plan are fair and equitable to the policyholders of Phoenix, in compliance with Section 7312(c)(3).

173. The reorganization of Phoenix from a mutual life insurance company to a stock life insurance company, as set forth in the Plan, will provide for the enhancement of the operations of Phoenix, in compliance with Section 7312(c)(4).

174. The reorganization of Phoenix from a mutual life insurance company to a stock life insurance company, as set forth in the Plan, will not substantially lessen competition in any line of insurance business, in compliance with Section 7312(c)(5).

175. The Policyholders' Membership Interests will be exchanged for an aggregate amount of consideration that is fair and equitable to the policyholders of Phoenix and meets the requirements of Section 7312, in compliance with Section 7312(d)(4)(A).

176. The consideration to be given to the policyholders of Phoenix will be allocated among such policyholders in a manner that is fair and equitable, in compliance with Section 7312(d)(4)(B).

177. It is in the interest of the policyholders of Phoenix that the costs of the reorganization of Phoenix from a mutual life insurance company to a stock life insurance company are to be borne by the Phoenix (and reimbursed by the Holding Company using part of the proceeds of the IPO and, if necessary, the Other Capital Raising Transaction,

in accordance with the Plan), and the undertaking with respect to such costs provided by Phoenix is in compliance with Section 7312(d)(4)(C).

178. The provisions of the Plan are fair and equitable to the policyholders of Phoenix, taking into account the legitimate economic interests of participating policyholders as delineated in Section 7312, in compliance with Section 7312(d)(4)(D).

179. Certain of the assets of Phoenix have been allocated to the Closed Block as of December 31, 1999 (including provision for subsequent adjustments) in an amount that produces cash flows that, together with anticipated revenue from the Closed Block Business, can reasonably be expected to be sufficient to support the Closed Block Business, including, but not limited to, provisions for payments of claims and surrender benefits, certain expenses, and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such dividend scales continues and for appropriate adjustments in such scales if the experience changes, in compliance with Section 7312(d)(5).

180. Reasonable provisions have been established under the Plan for the appropriate financial treatment of individual Participating Policies excluded from the Closed Block.

181. The Plan was adopted by the Board of Phoenix in compliance with Section 7312(e)(1).

182. The Plan sets forth a demonstration of the purpose of the proposed Reorganization, the form of the Reorganization, the manner and basis by which the Reorganization will take place, the consideration to be given to policyholders in

exchange for their Policyholders' Membership Interests, the method of allocation of consideration among policyholders, the method of operation of the participating business In Force on the Plan Effective Date, and a Plan of Operations, including actuarial projections for a ten-year period and a statement indicating the intentions of Phoenix with regard to issuing non-participating business, in compliance with 7312(e)(1)(A) through (H).

183. Phoenix has applied for a revocable permit authorizing the Company to issue participating policies and contracts in New York State as a stock life insurance company, as permitted by Section 7312(e)(1).

184. The Plan contains other conditions and provisions that the Board deems necessary or advisable in connection with the Reorganization, in compliance with Section 7312(e)(1).

185. The consideration to be given in exchange for the Policyholders' Membership Interests is in compliance with Section 7312(e)(2).

186. Notice of the public hearing and the policyholder vote on the Plan was given to the Eligible Policyholders of Phoenix, and newspaper publication was made, in compliance with Section 7312(e)(3), (i), and (k)(1).

187. The policyholder notices and accompanying documents, including the Policyholder Information Booklets Parts One and Two contained sufficient information about the proposed reorganization to enable Eligible Policyholders to make an informed decision regarding the Plan and, for that reason, were approved by the Superintendent pursuant to Section 7312(i) and (k)(1).

188. Phoenix complied substantially and in good faith with the requirement of providing notice of the public hearing and policyholder vote in compliance with Section 7312(s).

189. Copies of the Plan, as adopted, were submitted to the Superintendent in compliance with Section 7312(e)(4).

190. The public hearing was conducted in compliance with Section 7312(i).

191. The public hearing record was kept open for additional submissions by policyholders and members of the public until April 2, 2001, and, for purposes of the 60-day period in which the Superintendent must approve or disapprove the Plan pursuant to Section 7312(j), this Opinion and Decision has been timely issued.

192. A proposal to approve the Plan was submitted to policyholders and notice of the vote was provided to policyholders in compliance with Section 7312(k)(1).

193. Policyholders were entitled to vote on the Plan, in compliance with Section 7312(k)(2), and the Plan was approved by the affirmative vote of more than two-thirds of all votes cast by policyholders entitled to vote, in compliance with Section 7312(k)(2).

194. The Superintendent supervised and directed the vote as necessary to ensure a fair and accurate vote, in compliance with Section 7312(k)(3).

195. The Superintendent appointed certain Department personnel as inspectors of the vote and appointed Morrow & Co., Inc. to assist these inspectors, in compliance with Section 7312(k)(4).

196. Policyholders and/or their representatives could have been present for the vote, in compliance with Section 7312(k)(5).

197. The policyholder mailing lists did not knowingly omit any policyholders eligible to receive notice of the reorganization, public hearing, and policyholder vote, and any inadvertent omissions were remedied to the satisfaction of the Department, in compliance with Section 7312(k)(6).

198. The documents and certifications required by Section 7312(k)(11) were provided to the Department.

199. The corporate existence of Phoenix will continue in the manner provided for in Section 7312(m).

200. The directors and officers of Phoenix will serve as directors and officers of Phoenix after the reorganization in the manner provided for in Section 7312(o).

201. The undertakings required by Section 7312(p) were provided to the Department.

202. The notice of pendency required by Section 7312(q) was provided to all persons to whom Phoenix delivered policies or contracts issued after the Adoption Date and before the Plan Effective Date.

203. The guidelines and restrictions on the acquisition of Common Stock prior to and for five years following the Plan Effective Date by officers, directors, and employees of Phoenix, the Holding Company, and any Company Affiliate, including the family members of such persons and their spouses, meets the requirements of Section 7312(w).

204. The Facility and the Bank Loan will provide Phoenix additional capital to meet its obligations to policyholders and are, therefore, in the best interests of Phoenix and its policyholders.

205. The Dividend would be in compliance with Section 4207 if declared and paid after the Plan Effective Date and its declaration by the Board on the Plan Effective Date is hereby approved.

206. The Subsidiary Transfers, provided that they are made in exchange for consideration equal to the fair market value of the Target Subsidiaries, would comply with Section 1505 for transactions within a holding company system and are, therefore, approved.

207. As set forth in the Plan, proposed reorganization of Phoenix, in whole and in part, does not violate the New York Insurance Law, is fair and equitable to the policyholders of Phoenix, and is not detrimental to the public, and after giving effect to the reorganization, Phoenix will have an amount of capital and surplus reasonably necessary for its future solvency, in compliance with Section 7312(j).

208. The foregoing conclusions shall be subject to the following conditions, which, if not met prior to or on the Plan Effective Date, shall render this Opinion and Decision and the approval of the Plan set forth herein null and void and of no further force and effect, unless an amended Opinion and Decision is hereafter issued:

- a. The underwriting agreements entered into by Phoenix in connection with the IPO and any amendments thereto shall contain terms and provisions acceptable to the Superintendent, including, without

limitation, the initial price per share of the Common Stock and the aggregate size of the IPO.

- b. A copy of each of the MS Fairness Opinion, the IPO Letter, the Tax Opinion, the Davis-Briggs Opinion, the Blackstone Fairness Opinion, the Blackstone IPO Procedures Opinion, the Debevoise Opinion and the General Counsel Certification, each dated as of the Plan Effective Date, shall be delivered to the Superintendent on the Plan Effective Date.
- c. Final versions of each of the documents and agreements submitted to the Department in draft form, including, without limitation, the agreements between Phoenix and its affiliates, shall be executed and copies shall be delivered to the Superintendent in the form submitted to and approved by the Department.
- d. The Bank Loan shall not exceed \$100 million, and the final terms of the Other Capital Raising Transaction shall be subject to the prior approval of the Superintendent.
- e. The Subsidiary Transfers, if any, shall be made in consideration for the fair market value of each Target Subsidiary transferred and shall be approved by the Superintendent.
- f. Phoenix shall provide evidence satisfactory to the Superintendent that it has been unconditionally released from any and all of its obligations to guarantee the obligations of, or otherwise provide

additional statutory capital to, each of the Target Subsidiaries transferred in the Subsidiary Transfers.

- g. If, prior to one year from the date of this Opinion and Decision, the sale of the Common Stock pursuant to the IPO has not occurred, this Opinion and Decision and the approval of the Plan set forth herein shall be null and void and of no further force and effect, unless an amended Opinion and Decision is issued.

209. The Superintendent will retain jurisdiction of all matters relating to the Reorganization of Phoenix until the preceding conditions have been met.

210. All of the objections to the proposed reorganization raised at the public hearing, included in the written submissions made part of the record or otherwise submitted to the Department, have been duly considered. Upon consideration the record in its entirety, and for the reasons specified in this Order and Decision, none of these objections, individually or in the aggregate, merits a decision that the Plan is not fair and equitable to the policyholders of Phoenix as required by Section 7312 or that the Plan should not be approved as provided, and subject to the conditions set forth, herein.

211. For the reasons set forth herein, the proposed reorganization, in whole and in part, does not violate applicable law, is fair and equitable to the policyholders, and is not detrimental to the public, and, after giving effect to the Reorganization of Phoenix, the reorganized insurer will have an amount of capital and surplus reasonably necessary for its future solvency.

THEREFORE, under Section 7312(j) the Plan shall be approved, as herein provided.

Based upon the foregoing, and subject to the satisfaction of each and every condition set forth herein, the Plan is hereby APPROVED.

Dated: June 1, 2001
New York, New York

Gregory V. Serio
Superintendent of Insurance