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In the Matter of the Plan of Reorganization of
SBLI USA Mutual Life Insurance Company, Inc.

DECISION

and the Proposed Acquisition of Control of
SBLI USA Mutual Life Insurance Company, Inc.
By Prosperity Life Insurance Group, LLC

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SBLI USA Mutual Life Insurance Company, Inc., a mutual life insurance company domiciled in New York (“SBLI” or the “Company”), proposes to convert into a stock insurance company (the “Demutualization”) pursuant to a Plan of Reorganization (the “Plan”) submitted to the New York State Department of Financial Services (the “Department”). SBLI seeks approval for the Demutualization from the Superintendent of Financial Services (the “Superintendent”) pursuant to New York Insurance Law Section 7312.¹

Prosperity Life Insurance Group, LLC (“Prosperity”), a Delaware insurance holding company owned by Reservoir Capital Group, LLC and Black Diamond Holdings, LLC, proposes to acquire control of SBLI immediately upon completion of the Demutualization (the “Acquisition of Control,” and together with the Demutualization, the “Sponsored Demutualization”) and to that end, Prosperity has submitted an application for the Superintendent’s approval pursuant to Section 1506 (the “Acquisition Application”). As a result, upon completion of the Sponsored Demutualization, SBLI will become an indirect, wholly-owned subsidiary of Prosperity.

In addition, to effectuate the Sponsored Demutualization, SBLI seeks the Superintendent’s approval of the following: (1) SBLI’s issuance of a capital note, pursuant to Section 1323; (2) SBLI’s stock redemption plan, pursuant to Section 1411; and (3) amendments to SBLI’s Charter and By-laws, including the removal of the word “mutual” from SBLI’s name.

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

I. OVERVIEW

A. The Demutualization

A mutual insurance company is owned by and operated for the benefit of its participating policyholders. A participating policyholder's ownership interest in a mutual company is known as a "membership interest." Like voting equity securities of a stock corporation, these membership interests provide policyholders with the right to vote on matters submitted to a vote of members (such as the election of directors) and the right to receive a distribution of profits earned by the mutual insurance company in the form of a dividend. Membership interests are not freely transferrable — they only exist in connection with an individual's ownership of a participating policy.

Demutualization is the process by which a mutual insurance company converts to a stock insurance company.² When a demutualization occurs, membership interests in the mutual insurance company are converted to equity interests in the converted stock insurance company, and eligible policyholders of the mutual insurance company become shareholders of the converted stock insurance company. A plan of reorganization is the operative document governing a demutualization, which is subject to various procedural requirements as well as the Superintendent's approval, pursuant to the standards set forth in Section 7312(j).

1. Policyholder Consideration

The consideration paid to policyholders of a mutual insurer upon its demutualization generally involves converting membership interests into equity in the reorganized insurance company. Here, however, SBLI proposes to sell all of its stock upon Demutualization to Prosperity. Thus, instead of receiving stock in the reorganized SBLI, eligible policyholders will receive \$36 million to be paid by Prosperity (the "Policyholder Consideration") and certain other protections. To be eligible to receive a share of the \$36 million, a person must own a policy issued by SBLI that is in force on the date the Plan is adopted by the SBLI board of directors and is still in-force when the Demutualization is completed ("Eligible Policyholder").³ SBLI estimates that there are approximately 186,000 Eligible Policyholders.

Under the Plan, the Policyholder Consideration will be divided by the number of Eligible Policyholders and each Eligible Policyholder will receive one share of the divided Policyholder

² See Section 7312.

³ Policy ownership is determined in accordance with a set of rules that are explained on pages 22–23 of the SBLI USA Mut. Life Ins. Co. Policyholder Information Booklet dated July 18, 2014 ("Policyholder Information Booklet") and Article VI of the Plan. Owners of policies issued by SBLI's subsidiary — S.USA Life Insurance Company, Inc. — are not eligible to vote on or receive consideration from the Demutualization of SBLI because Section 7312 only applies to domestic mutual life insurance companies and SBLI's subsidiary is a stock insurance company incorporated in Arizona.

Consideration. SBLI currently estimates that its fixed allocation of the Policyholder Consideration will result in each Eligible Policyholder receiving approximately \$190. The entire amount of the Policyholder Consideration will be distributed by this fixed allocation method; unlike many other demutualizations, the Plan does not include a variable component paid to Eligible Policyholders. The reason for this fixed allocation, as explained below in sections III.B.2 and III.C.2, is that SBLI lacks sufficient records to enable it to calculate a variable component.

By surrendering their membership interests in exchange for their respective shares of the Policyholder Consideration, SBLI's policyholders will forfeit: the right to vote on matters that are generally submitted to a vote in a mutual insurance company; the opportunity to receive a larger amount of policyholder compensation *if* SBLI were to receive a better offer; and the right to share directly in any profits *if* SBLI's financial condition were to improve.

2. The Closed Block

A closed block is an accounting mechanism that provides certain protections to owners of traditional dividend-paying life insurance policies. The primary purpose of the closed block (the "Closed Block") is to set aside assets from the general accounts of SBLI to pay for the claims, expenses and dividends associated with certain in-force policies. In other words, the Closed Block is meant to ensure that the reorganized SBLI does not use the Closed Block assets for any purpose other than for the benefit of the Closed Block policyholders.

The SBLI policies included in the Closed Block include in-force traditional dividend-paying individual ordinary life insurance policies, limited payment whole life insurance policies, endowment life insurance policies, senior life policies, single premium whole life policies, endowment policies, retirement income policies, family plan policies and life insurance policies in effect under a nonforfeiture option, in each case with an experience-based dividend scale (collectively, the "Closed Block Policies").⁴

Although the Closed Block is expected to support dividend payments, it does not guarantee a continuation of the current dividend scales. Pursuant to Section 7312(d)(5), the dividend scales might be adjusted in the future if the actual experience of the Closed Block deviates from the experience assumptions underlying the Closed Block funding calculation.

B. The Acquisition of Control

Pursuant to Section 1506, immediately following SBLI's conversion into a stock insurance company, Prosperity proposes to acquire all of SBLI's common stock for \$36 million

⁴ The Policies excluded from the Closed Block are generally those policies that do not pay a dividend or, if they do pay a dividend, that dividend payment does not vary based upon the underlying experience of the policy.

through a series of transactions that will result in SBLI becoming an indirect, wholly-owned subsidiary of Prosperity. The \$36 million Policyholder Consideration will be distributed to Eligible Policyholders within 60 days of the effective date of the Demutualization (the “Plan Effective Date”).⁵

C. The Capital Note

As described more fully in sections IV and V below, SBLI seeks the Superintendent’s approval, pursuant to Section 1323, to issue a \$7.5 million capital note to Prosperity or one of its affiliates, which will be used to finance a part of the \$36 million Policyholder Consideration (the “Capital Note”). The Capital Note will bear interest of 5% per annum, paid quarterly. The principal amount will be due to the holder of the Capital Note in amortized payments of \$525,000 per year. The Capital Note will mature and the unpaid principal and any accrued but unpaid interest will become due and payable in full in 2029.

D. The Stock Redemption Plan

Upon converting to a stock insurance company, SBLI’s shares will be held by a newly-created subsidiary called SBLI USA Holdings LLC (“Holdco”). In connection with the Acquisition of Control, SBLI proposes to use the proceeds from the sale of the Capital Note to redeem \$7.5 million of its common stock held by Holdco pursuant to a stock redemption plan (the “Stock Redemption Plan”). Holdco will then indirectly distribute the proceeds of the stock redemption to Eligible Policyholders as part of the Policyholder Consideration.⁶

E. Charter and By-Laws

Pursuant to Section 7312(e)(1)(C), SBLI has submitted an amended Charter and By-laws, reflecting the Company’s conversion to a domestic stock life insurance company in accordance with Article 12 of the New York Insurance Law, and seeks removal of the word “mutual” from its name. SBLI has also submitted a Certificate of Amendment to amend its Charter in connection with the Stock Redemption Plan.

II. BACKGROUND

A. Historical Background

SBLI is the successor to the Savings Bank Life Insurance System (the “SBLI System”). The SBLI System was organized in 1939 to sell life insurance policies to working class families across a network of savings banks located throughout New York.⁷ While general administrative

⁵ See Section IV below.

⁶ See Sections IV and VI below.

⁷ Policyholder Information Booklet at 12.

and underwriting services were performed by the Savings Bank Life Insurance Fund (the “Fund”), a corporate body organized within the New York State Banking Department, policies were sold by private savings banks that elected to participate in the SBLI System. This structure eliminated the commissions traditionally paid to insurance agents, and enabled the SBLI System to offer low-cost life insurance to low- and middle-income New Yorkers.

In addition to selling low-cost life insurance policies, the SBLI System generally paid a relatively high dividend to policyholders, reflecting that the SBLI System frequently collected premiums in excess of the amounts it needed to pay claims and expenses. These dividends functioned, in essence, as a return of premium and thereby further reduced the cost of insurance for the SBLI System’s policyholders. In fact, at the public hearing, one witness stated that the dividends paid on his policies were more than enough at one time to pay for his premiums.⁸

During the 1990s, the SBLI System struggled in a changing financial services landscape. A decline in the number of banks participating in the SBLI System — between 1986 and 1999 the number of banks participating in the SBLI System dropped from 49 to 16 — and increasing competition from insurance companies led to a significant decline in the number of policyholders participating in the SBLI System. Between 1991 and 2000, the total number of policyholders insured by the SBLI System declined by nearly one-third, dropping from 650,000 to 450,000. This significant decline raised concerns about the SBLI System’s ability to compete with traditional insurers.

In 1998, New York enacted legislation that allowed the Fund to consolidate and convert the former public-private partnership into a single mutual life insurance company.⁹ On May 6, 1999, the participating savings banks voted unanimously to approve the plan of conversion, and the Fund approved the plan one month later. SBLI incorporated as a mutual life insurance company on August 30, 1999, and became licensed to write life insurance, annuities, and accident and health insurance in New York on December 28, 1999.¹⁰

The restructuring removed all restrictions placed on the SBLI System’s business¹¹ and allowed SBLI to compete in the insurance market outside of its traditional savings bank distribution network. After the restructuring, SBLI pursued a number of strategies to restore its competitive position and to expand into new markets. Among other initiatives, SBLI: purchased a stock life insurance company that was licensed to write insurance in 49 states, the

⁸ Tr. 84:21–85:7. Citations in this Decision to “Tr. ___” refer to the Transcript of the public hearing held on August 21, 2014.

⁹ Policyholder Information Booklet at 12.

¹⁰ *Id.*

¹¹ Because the SBLI System enjoyed a number of competitive advantages due to its affiliation with the state, including tax exempt status, limits had previously been placed on the amount of insurance it could provide to any one person. These limits prevented the SBLI System from competing with private insurers for larger policies.

District of Columbia, Puerto Rico and the U.S. Virgin Islands; obtained approval to sell a number of different products; and opened customer service centers in select target markets, including Buffalo, Chicago, Los Angeles and Bayamon, Puerto Rico.¹² These growth initiatives, however, failed to produce any significant new business or reverse SBLI's decline. Between 2000 and 2007, the Department estimated that SBLI spent between \$20 and \$25 million each year pursuing its business plan but only earned, at most, \$4 million a year in new life insurance premiums. These acquisition expenses, which added to an already high corporate expense structure, were paid from profits earned on SBLI's existing insurance business.

In the 13 years following SBLI's incorporation as a mutual insurer, SBLI's gains, dividends and surplus all dropped significantly:

	Net Gain Before Dividends	Dividends	Surplus
2000	\$40 m	\$38 m	\$136 m
2001	\$33 m	\$28 m	\$120 m
2002	\$21 m	\$21 m	\$132 m
2003	\$15 m	\$14 m	\$123 m
2004	\$16 m	\$13 m	\$120 m
2005	\$18 m	\$11 m	\$119 m
2006	\$20 m	\$9 m	\$119 m
2007	\$13 m	\$9 m	\$123 m
2008	\$19 m	\$8.7 m	\$122 m
2009	\$29 m	\$8.9 m	\$113 m
2010	\$4 m	\$8.8 m	\$64 m
2011	\$28.5 m	\$8.3 m	\$76.4 m
2012	\$27.2 m	\$8.4 m	\$81.3 m
2013	\$22.2 m	\$8.1 m	\$89.0 m

As SBLI failed to produce any meaningful new business, its policyholder base continued to deteriorate, with in-force insurance declining from \$19.1 billion in 2001 to \$16.8 billion 2006, and with participating policyholders declining from 450,000 to 300,000.

In addition to its failure to attract new business, SBLI's investments also lost significant value during the financial crisis. SBLI had concentrated a larger proportion of its assets — more than any other New York insurance company — in mortgage backed securities issued by some of the most notorious lenders (particularly Countrywide Financial Corporation), and these securities lost nearly half of their value during the crisis. Following these and other losses, as reflected in the chart above, SBLI's surplus dropped from over \$122 million in 2008 to \$64

¹² State of New York Ins. Dep't, *Report on Examination of the SBLI USA Mut. Life Ins. Co.* dated Aug. 11, 2010 at 10.

million in 2010. In the face of these investment losses and the Company's deteriorating condition, A.M. Best Company, Inc. ("A.M. Best") downgraded the financial strength rating of SBLI twice, reducing its rating from "A-" (Excellent) to "B" (Fair).¹³ By 2012, SBLI's total in-force insurance dropped to just over \$12 billion — representing a nearly 40% decline since SBLI's reorganization as a mutual insurance company.

In light of its deteriorating viability, SBLI voluntarily agreed to close all of its customer service centers except for New York and to cease writing any new insurance business effective July 1, 2010 — a process known as "run-off." The Department's Report on Examination of SBLI dated August 11, 2010 noted that, as a result of these changes, "expenses that would have been incurred in the pursuit of new business should cease after a short transition period. In turn, pre-dividend net income should increase as well." While SBLI has stabilized since July 2010, it has not, in the Department's estimation, recovered sufficiently to allow the Company to start writing new business or to increase policyholder dividends. Instead, SBLI has continued to operate as a company in run-off, administering and paying claims on its in-force policies without writing new insurance business.

As discussed below, SBLI has sought a merger partner or an acquiring company since 2004.¹⁴ During that time, SBLI hired four different financial advisors to canvass the market for potential partners.¹⁵ To date, Prosperity, which first approached SBLI in 2012, is the only company to advance a viable offer to acquire SBLI.¹⁶ SBLI and Prosperity negotiated and submitted initial drafts of a plan of reorganization and an application to acquire control of SBLI in December 2012. In connection with its review of the Demutualization, the Department, pursuant to Section 7312(h), engaged Towers Watson & Co. to serve as its actuarial consultant ("Towers Watson") and Dentons US LLP to serve as its legal consultant.

B. Procedural Background

1. **SBLI Board Action and Notice to Policyholders**

As noted above, the Plan is the operative document governing the Demutualization. The Insurance Law requires that, before a plan of reorganization can become effective, it must be approved by three-fourths of the mutual insurer's board of directors,¹⁷ by the Department¹⁸ and by the affirmative vote of two-thirds of all votes cast by policyholders entitled to vote.¹⁹

¹³ Policyholder Information Booklet at 13.

¹⁴ Tr. 59:8–60:16.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 7312(e).

¹⁸ Section 7312(j).

¹⁹ Section 7312(k)(2).

Approval by the board is the prerequisite to either a policyholder vote or consideration by the Department. Upon approval by a board of directors, a company must mail and publish notices regarding the proposed transaction and provide policyholders with information, approved by the Department, which explains the proposed transaction.²⁰

On July 8, 2014, the Board of Directors of SBLI (the “Board”) unanimously adopted the Plan and the various exhibits and schedules thereto.²¹ The following day, SBLI and Prosperity submitted the Plan to the Department, together with a request for the approvals required to effectuate the Demutualization.

The Board resolution

(i) declares advisable the Plan of Reorganization; (ii) finds that the Plan of Reorganization is fair and equitable to the policyholders of the Company; (iii) finds that the Plan of Reorganization to be in the best interests of the Company and the policyholders of the Company; (iv) finds the Plan of Reorganization to be consistent with the provisions of Section 7312; and (v) determines that reorganization under Method 4 is the most appropriate method for the Plan of Reorganization under Section 7312(d) for the Company because (a) Method 4 allows for the design of a Plan that is best suited to provide the Company’s policyholders with a fair and equitable result, (b) the other methods could not be used for this particular transaction and (c) it provides a financial and strategic partner in Prosperity Life Insurance Group, LLC that will enable it to compete effectively, and thereby help strengthen the long-term prospects and viability of the Company.²²

Thereafter, on July 18, 2014, pursuant to Section 7312(i) and (k), SBLI mailed notice of the policyholder vote and public hearing, along with the Policyholder Information Booklet, a copy of the Plan and other documents, to 186,211 eligible SBLI policyholders. Consistent with the requirements of Section 7312(i), notice of a public hearing was published in the New York Post, a publication of general circulation located in the county where SBLI has its principal office, as well as in the Star-Ledger and The Buffalo News on July 23, 2014.²³

SBLI’s proxy agent, AST Fund Solutions Proxy Services (“AST”), began receiving ballots shortly after SBLI completed its mailing of the notices, Policyholder Information Booklet and related materials. AST recorded ballots on a daily basis at its facility in Ridgefield Park, New Jersey. Policyholders also were able to vote at SBLI’s home office, located at 460 West

²⁰ Sections 7312(i) and (k).

²¹ Policyholder Information Booklet at 2.

²² *Id.* at 13.

²³ Tr. 57:13–20.

34th Street, Suite 800, New York, NY, on August 28, 2014 between 10:00 a.m. and 4:00 p.m. The policyholder vote was completed on August 28, 2014. In total, out of the 186,211 SBLI policyholders who were eligible to vote, 34,769 policyholders voted for or against the Demutualization. Out of the 34,769 policyholders who voted, 28,449 (81.82% of the total number of voting policyholders) voted in favor of the Demutualization and 6,320 (18.18%) voted against the Demutualization. Pursuant to Section 7312(k)(4), Department personnel inspected the operations of SBLI's proxy agent and were present during the policyholder vote held at SBLI's offices.

2. The Public Hearing

In deciding whether to approve a plan of reorganization, the Insurance Law requires that the Department hold a public hearing “upon the fairness of the terms and conditions of the 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 not detrimental to the public.”²⁴

The Department convened a public hearing on August 21, 2014 at its offices, located at One State Street, 6th Floor, New York, New York. A transcript of the hearing is available at http://www.dfs.ny.gov/about/hearings/sbli_demut_20140821.htm.

At the hearing, five witnesses presented oral and written statements on behalf of SBLI and Prosperity: Michael Akker, President and Chief Executive Officer of SBLI; Ralph Meola, SBLI's chief actuary; Marc Slutzky, a principal and actuary at SBLI's external actuary, Milliman, Inc. (“Milliman”); Ronald Fry, Senior Vice President at Sherman & Company, an investment bank hired by SBLI to opine on the fairness, from a financial point of view, of the consideration to be received by Eligible Policyholders; and Matthew Popoli, a director of Prosperity. Messrs. Akker and Meola testified in favor of the Sponsored Demutualization, discussing, among other things, the reasons that the Board elected to pursue this path, the process SBLI undertook to identify a potential partner and the dividend process.²⁵ Mr. Slutzky testified about the creation of the Closed Block and the allocation methodology, and Mr. Fry explained Sherman & Company's conclusion that the Policyholder Consideration is fair to Eligible Policyholders.²⁶ Mr. Popoli testified in support of Prosperity's application to acquire control of SBLI.²⁷

In addition, eight SBLI policyholders — Richard Hoffman, Mark Smilow, Haydee Montero, Gordon Leavitt, Henry Lichtenstein, Lawrence Donahue, Malikia Gabay and Anthony

²⁴ Section 7312(i).

²⁵ Tr. 9:9–25:16; 55:16–71:18.

²⁶ Tr. 25:17–42:14.

²⁷ Tr. 42:15–55:15.

Bellifato — spoke in opposition to the Demutualization, with Mr. Hoffman also submitting a written statement.²⁸ Some of the policyholder testimony reflected confusion as to the impact that the Demutualization would have on SBLI. In particular, several policyholders expressed concern that their insurance policies would be terminated if SBLI demutualized or that the Company would redomesticate to another jurisdiction, leaving New York policyholders unprotected²⁹ — neither of which would result if the Sponsored Demutualization is consummated.³⁰ Other policyholders opposed the Sponsored Demutualization, arguing that the Policyholder Consideration is too low, the allocation methodology unfair, or that the Closed Block would only maintain SBLI's current dividend scale, which is one of the lowest in SBLI's history.³¹ Some of those opposed to the Sponsored Demutualization further suggested that it would be in the interest of SBLI policyholders for the Company to enter receivership and end its affairs rather than conclude a transaction that potentially would enable SBLI to return to market as a company that writes new business.³²

The hearing ended after approximately two hours — after all persons who wanted to comment on the Demutualization had the opportunity to do so.

The hearing record closed on September 4, 2014. The Department received a total of 13 written submissions concerning the proposed Demutualization. After the hearing, SBLI and Prosperity submitted additional statements from Matthew Popoli, Ronald Fry, Michael Akker, Marc Slutzky, Ralph Meola and Leslie Fenton, a managing director of KPMG Corporate Finance LLC. SBLI policyholders Richard Hoffman, Gordon Leavitt and Mark Smilow (jointly), Henry Lichtenstein, Phillip Smith, Paul O'Brien, Howard Grossman and Charles Henricks submitted statements in opposition to the Demutualization. All of these submissions were reviewed by the Department and were made part of the hearing record.³³

²⁸ Tr. 83:14–113:18.

²⁹ Tr. 86:5–90:2; 104:3–107:14.

³⁰ Tr. 83:14–113:18.

³¹ Tr. 92:7–95:12; 108:4–109:17.

³² Tr. 102:5–103:15.

³³ In addition, on September 12, 2014, over a week after the hearing record closed, the Department received a supplemental submission from Howard Grossman. This submission was not made a part of the hearing record but was considered as part of the Department's review and analysis of the Sponsored Demutualization.

III. THE DEMUTUALIZATION

A. Legal Standards

The Insurance Law authorizes various methods by which a mutual life insurer may demutualize.³⁴ Here, SBLI proposes to effectuate the Demutualization pursuant to Section 7312(d)(4) (“Method 4”), which authorizes any plan of demutualization:

(A) ... 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.

As opposed to the other methods of demutualization authorized by Section 7312(d), Method 4 provides flexibility to structure a proposed demutualization in a manner that is appropriate to the needs and situation of a particular insurance company. In enacting Section 7312, the Legislature emphasized the broad latitude authorized by Method 4, stating that:

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.

L. 1988, ch. 683 § 1 (legislative findings).³⁵

³⁴ See Section 7312(d).

³⁵ Regardless of the method of reorganization, the Legislature made plain that the Department has broad authority to interpret and apply the new law, stating that “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.*

Section 7312(j) guides the Superintendent's review of the Plan, stating in relevant part:

The superintendent shall after the public hearing . . . approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate [the 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 to be reasonably necessary for its future solvency.

In reviewing the Plan, the Department is mindful of the legislative findings accompanying the enactment of Section 7312, which note that:

[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.

L. 1988, ch. 684 § 1 (legislative findings).

B. Fairness to Policyholders

As noted above, Section 7312(j) requires the Superintendent to approve the Plan if he finds that it (1) is fair and equitable to the policyholders; (2) does not violate the Insurance Law; (3) is not detrimental to the public; and (4) results in the reorganized insurer having sufficient capital and surplus reasonably necessary for its future solvency. While all of the statutory factors must be satisfied, the issue of whether the Plan fairly and equitably compensates SBLI's policyholders is the overarching concern of Section 7312,³⁶ and is the fundamental issue for the Department's review.

The three key components of the Plan that implicate the question of fairness are: (a) the adequacy of the amount of the Policyholder Consideration; (b) the fairness of the fixed allocation of the Policyholder Consideration; and (c) the protection offered by the Closed Block.

In support of its application for approval, SBLI submitted opinions and statements from two experts as to the fairness of the proposed Demutualization, written statements from two of

³⁶ See, e.g., Section 7312(c), (d), (e), (i), (j).

SBLI's executives and one statement from a financial consultant that helped SBLI market itself. At the hearing and in written submissions, only twelve Eligible Policyholders, out of 186,211 potential objectors, expressed concerns about the Sponsored Demutualization and questioned whether the proposed terms are fair and equitable to Eligible Policyholders.

1. The \$36 Million Policyholder Consideration

a. SBLI Expert Opinions

SBLI submitted an opinion from Ronald Fry of Sherman & Company, an "investment bank dedicated exclusively to the insurance industry," opining that the proposed Demutualization is fair to policyholders "from a financial point of view" (the "Sherman Opinion").³⁷ In explaining its valuation analysis, the Sherman Opinion cautions that no company was identical to SBLI for comparative purposes, so it utilized information from companies that it believed to be the most comparable to SBLI. The Sherman Opinion notes that many of these comparable companies were in better financial condition than SBLI in that they were "better rated, still producing new business, and may have had better financial metrics...."³⁸

Sherman & Company performed five different valuation analyses to gauge the fairness of the proposed Demutualization of SBLI. Briefly stated, those analyses included:

- Comparable Publicly Traded Companies Analysis, which compared SBLI to a number of small insurance companies to project a range of potential values based on price to earnings per share and book value metrics;
- Takeover Premium Analysis, which supplemented the Comparable Publicly Traded Company Analysis by comparing the projected takeover premium for the Demutualization of SBLI against the actual takeover premium paid in connection with the acquisition of other small insurance companies;
- Precedent Transactions Analysis, which analyzed recent acquisitions of small life insurance companies to generate a value ratio by comparing the acquisition cost against the acquired company's statutory capital and surplus;
- Discounted Cash Flow Analysis, which calculated a theoretical value of SBLI based on its projected future earnings; and

³⁷ Policyholder Information Booklet at 30–36.

³⁸ Policyholder Information Booklet at 32.

- Embedded Value Analysis, which involved an estimate of the current value of SBLI’s assets in excess of its liabilities and the present value of in-force and potential new business written by the Company, after adjustments for expenses.³⁹

In addition, Sherman & Company also analyzed the Sponsored Demutualization to ensure that it was consistent with the current market, and compared the divisible surplus paid to policyholders to that paid in similar deals. From this analysis, Sherman & Company concludes that the \$36 million Policyholder Consideration, which equates to roughly 44% of statutory capital and surplus, compares favorably to “other recent demutualizations where policyholders received much less as a percentage of statutory surplus...”⁴⁰

Sherman & Company used these analyses to calculate a range of potential valuations for SBLI:

Analysis	Low	Mean	Median	High
Comparable Publicly Traded Company	\$27.5 million	\$58.2 million	\$57.7 million	\$83.7 million
Precedent Transactions	\$7 million	\$66.4 million	\$73 million	\$100 million
Discounted Cash Flow	\$24.3 million	NA	NA	\$40 million
Embedded Value	\$33.2 million	NA	NA	\$47.9 million

Because the \$36 million Policyholder Consideration falls within these high/low ranges, and was consistent with its other analyses, Sherman & Company concludes that the consideration is fair, from a financial point of view, to SBLI’s policyholders.⁴¹

b. Objections to the Fairness of the Policyholder Consideration

Nine Eligible Policyholders have criticized the amount of the Policyholder Consideration. Howard Grossman, through his counsel, submitted a detailed critique of the Policyholder Consideration and the Sherman Opinion.⁴² Overall, Mr. Grossman asserts that improvements in SBLI’s financial condition are not reflected in the Policyholder Consideration.⁴³ In particular, Mr. Grossman asserts that the terms of the Plan were set in October 2012 and, therefore do not reflect improvements in SBLI’s financial condition over the last two years.⁴⁴

³⁹ Tr. 37:13–38:5.

⁴⁰ See Written Statement of Ronald Fry, August 21, 2014, at 4.

⁴¹ Although the Sherman Opinion is dated November 22, 2013, Mr. Fry confirmed at the public hearing that the opinion still accurately reflects Sherman & Company’s estimate of the value of SBLI. Tr. 75:4–9.

⁴² Written Submission Objecting to Plan of Reorganization of SBLI USA Mutual Life Insurance Company, Inc. (Aug. 29, 2014) (“Grossman Submission”).

⁴³ Grossman Submission at 4–5.

⁴⁴ *Id.*

Mr. Grossman also asserts that none of the analyses used by Sherman & Company establishes the fairness of the Demutualization.⁴⁵ Mr. Grossman accepts the validity of the Publicly Traded Companies and Precedent Transaction analyses, but disagrees that SBLI should be valued at the lower end of either range.⁴⁶ Instead, Mr. Grossman argues for a sale price in the mean and median range.⁴⁷ Regarding the Publicly Traded Company analysis in particular, he argues for a valuation based on a multiple of SBLI's earnings without the realized capital losses, suggesting a valuation between \$87 million and \$172 million.⁴⁸ Mr. Grossman also rejected the Sherman Opinion's discounted cash flow and embedded analyses as unreliable and opaque.⁴⁹

Similarly, Richard Hoffman focuses on SBLI's operating income before capital losses to conclude that SBLI is profitable and, given time, would be able to increase policyholder dividends.⁵⁰ As he concludes that Eligible Policyholders will gain nothing from the Sponsored Demutualization of SBLI, Mr. Hoffman suggests that SBLI should continue in run-off, or be placed into receivership by the Department, in the hope that the performance of the Company will improve enough to raise dividends.⁵¹

Gordon Leavitt and Mark Smilow submitted a joint objection to the fairness of the Policyholder Consideration.⁵² Messrs. Leavitt and Smilow accept the methodology used by Sherman & Company but assert that the fact that the Policyholder Consideration is below the mean and median values indicates that the Demutualization is unfair to policyholders and will provide Prosperity with a windfall.⁵³ Henry Lichtenstein agrees that the Policyholder Consideration is inadequate because it is below the mean and median book value calculated by Sherman & Company.⁵⁴

Charles Henricks asserts that SBLI's statutory surplus, \$92.2 million as of June 30, 2014, is the appropriate valuation for SBLI.⁵⁵

⁴⁵ *Id.* at 5–10.

⁴⁶ *Id.* at 7–9.

⁴⁷ *Id.* 7.

⁴⁸ *Id.* at 8.

⁴⁹ *Id.* at 9–10. Contrary to Mr. Grossman's assertion, the public hearing required by Section 7312(i) does not constitute an adjudicatory proceeding under the New York State Administrative Procedure Act.

⁵⁰ Written Submission from Richard Hoffman, Aug. 22, 2014 ("Hoffman Submission"), at 1–2.

⁵¹ *Id.*

⁵² Written Submission from Gordon H. Leavitt and Mark D. Smilow, Sept. 4, 2014 ("Leavitt and Smilow Submission").

⁵³ *Id.* at 1–2.

⁵⁴ Written Submission from Henry L. Lichtenstein, Sept. 4, 2014 ("Lichtenstein Submission"), at 3.

⁵⁵ Written Submission from Charles S. Henricks, Aug. 20, 2014, at 1.

c. **Sherman & Company's Response**

On behalf of SBLI, Sherman & Company submitted a supplemental written statement responding to Mr. Grossman's criticisms of its analyses and conclusion.⁵⁶ In general, Sherman & Company defended its opinion as being consistent with general investment banking practices. Regarding the rise in operating income identified by Mr. Grossman, Sherman & Company explained, "We believe the Company is experiencing a temporary boost to its financials that is not sustainable should it continue to remain in run-off."⁵⁷ The Fry Supp. Submission attributed this "temporary boost" to "the Company's cessation of writing new business."⁵⁸ Sherman & Company expects that "Over time this improvement will erode, as the number of policies in force declines due to policy surrenders, lapses, maturities, and deaths" and "At some point reduced earnings on a shrunken policyholder base will no longer support fixed expenses."⁵⁹

Sherman & Company cogently defends the assumptions criticized by Mr. Grossman.⁶⁰ Regarding the assertion that any price below SBLI's book value is unfair, Sherman & Company points out that the average share price to book value for the small, publicly traded, comparable companies identified in the Sherman Opinion was approximately 61.6%, a number that compares favorably to the Policyholder Consideration.⁶¹

2. Allocation Methodology

The allocation of consideration paid to policyholders of a demutualized insurance company typically has two parts: a fixed component and a variable component. The fixed component is a flat amount that compensates each eligible policyholder for the termination of the policyholder's membership interests. The variable component compensates policyholders for their contributions over time to the mutual insurance company's surplus and profit, and generally is paid to long-term policyholders or the holders of high value policies.

⁵⁶ Supplemental Written Statement of Ronald Fry, Sept. 4, 2014 ("Fry Supp. Submission").

⁵⁷ *Id.* at 1-2.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Fry Supp. Submission at 2.

⁶¹ *Id.* at 1. On September 12, 2014, after the Department closed the hearing record, Mr. Grossman submitted a response to the Fry Supp. Submission ("Grossman Supp. Submission"). Because it was submitted after the hearing record was closed, the Grossman Supp. Submission was not included in the hearing record, but was reviewed by the Department as part of its consideration of the Plan. Overall, the Grossman Supp. Submission challenges the evidentiary value of SBLI's supplemental submissions because they do not purport to be based on personal knowledge or provide adequate detail. Among other things, Mr. Grossman challenges Mr. Fry's assessment that SBLI is experiencing a "temporary boost," asserting that SBLI stopped writing new business in 2010 and that any associated improvement in SBLI's financial condition would have been experienced at that time. Grossman Supp. Submission at 3.

Here, the Plan calls for the Policyholder Consideration to be distributed solely as a flat allocation. According to SBLI and its actuarial consultant, the primary reason for the flat allocation is that SBLI lacks the records necessary to calculate policyholder contributions to surplus. Specifically, SBLI points to the fact that, as the successor to the SBLI System, SBLI received records for insureds who purchased their policies from one of up to 78 different savings banks that at one time participated in the SBLI System.⁶² SBLI states that the policyholder experience records were not maintained subsequent to SBLI's incorporation as a mutual insurer in 1999, and therefore no credible calculation can be developed with regard to a variable component.⁶³

a. SBLI Expert Opinions

In support of the Plan and its proposed flat allocation of the Policyholder Consideration, SBLI submitted an opinion and statement from Marc Slutzky, a principal and consulting actuary at Milliman (the "Fairness Opinion"), asserting that the flat allocation is fair and equitable.⁶⁴ Mr. Slutzky notes that Actuarial Standard of Practice ("ASOP") 37 provides that the calculation of "fixed and variable components of consideration that any one policyholder receives should reflect both equity and practicality... Practicality requires that the proposed allocation take into account both administrative feasibility and imperfections in the available data."⁶⁵ Mr. Slutzky concludes that the lack of data made any calculation of a variable component "impractical," and thus unnecessary according to ASOP 37.⁶⁶ Mr. Slutzky also notes that two recent demutualizations — Security Benefit Life Insurance Company, a Kansas stock life insurer, in 2010 and Shenandoah Life Insurance Company, a Virginia stock life insurer ("Shenandoah Life"), in 2012 — allocated policyholder consideration solely on a flat basis.⁶⁷

b. Objections to the Fixed Allocation

Three policyholders — Messrs. Leavitt, Smilow and Lichtenstein, each a long-term SBLI policyholder — object to the fairness of the flat allocation of Policyholder Consideration. Specifically, Messrs. Leavitt and Smilow assert that the "\$190 per policyholder payment is also unfair because it treats all policyholders equally without recognizing the materially enhanced

⁶² By 1999, there were only 16 banks still participating in the SBLI System, but through mergers or transfers of business, the in-force policies issued by any of the SBLI System banks were still insured by the SBLI System.

⁶³ Tr. 29:4–7.

⁶⁴ Policyholder Information Booklet at 36-39; Fairness Opinion Regarding the Allocation of Consideration Related to the Plan of Reorganization of SBLI USA Mutual Life Insurance Company, Inc., July 8, 2014; Written Statement of Marc Slutzky, Aug. 21, 2014.

⁶⁵ Fairness Opinion at 4; ASOP 37, Section 3.2.

⁶⁶ Fairness Opinion at 4.

⁶⁷ *Id.* at 5.

contribution made by long-term policyholders to the Company's surplus and profitability."⁶⁸ And Mr. Leavitt asserts that, as a former chief actuary of the SBLI System, he recalls that SBLI filed surplus information with the Department upon which the calculation of a variable component could be made.⁶⁹

Mr. Lichtenstein also asserts that the flat allocation is unfair.⁷⁰ And like Mr. Leavitt, Mr. Lichtenstein believes that sufficient records must exist for SBLI to calculate a variable component that will recognize the value that long-term policyholders have helped build at SBLI.⁷¹

3. The Closed Block and the Dividend Scale

As noted above, the Closed Block is an accounting mechanism that provides certain protections to owners of traditional dividend-paying life insurance policies. Assets are allocated to the Closed Block to produce income which, together with anticipated revenue from the Closed Block Policies, is reasonably expected to be sufficient to pay claims, expenses, and to maintain SBLI's current dividend scale.

In accordance with the Plan, the Closed Block will initially be funded, as of September 30, 2012, with \$909,144,185. Consistent with Section 7312(d), the funding of the Closed Block will be updated to the December 31 preceding the adoption of the Plan and brought forward to the effective date of the Demutualization, using methods that would have been used had the Closed Block been established on the December 31 preceding the adoption date of the Plan. The inventory and valuation amount of the assets will be adjusted, subject to the Department's approval, to reflect the update to the statement and effective date.

SBLI's actuary, Milliman, by letter dated July 8, 2014, opines that the Closed Block is consistent with the requirements imposed by Section 7312 and that the funding of the Closed Block, "together with anticipated revenues ... are reasonably expected to be sufficient to support the Closed Block Business including, but not limited to, provisions for payment of claims and certain expenses and taxes, and to provide for continuation of dividend scales payable in 2013, if the experience underlying such scales continues."

Like Milliman, the Department and Towers Watson have reviewed the Closed Block and determined that its funding is reasonable and sufficient for purposes of Section 7312(d)(5)(B), which provides in relevant part 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

⁶⁸ Leavitt and Smilow Submission at 3.

⁶⁹ *Id.* at 3.

⁷⁰ Lichtenstein Submission at 3.

⁷¹ *Id.*

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.”

a. SBLI Expert Opinions

SBLI submitted a second opinion from Mr. Slutzky regarding the establishment and funding of the Closed Block.⁷² Mr. Slutzky opines that the Closed Block is consistent with the requirements of the Insurance Law and general actuarial standards of practice regarding the establishment of closed blocks upon demutualization and that, based on his actuarial projections, the Closed Block is funded with sufficient assets to pay the claims, expenses and dividends provided for in the Closed Block memorandum.

b. Objections to the Closed Block and the Dividend Scale

Given SBLI’s historically high dividend rate, certain policyholders criticize the fact that the current dividend scale, one of the lowest in SBLI’s history, is the basis for the establishment of the Closed Block. Mr. Hoffman strenuously criticizes the operation of SBLI since its reorganization in 1999, condemning what he viewed as waste, excessive executive compensation and an inept business strategy, and the declining dividends since that time.⁷³ To emphasize the decline in dividends, Mr. Hoffman estimates that difference between the total amount of dividends paid to policyholders in 1999 and the actual dividends paid to date amounts to \$265 million.⁷⁴ Mr. Hoffman concludes that with the formation of the Closed Block “policyholders are going to suffer because they will never have an opportunity to regain our dividend.”⁷⁵

In addition, a number of Eligible Policyholders raised the unfounded concern that the creation of the Closed Block somehow means that Closed Block policies no longer would be backed by all the assets of SBLI.⁷⁶ Messrs. Smilow, Leavitt and Lichtenstein more specifically expressed concern that the protection of the assets included in the Closed Block, roughly \$900 million, is short of the \$1.4 billion of assets that currently support the general obligations of the

⁷² Fairness Opinions Regarding the Establishment and Operation of a Closed Block Relating to the Plan of Reorganization of SBLI USA Mutual Life Insurance Company, Inc., July 8, 2014.

⁷³ See generally Tr. 84:11–91:14.

⁷⁴ Mr. Hoffman’s analysis overstates the decline in SBLI’s dividends because it assumes that the total dividend paid in 1999 would have remained constant even though the number of SBLI policyholders has declined significantly.

⁷⁵ Tr. 88:11–13.

⁷⁶ Tr. 93:14–94:8.

Company and that policyholders will lose roughly \$500 million of protection upon consummation of the Sponsored Demutualization.⁷⁷

C. Discussion and Analysis

As noted in section II above, SBLI has been in a state of decline for nearly 25 years. Throughout the 1990s, SBLI's predecessor struggled to adapt to the changing competitive landscape, losing nearly one-third of its policyholders within the span of one decade. Recognizing its precarious competitive situation, New York enacted legislation to allow the SBLI System to reorganize and compete as a single private mutual insurance company.

Following its reorganization as a mutual insurer in 1999, the Company sought to restore its market presence, but could not execute an effective and viable business plan. Indeed, between 2000 and 2007, the Department estimated that SBLI spent between \$20 million and \$25 million a year on acquisition and restructuring expenses, but new premiums, at their peak, totaled just \$4 million. Because new business was not self-supporting, SBLI's acquisition expenses, which added to an already high expense structure, were paid out of profits earned on the Company's existing insurance business. After 1999, SBLI also substantially increased the amount of compensation it paid to executives, despite the fact that the Company was struggling to write new business profitably. As a result, the Company significantly reduced policyholder dividends.⁷⁸

Compounding its difficulties, SBLI concentrated a large proportion of its assets — more than any other New York insurance company — in mortgage backed securities. These securities lost nearly half of their value during the financial crisis and led to a steep decline in SBLI's surplus, from over \$122 million in 2008 to \$64.5 million in 2010. Given this deterioration, A.M. Best downgraded SBLI twice, reducing its rating from "excellent" to "fair."

Overall, between 2000 and 2013, SBLI's total in-force insurance dropped from \$18.4 billion to \$11.3 billion while the number of SBLI policies declined from 450,000 to 230,000. Taken together with the declines from the prior decade, between 1990 and 2013 SBLI-issued policies declined by nearly two-thirds. Just as troubling, between 2000 and 2010, SBLI's risk based capital ("RBC") — a regulatory measure of the Company's financial soundness — declined by one-third before rebounding slightly after SBLI stopped writing new business and reduced its acquisition expenses.

⁷⁷ See Tr. 93:14–94:8; Leavitt and Smilow Submission at 2; Lichtenstein Submission at 3.

⁷⁸ See Chart at 6, above.

Many policyholders at the public hearing expressed concern over SBLI's decline,⁷⁹ but offered suggestions other than the Demutualization on the Company's future trajectory. Messrs. Leavitt, Smilow, Lichtenstein and Hoffman each suggests that, absent a better deal, the Department take control of SBLI through a receivership (*i.e.*, either a liquidation or rehabilitation proceeding). This way, Mr. Leavitt and Mr. Smilow assert, "policyholders are substantially more likely to be treated fairly and will receive materially more compensation than they will under the proposed demutualization."⁸⁰ In the alternative, Mr. Hoffman suggests that SBLI be left in run-off so that the Company can limit its expenses and increase the amount of dividends paid to policyholders.⁸¹

Having long considered the options available to SBLI, the Department believes that a sale, at a fair price, to an appropriate third-party, is the best course for SBLI and its policyholders. Becoming part of a more financially secure company will allow SBLI to start writing new business and to improve its financial condition. This will render the Company more secure, better prepared to service policyholders and pay claims as they come due. Moreover, Prosperity plans to reorganize SBLI's operations, as it did upon acquiring Shenandoah Life, a company that was in receivership in Virginia, and to serve again New York's underserved market of middle and low-income New York consumers. While Prosperity is a relatively new company, it is owned and managed by individuals with significant insurance industry experience, including, among others, a former Chief Executive Officer of Swiss Reinsurance Company who helped run off Lloyd's of London policies dating back to the 1930s, and a former Commissioner of the Texas Insurance Department.⁸² In addition, Prosperity's Chief Executive Officer is the former Executive Vice President and Chief Operating Officer of Allstate Financial.⁸³

Neither run-off nor receivership offers the same opportunity to improve SBLI's financial condition, and leaving SBLI in run-off merely maintains the status quo. The Department had expected that SBLI's financial condition after 2010 would improve sufficiently, after it ceased writing new business, to allow the Company to increase policyholder dividends, but the improvement has not been as significant as expected. Thus, it is hard to see how maintaining the status quo could improve the Company's condition.

⁷⁹ Indeed, a number of policyholders harshly criticized SBLI's management and Board over the last 14 years, accusing them of misusing corporate assets to fund unprofitable customer service centers, lavish events, charitable contributions, and deferred compensation plans for senior managers, as well as failing to adjust to low interest rates when the bulk of the insurance industry successfully did so. Tr. 86:23-88:9; Lichtenstein Submission at 2-3; Hoffman Submission at 1-9.

⁸⁰ Leavitt and Smilow Submission at 3.

⁸¹ Hoffman Submission at 1-11.

⁸² Tr. 44:2-45:9.

⁸³ Tr. 47:23-48:20.

Placing the Company into receivership similarly would not benefit its policyholders (dividends would likely cease entirely) or otherwise allow SBLI to grow. And without a growing policy base there would be the very real risk that, as its policyholder base were to continue to erode, SBLI's expenses would exceed its income. Further, the receivership process tends to be both lengthy and costly, and in the case of a life insurer, exceedingly complex given the need to maintain sufficient financial resources to meet long-term policy obligations.

In short, neither the status quo nor receivership offers much chance that SBLI's financial condition will sufficiently improve to allow the Company to sell itself for more money, to increase policyholder dividends, or to resume writing new business.

As discussed above in section III.B., there are three key components that implicate the question of whether the Plan is fair and equitable to policyholders: (1) the adequacy of the Policyholder Consideration; (2) the allocation methodology for the Policyholder Consideration; and (3) the adequacy of the Closed Block. Each of these items is addressed in turn. As shown below, the Department finds that the Demutualization and the Plan satisfy Section 7312(j) in that they are fair and equitable to Eligible Policyholders. The Department also finds – although Section 7312(j) does not require it – that each of the items discussed below is itself fair and equitable under the circumstances.

1. The \$36 Million Policyholder Consideration

Under the Plan, Eligible Policyholders stand to receive \$36 million in Policyholder Consideration. After careful review, the Department concludes that the Policyholder Consideration is fair and equitable.

Valuing a small life insurance company such as SBLI is imprecise in that there is a limited market for such companies, and, thus few similar transactions available to use as benchmarks. The limited market is due to the fact that the potential profit margin to be realized from acquiring a small life insurance company is small while the potential loss is large, resulting in an uncertain or even unfavorable risk/reward calculus. This is borne out in part by Sherman & Company's observation that the price to book value for the publicly traded companies it identified as comparable to SBLI is approximately 61%.⁸⁴

The limited market for small insurance companies also is evident from SBLI's inability to identify any other viable partner other than Prosperity, despite shopping itself since 2004.⁸⁵ Over an eight-year period, SBLI retained four different financial advisors, including most recently KPMG Corporate Finance LLC, to try to find a merger partner or an acquiring

⁸⁴ Fry Supp. Submission at 1.

⁸⁵ Tr. 59:8–60:16.

company.⁸⁶ These advisors reviewed SBLI's operations and identified a number of companies that they believed might be appropriate partners for a merger or acquisition.⁸⁷ SBLI's advisors then contacted over forty potential partners to gauge their interest in SBLI.⁸⁸ Among these potential partners were two proposals to merge with other financially vulnerable insurers, but SBLI could not agree on terms with those potential partners.⁸⁹

When Prosperity first emerged as a bidder, it offered only \$12.5 million in consideration to Eligible Policyholders.⁹⁰ But over time, it improved its offer to \$36 million, on top of \$4 million in expenses. That Prosperity's offer is by far the best that the Company has received either before or after the financial crisis tends to support a determination that the Policyholder Consideration is fair and equitable.

Mr. Grossman suggests that SBLI inadequately marketed itself and that there must be more interest in acquiring SBLI. Mr. Grossman criticizes the process as "having been conducted more than four years ago at a time when the Company was teetering on the verge of financial collapse, and was not an appealing partner in any type of transaction."⁹¹ In fact, SBLI began shopping itself in 2004 — long before the financial crisis weighed down SBLI's financials — and received no viable offer.⁹² Moreover, as it became concerned about SBLI's ineffective business plan and its impact on policyholder dividends, the Department in 2007 contacted a number of New York domiciled insurance companies to gauge their interest in merging with or acquiring SBLI. None of the companies pursued the matter further. And as a consequence, SBLI ultimately stopped writing new business in July 2010, fired its sales staff, and began rebuilding its surplus at the Department's direction.

In acquiring SBLI, Prosperity will need to rebuild a sales platform and SBLI's name recognition by developing a viable market strategy, constructing products suitable to that strategy and hiring and training sales staff to sell these products. It will have to grapple with the inadequate records left behind by the SBLI System and confront an unusually high expense structure that, despite the fact that SBLI does not have any acquisition expenses, ranks in the fourth quartile for per policy expenses.⁹³ Although Prosperity could profit if it successfully reduces SBLI's maintenance expenses on its block of business, reducing SBLI's expense

⁸⁶ Policyholder Information Booklet at 13.

⁸⁷ Tr. 59:8–60:16.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Tr. 82:14–17; Supplemental Written Statement of Matthew Popoli, Aug. 26, 2014, at 1.

⁹¹ Grossman Supp. Submission at 2.

⁹² Tr. 59:8–60:7.

⁹³ SBLI's expense ranking is based on a comparison of SBLI's per unit costs against the data contained in the 2010 Annuity and Individual Life Expense Study, which was published by the Society of Actuaries in October 2013. Society of Actuaries, *2010 Individual Life and Annuity Expense Study*, Oct. 2013, at 12.

structure would require a substantial upfront investment to achieve any meaningful savings. Prosperity is thus banking on realizing profits by reducing SBLI's expenses — a prospect that has existed for years but which no other company in the marketplace has expressed any serious interest in trying to unlock.

In other words, Prosperity is spending \$40 million — \$36 million of which will go to Eligible Policyholders — for the opportunity to right the SBLI ship. The Sherman Opinion is helpful, but not determinative in assessing the fairness of the Demutualization. The Sherman Opinion provides broad ranges that offer context to the sale of SBLI, but identifies some mean and median values that, as a number of policyholders note, exceed the total amount of Policyholder Consideration, and others that suggest the consideration is entirely fair and equitable.

Given this circumstance, the Department has analyzed the value of the Policyholder Consideration by considering the actuarial valuation of the Company as modified by the discount rate. This approach essentially reflects the Department's view that a new direction is necessary to attempt to reverse SBLI's ongoing decline, combined with an examination of the reasonableness of the discounted rate of future cash flows that an investor may reasonably be expected to accept. A general review of the market suggests that a discount rate of between 9% and 13% applies to an acquisition of an insurance company. Based on the Department's review, performed with the assistance of Towers Watson, when factoring in the costs and expenses of the Sponsored Demutualization, as well as Prosperity's ability to receive payments on the Capital Note and in the form of dividends, the discount rate for the Demutualization is approximately 17.53%. While that is higher than the rate seen in other transactions, it is reasonable where, as is the situation here, there is only one suitor for SBLI and the Company is in a sustained state of decline.

Mr. Grossman also believes that the terms of the Sponsored Demutualization are stale, as Prosperity and SBLI entered into an agreement in 2012.⁹⁴ However, the terms of the Sponsored Demutualization have changed since that time. The proposal first submitted to the Department called for SBLI policyholders to receive \$12.5 million in policyholder consideration.⁹⁵ The Department deemed the Policyholder Consideration to be insufficient under the circumstances. The current terms of the Plan did not come together until November 2013. Thus, Mr. Grossman's suggestion that the transaction is "stale" is without foundation.

⁹⁴ Grossman Submission at 2–11.

⁹⁵ Tr. 82:14–17.

2. Allocation Methodology

Notwithstanding the fact that the Policyholder Consideration has only a fixed but no variable component, the Department finds the allocation method for the payment of the Policyholder Consideration is reasonable under the circumstances. Because the Company lacks the records needed to calculate any variable component for the Policyholder Consideration,⁹⁶ the Department and SBLI discussed a number of different methods to approximate the necessary information and develop an alternative method for calculating a variable component. In each of these exercises, the Department and SBLI found that these approximations required too many unsupported assumptions. Because this process would have required the Department to substitute its judgment in lieu of actual data, the Department concluded that these approximations would be unsound and inappropriate. As a result, the Department concluded that the only fair way to allocate the Policyholder Consideration is by the flat allocation method.

While Messrs. Leavitt, Smilow and Lichtenstein rightly point out that the flat allocation does not compensate them for their contributions to SBLI's surplus,⁹⁷ they are incorrect in concluding that the flat allocation is unfair or inequitable. While a variable component is often preferred in the context of a demutualization, it is not required in every instance,⁹⁸ and the objectors suggest no alternate methodology by which a variable component could be calculated. As the Fairness Opinion notes,⁹⁹ ASOP 37 recognizes that allocation of policyholder consideration "should reflect both equity and practicality" and that "[p]racticality requires that the proposed allocation take into account both administrative feasibility and imperfections in the available data."¹⁰⁰ Similarly, the legislative history of New York's demutualization law indicates that Section 7312 is flexible enough to take account of the particularized circumstances facing a mutual insurance company, which here include the lack of data necessary to calculate a variable component.¹⁰¹ Given SBLI's circumstances — namely, its inability to produce viable records without spending at least \$1 million¹⁰² — the Department believes that a flat allocation is the only fair and equitable method of allocating the \$36 million Policyholder Consideration.

⁹⁶ While Mr. Leavitt is correct that the Department receives general information about SBLI's surplus and financial condition (*see, e.g.*, Tr. 65:7–71:18), the Department has never received or possessed sufficiently detailed information to allow for the calculation of a variable component.

⁹⁷ Tr. 90:25–91:13; 94:20–95:2; 100:15–24; 102:6–12; 105:4–12.

⁹⁸ *See* Fairness Opinion at 4–5.

⁹⁹ *Id.*

¹⁰⁰ ASOP 37, Section 3.2.

¹⁰¹ *Id.*

¹⁰² Tr. 68:20–71:6.

3. The Closed Block and the Dividend Scale

As contemplated by the Plan, the construction of the Closed Block is fair and equitable to Eligible Policyholders.

The Plan is funded to support the continuation of SBLI's current dividend scale, if the experience of the Closed Block Policies remains unchanged. Pursuant to Section 7312(d)(5), "[w]hen the mutual life insurer's participating business ... shall be operated by the reorganized insurer as a closed block of participating policies," then the closed block must be funded with sufficient assets to pay claims, expenses and "to provide for continuation of the current payable dividend scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience changes." Although policyholders like Mr. Hoffman complain that the current dividend scales are lower than prior scales, as Mr. Meola testified, the scales reflect SBLI's current experience on its in-force policies.¹⁰³

In addition to criticizing the Company's current dividend scale, some policyholders express significant confusion and concern about the protection provided by the Closed Block. Messrs. Smilow, Leavitt and Lichtenstein, in particular, suggest that the protection provided by the Closed Block assets, roughly \$900 million, is far short of the \$1.4 billion of assets that currently support the general obligations of the Company.¹⁰⁴ They argue that the Closed Block Policies will lose roughly \$500 million of protection upon consummation of the Demutualization.

That claim is without merit. The Closed Block is funded with assets that are estimated to be sufficient to pay for the claims and dividends owed on the Closed Block Policies, but the Closed Block Policies will still be backed by the full assets of the reorganized Company. Thus, even if a major event causes the Closed Block Policies' experience to deviate substantially from the assumptions underlying the Closed Block, SBLI will nevertheless be obligated to continue to pay all claims on Closed Block Policies. The Company is not, however, required to pay dividends on Closed Block Policies if the Closed Block funding is inadequate.¹⁰⁵

¹⁰³ Supplemental Written Statement of Ralph Meola, Aug. 26, 2014, at 1–2; Tr. at 23:14–21.

¹⁰⁴ Tr. 93:14–94:8; *see generally* Leavitt and Smilow Submission, Lichtenstein Submission.

¹⁰⁵ The Policyholder Information Booklet explains: "The existence of the Closed Block should have no effect on SBLI USA's obligations or SBLI USA's ability to pay guaranteed benefits. We cannot ensure that the Closed Block Assets, the cash flows generated by the Closed Block Assets and the anticipated revenue from the Policies included in the Closed Block will be sufficient to provide for the benefits guaranteed under these Policies. If the assets allocated to the Closed Block, and the investment cash flows from those assets and the revenues from the Closed Block Policies were to prove insufficient to pay the guaranteed benefits under Closed Block Policies, SBLI USA would make such guaranteed payments from funds outside the Closed Block. SBLI USA is not required to pay policy dividends on Closed Block Policies from funds outside the Closed Block, and the goal in

Both the Department and Towers Watson have carefully reviewed both the projected experience of the Closed Block Policies and the adequacy of the Closed Block funding levels and found them to be reasonable. The funding of the Closed Block will be established as of September 30, 2012 and updated to December 31, 2013, and then brought forward to the effective date of the Demutualization, using methods that would have been used had the Closed Block been established on December 31, 2013. The inventory and valuation amount of the assets allocated to the Closed Block will be adjusted, subject to the Department's approval, to reflect the actual experience of the Closed Block and to establish the appropriate funding level of the Closed Block, all of which is intended to benefit and protect Eligible Policyholders.

4. Other Fairness Issues

In addition to the issues discussed above, a number of policyholders raise basic concerns as to how policyholders will fare after the Demutualization. For instance, Lawrence Donahue expresses concern that as a result of the Sponsored Demutualization, Prosperity would terminate all policies issued by SBLI and that it would be difficult for certain policyholders to obtain replacement coverage.¹⁰⁶ The Plan, however, contemplates no such thing. Following the Sponsored Demutualization, SBLI will remain subject to the same laws and regulations governing policy termination as currently apply.¹⁰⁷

Mr. Donahue also worries that the Sponsored Demutualization will cause SBLI to redomesticate to another jurisdiction, thereby depriving the Department of the ability to protect the interests of SBLI's largely New York policyholder base.¹⁰⁸ Consummation of the Sponsored Demutualization, however, will not result in the redomestication of SBLI to another state. SBLI cannot change its domicile without the prior approval of the Department, and SBLI has not applied to change its domicile.

Mr. Bellifato worries that upon approval of the Sponsored Demutualization, SBLI will become a foreign company and, in the event of a liquidation, SBLI would not be subject to New York law and the guarantee provided by the Life Insurance Company Guaranty Corporation of New York, which provides up to \$500,000 per policy in the event of a life insurer liquidation.¹⁰⁹ Again, following the Sponsored Demutualization, SBLI will remain a New York domiciled insurance company, and any receivership proceeding that might arise at some point in the future

establishing the Closed Block is to provide for policy dividends to be paid from the Closed Block." Policyholder Information Booklet at 39.

¹⁰⁶ Tr. 104:3-14.

¹⁰⁷ Any policyholder who believes that his or her policy is improperly terminated may contact the Department's Consumer Assistance Unit at (212) 480-6400 or 1-800-342-3736.

¹⁰⁸ Tr. 106:10-107:9.

¹⁰⁹ Tr. 111:6-113:6; *see also* Sections 7701-7718.

would be handled by the New York Liquidation Bureau pursuant to the New York Insurance Law.

5. Remaining Factors of Section 7312(j)

As noted in section III.B. above, in addition to finding that the Plan is fair and equitable, Section 7312(j) requires a finding that the Plan does not violate the Insurance Law, is not detrimental to the public, and results in the reorganized insurer having sufficient capital and surplus reasonably necessary for its future solvency.

Based on the discussion in preceding sections of this Decision, the Department finds that SBLI has complied with the applicable provisions of Section 7312, including the issuance of certain notices and materials to policyholders, and publication of notice and the conduct of the policyholder vote. The Plan does not violate the Insurance Law.

In light of the protections for SBLI's policyholders discussed above and the fact that SBLI is currently not writing any new insurance business, it is the Department's considered and reasoned view that the Plan is not detrimental to the public. Furthermore, pursuant to Section 7312(c)(5), the Plan will not substantially lessen competition in any line of insurance business. Indeed, the Sponsored Demutualization should help to improve competition in the life insurance business, particularly as Prosperity has indicated that it intends SBLI to again offer products to the underserved markets in New York.¹¹⁰

Finally, Section 7312(e)(1)(H) requires SBLI to submit, in addition to the Plan and other materials, a Plan of Operations for the reorganized insurer, which includes actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. SBLI submitted a Plan of Operations as Exhibit E to the Plan. The Plan of Operations contemplates that SBLI will resume writing new whole and term life insurance policies on a non-participating basis.

The Plan of Operations also contains projections of SBLI's total capital and surplus for the years 2013 through 2022. Based upon these submissions and analysis, the Department is satisfied that after giving effect to the Demutualization, the reorganized SBLI will have an amount of capital and surplus that is reasonable for its future solvency. As with all domestic insurance companies, the Department will continue to monitor SBLI after the Sponsored Demutualization and ensure that it adheres to the requirements imposed by the Insurance Law.

¹¹⁰ Tr. 14:21-15:13.

IV. ACQUISITION OF CONTROL

A. The Acquisition Application

According to the Acquisition Application, Prosperity manages, and owns a 90.4% interest (which is voting) in, SBLI USA Acquisition LLC, a Delaware limited liability company (“Acquisition Co”), which will, upon completion of the proposed Acquisition of Control, directly own all of SBLI’s voting securities (which will be issued as a result of the Demutualization). The remaining 9.6% interest in Acquisition Co (which is non-voting) will be owned by Shenandoah Life, a direct, wholly-owned subsidiary of Prosperity.

Prosperity’s membership interests are owned by the following members: Reservoir Capital Partners, L.P., a Cayman limited partnership (“Reservoir Partners Cayman”), which owns an approximately 40.7% interest in Prosperity; Reservoir Capital Investment Partners, L.P., a Delaware limited partnership (“Reservoir Investment Partners”), which owns approximately 22.9%; Reservoir Capital Master Fund II, L.P., a Delaware limited partnership (“Reservoir Master Fund” and collectively with Reservoir Partners Cayman, Reservoir Investment Partners, the “Reservoir LPs”), which owns approximately 16.4%; and Black Diamond Capital Partners I, L.P., a Delaware limited partnership (“BD Capital Partners”), which owns approximately 20%.

The Acquisition Application states that the respective general partners of the Reservoir LPs are wholly-owned or managed by various subsidiaries of Reservoir Capital Group, L.L.C., a Delaware limited liability company and a private investment firm that invests in publicly-traded securities and private investments (“RCG”). As of September 2013, RCG and its managed investment funds (collectively, the “Reservoir Group”) had approximately \$6.7 billion in assets under management. RCG is controlled by its managing member, RCGM, LLC, a Delaware limited liability company (“RCGM”), whose Senior Managing Members are Daniel Stern and Craig Huff.

The Acquisition Application also states that BD Capital Partners is managed by its general partner, Black Diamond General Partner, L.P., a Delaware limited partnership (“BDGP”), which, in turn, is managed by its general partner, Black Diamond Investors, L.P., a Delaware limited partnership. Black Diamond Investors, L.P. is managed by its general partner, Black Diamond Holdings, LLC, a Delaware limited liability company (“BD Holdings”), whose three members are Heidi Hutter, Jay Novik and Jose Montemayor.

BD Holdings is a specialty investment firm focused on insurance sector investments, and BD Holdings and investment funds and other affiliates managed thereby (collectively, the “Black Diamond Group”) identify insurance companies for investment through the industry experience of their principals and emphasize investments with significant governance opportunities through which the firm utilizes its management expertise to improve operations and increase shareholder value. The Black Diamond Group invests in equity and equity-related securities of private

companies engaged in the insurance business primarily in the United States and Bermuda markets. As of year-end 2013, the Black Diamond Group managed approximately \$72 million in total capital commitments, the majority of which are capital commitments from the Reservoir Group.

The Acquisition Application further states that pursuant to the terms of BDGP's limited partnership agreement, BDGP has an investment committee, of which unanimous approval is required for certain material investment decisions of BD Capital Partners. The Reservoir Group holds seats on the aforementioned investment committee and, as a result, has approval rights on the acquisition or disposition of any investments by BD Capital Partners as well as the making of any material capital decisions with respect to any investments by BDGP's managed investment funds, including BD Capital Partners.

According to the Acquisition Application, for the purposes of the Sponsored Demutualization, SBLI has formed a direct, wholly-owned subsidiary, SBLI USA Holdings, LLC, a Delaware limited liability company ("Holdco"). Pursuant to a certain Amended and Restated Merger Agreement dated November 27, 2013, by and among Prosperity, Acquisition Co, SBLI and Holdco (the "Merger Agreement"), SBLI will issue all of the newly authorized shares of its common stock (collectively, the "SBLI Shares"), upon completion of the Demutualization, to Holdco as consideration for the limited liability interests of Holdco (collectively, the "Holdco Interests"), and thereupon Holdco will be the parent of SBLI. Upon the completion of the Demutualization, membership interests of SBLI's policyholders will be extinguished, and each Eligible Policyholder will receive Holdco Interests in exchange.

The Acquisition Application also provides that SBLI will issue the Capital Note to Acquisition Co in exchange for \$7.5 million and will use that cash (the "Redemption Cash Consideration") to effectuate the Stock Redemption Plan and redeem SBLI Shares from Holdco (the "Redemption Shares"). The Redemption Shares will be retired and treated as such on the books and records of SBLI, and an amount of cash equal to the Redemption Cash Consideration will be transferred to a paying agent, America Stock Transfer and Trust, LLC (the "Paying Agent"), for distribution to the Eligible Policyholders in exchange for their Holdco Interests.

Pursuant to the Merger Agreement, Holdco will merge with and into Acquisition Co, with Acquisition Co as the surviving company (the "Merger"), and each then-issued and outstanding Holdco Interest will be converted into the right to receive a portion of the Policyholder Consideration. Under the Merger Agreement, the Paying Agent will receive an aggregate amount of \$36 million in cash for distribution to the Eligible Policyholders, which amount may be subject to adjustment as described in the Merger Agreement (the "Final Cash Consideration"). The Acquisition Application states that upon consummation of the Sponsored Demutualization, SBLI will become a direct, wholly-owned subsidiary of Acquisition Co, as the surviving company of the Merger.

Based on the discussion between the Department and the parties to the Sponsored Demutualization, Acquisition Co will reimburse SBLI for up to \$4 million of reasonable, documented third-party costs and expenses incurred by SBLI or paid by SBLI on behalf of the Department in connection with the Sponsored Demutualization.

B. Discussion and Analysis

The Acquisition Application was filed pursuant to Insurance Law Section 1506(a) and 11 NYCRR Section 80-1.6 (“Regulation 52”). Section 1506 provides:

- (a) No person, other than an authorized insurer, shall acquire control of any domestic insurer, whether by purchase of its securities or otherwise unless:
 - (1) it gives twenty days’ written notice to the insurer, or such shorter period of notice as the superintendent permits, of its intention to acquire control, provided that the notice shall include an agreement by the person seeking to acquire control and the person will provide the annual report specified in section one thousand five hundred three of this article for so long as control exists; and
 - (2) it receives the superintendent’s prior approval.

Because Prosperity and Acquisition Co are not “authorized insurers” within the meaning of the Insurance Law,¹¹¹ they cannot acquire control of SBLI without the Superintendent’s prior approval.

Section 1506(b) guides the Superintendent’s inquiry into whether to grant such approval by providing an exclusive list of factors to be considered. That provision reads, in pertinent part, as follows:

- (b) . . . Only the following factors may be considered in making such determination:
 - (1) the financial condition of the acquiring person and the insurer;
 - (2) the trustworthiness of the acquiring person or any of its officers or directors;
 - (3) a plan for the proper and effective conduct of the insurer’s operations;
 - (4) the source of the funds or assets for the acquisition;
 - (5) the fairness of any exchange of shares, assets, cash or other consideration for the shares or assets to be received;

¹¹¹ See Section 107(a)(10).

- (6) whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and
- (7) whether the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or shareholders.

Regulation 52 similarly sets forth information that an applicant must furnish to the Superintendent when applying for approval of an acquisition of control. The information required includes the identity and background of the applicant; financial statements for the applicant; a description of the nature, source, and amount of consideration to be used in effectuating the acquisition; and a description of the applicant's objectives in acquiring control of the domestic insurer.¹¹²

Upon consideration of the factors set forth in Section 1506(b), in light of the representations contained in the Acquisition Application and its supporting submissions, and in reliance upon the truthfulness of these representations, the Department concludes that the statutory factors, on balance, weigh in favor of approving the proposed Acquisition of Control. The Department's findings as to each of the factors are set forth below:

Financial Condition: The Superintendent, through Department staff, has reviewed the respective financial conditions of Prosperity and SBLI and has found no patent conditions that would preclude approval of the Acquisition Application.

Trustworthiness: A preliminary review of the biographical affidavits of the officers and directors of Prosperity did not disclose any issues regarding the backgrounds of such individuals that would indicate untrustworthiness. The biographical affidavits have been forwarded to the Department's Albany office for further investigation. If after further investigation any such individual demonstrates untrustworthiness, or does not appear to have the background, character, or integrity needed to meet the standards of the Department, Prosperity will promptly remove such officer or director.

Plan of Operations: Prosperity has represented in the Acquisition Application that its operational plans for SBLI, consistent with the Plan, include reviewing products previously offered by SBLI to select those most suitable to current market preferences and the long-term stability of SBLI, and evaluating life insurance and other product lines in order to start writing new insurance business. Upon consummation of the Sponsored Demutualization, Prosperity will implement a plan for SBLI to resume writing profitable new business to serve the New York regional market, focusing on underserved middle income and low income New York consumers.

¹¹² See 11 NYCRR § 80-1.6.

In the long term, Prosperity would encourage SBLI's management and Board to evaluate the strategic growth opportunities when and if they arise.

The Acquisition Application further represents that other than the foregoing, Prosperity has no plans to liquidate SBLI, to permit SBLI to sell its assets (other than in connection with the ordinary course of management of its investment portfolio) or to merge SBLI with any person, or, except as set forth above (including in SBLI's Plan of Operations and the Plan), to make any change in SBLI's business operations or corporate structure. Prosperity has represented that it has no intention of causing SBLI to cede risk associated with its general account or Closed Block assets to an affiliated offshore or U.S. reinsurer. In addition, Prosperity has represented that it has no intention of directly managing the invested assets of SBLI, and such assets will remain subject to the restrictions of the applicable provisions of the Insurance Law.

To ensure that Prosperity operates SBLI in a responsible manner, for the five-year period following its acquisition of SBLI, Prosperity shall inform the Department of any significant deviation in emerging results from those shown in the projections submitted to the Department as part of its application, and shall, at the Department's request, resubmit projections for review based on revised conditions. A significant deviation shall mean any of the following: (i) increasing the volume of new premium sales such that SBLI's total adjusted capital would reasonably be expected to fall below 425% of its authorized control level RBC; (ii) entering into reinsurance transactions with Prosperity or any affiliate that, in aggregate, exceed 5% of SBLI's statutory reserves; or (iii) increasing SBLI's High Risk Asset Percentage above 10.5%. High Risk Asset Percentage shall mean: (a) the sum total carrying value of all SBLI's investment assets that are rated below NAIC 3, listed on Schedule BA or carry an RBC charge equivalent to a security rated below NAIC 3; (b) divided by the total carrying value of all of SBLI's investment assets.

In light of the approval of the Sponsored Demutualization, the Superintendent does not object to the foregoing plans for SBLI.

Source of Funds: According to the Acquisition Application, the consideration used in effectuating the proposed Acquisition of Control will consist of a payment (1) to the Paying Agent, for distribution to the Eligible Policyholders, of an amount equal to the Final Cash Consideration, and (2) to SBLI of an amount equal to the Demutualization Reimbursement (as defined in the Merger Agreement). The Final Cash Consideration and the Demutualization Reimbursement will be funded through capital contributions to Acquisition Co by its members or, in the case of the portion thereof funded through the issuance of the Capital Note, payment by an affiliate of Prosperity. The Superintendent does not object to this source of funds.

Fairness of Consideration: According to the Acquisition Application, the nature and amount of the consideration to be paid in connection with the proposed Acquisition of Control

were determined by arms-length negotiations among the parties to the Merger Agreement. The Superintendent has no objection with respect to this factor.

Effect on Competition: Based on the information available, the Superintendent has no reason to believe that the proposed Acquisition of Control will have an adverse effect on competition or create a monopoly in any line of commerce in insurance within New York State.

Potential Hazard to Policyholders: To ensure that the policyholders of SBLI are protected, Prosperity has agreed that, if after full review, any of its officers or directors is found to be untrustworthy, it will replace such officer or director. Also, for the five-year period following the consummation of the Sponsored Demutualization, Prosperity will cause SBLI to submit a revised Plan of Operations and obtain the prior written approval of the Department before making any significant deviation. In addition, unless the total adjusted capital of SBLI equals or exceeds 425% of its authorized control level RBC, Prosperity will cause SBLI to obtain the prior written approval of the Department before (i) paying any dividends to its shareholders; or (ii) making any payments of interest or principal on any outstanding capital notes.

In light of the foregoing, the Superintendent has no objection with respect to this factor.

As a result of this Acquisition of Control, Daniel Stern, Craig Huff, Heidi Hutter, Jose Montemayor and Jay Novik will become the ultimate controlling persons of SBLI under the definition of “control” set forth in Section 1501(a)(2). These individuals will therefore become subject to certain restrictions that Article 15 imposes on controlling persons, such as Section 1504(b), which authorizes the Superintendent to subject a controlling person to an examination by the Department if there is any cause to believe that such person’s operations may materially affect the operations, management, or financial condition of any controlled insurer, including by posing enterprise risk to the insurer, and cannot obtain relevant information from the controlled insurer, and Section 1506(c)(1)(A), which makes it a violation of the Insurance Law for a controlling person or any of its officer or directors to demonstrate untrustworthiness.

Pursuant to Section 1503(a), every person who becomes a “controlled insurer” must, within thirty days thereafter, register with the Superintendent, and such registration must be amended within thirty days after any change in the identity of the insurer’s holding company. Accordingly, within thirty days after the closing of the Sponsored Demutualization, SBLI must amend its registration to reflect the change in the identity of its holding company.

Finally, pursuant to Section 1503(b), a holding company that directly or indirectly controls an insurer shall adopt a formal enterprise risk management function and shall file an enterprise risk report with the Superintendent, which shall, to the best of the holding company’s knowledge and belief, identify the material risks within the holding company system that could pose enterprise risk to the insurer.

V. CAPITAL NOTE

As described above, in connection with the Acquisition of Control, SBLI intends to issue the Capital Note to Prosperity or its affiliate, the proceeds of which will be used to fund a portion of the Policyholder Consideration. The Capital Note will bear interest at 5% per annum, paid quarterly. The principal amount will be due to the holder of the Capital Note in amortized payments of \$525,000.00 per year. The Capital Note shall mature and the unpaid principal and any accrued but unpaid interest shall become due and payable in full in 2029.

For a period of five years after the Acquisition of Control, and unless the total adjusted capital of SBLI equals or exceeds 425% of its authorized control level RBC, Prosperity will receive no principal or interest payments on the Capital Note without the Department's prior written approval. Any amendment or modification of the Capital Note will be subject to the prior approval of the Department.

Section 1323(a) authorizes a domestic life insurer to "issue capital notes . . . in an aggregate principal amount not exceeding (1) twenty-five percent of its total adjusted capital (including the aggregate principal amount of outstanding notes) less (2) the aggregate principal amount of outstanding notes" However, no domestic life insurer "shall issue capital notes . . . unless the terms thereof shall have been approved by the superintendent as not adverse to the interests of the insurer's policyholders."¹¹³

Based on the analysis above, and in light of the approval of the Sponsored Demutualization, the Department concludes that the terms of Capital Note are not adverse to the interests of SBLI's policyholders and SBLI's issuance of the Capital Note is hereby approved.

VI. THE STOCK REDEMPTION PLAN

Like the Capital Note, the proposed Stock Redemption Plan is a component of the Acquisition of Control and part of the mechanism by which the Policyholder Consideration will be distributed to Eligible Policyholders.

Section 1411(d) provides that "[n]o domestic stock insurer shall purchase its own capital shares except . . . pursuant to a plan of stock redemption and retirement approved by the superintendent as reasonable and equitable." Here, the only purpose of the Stock Redemption Plan is to facilitate the payment of a portion of the Policyholder Consideration to Eligible Policyholders in connection with the Sponsored Demutualization.

¹¹³ Section 1323(b).

Based on the analysis above, and in light of the approval of the Sponsored Demutualization, the Department concludes that the Stock Redemption Plan is reasonable and equitable, and is, accordingly, approved.

VII. CHARTER AND BY-LAWS

As required by Section 7312(e)(1)(C), the Company has submitted an amended Charter and By-laws, reflecting the Company's conversion to a domestic stock life insurance company in accordance with Article 12 of the New York Insurance Law. SBLI has also submitted a Certificate of Amendment to amend its Charter in connection with the Stock Redemption Plan.

The Department has reviewed and hereby approves the proposed changes, including SBLI's request to remove the word "mutual" from its name.

VIII. CONCLUSIONS AND DECISIONS

For the reasons stated here, upon consideration of (1) the applicable statutory and regulatory factors; (2) the representations contained in the submissions by SBLI and Prosperity; (3) written submissions and comments received at the public hearing; (4) the Department's familiarity with SBLI's operations and history and its expertise in the insurance industry; and (5) other supporting material received and reviewed by the Department, and in reliance upon the truthfulness of these representations, the various applications submitted by SBLI and Prosperity are hereby decided as follows:

1. Pursuant to Section 7312(c)(1), the Plan demonstrates a purpose and specifies reasons for the proposed Demutualization.
2. Pursuant to Section 7312(c)(2), the Plan and the Sponsored Demutualization is in the best interest of SBLI and its policyholders.
3. Pursuant to Section 7312(c)(3), the provisions of the Plan are fair and equitable to the policyholders of SBLI.
4. Pursuant to Section 7312(c)(4), the Plan provides for the enhancement of the operations of SBLI.
5. Pursuant to Section 7312(c)(5), the Plan will not substantially lessen competition in any line of insurance business.
6. Pursuant to Section 7312(d)(4)(A), policyholders' membership interests will be exchanged for an aggregate amount of consideration that is fair and equitable from a financial point of view.

7. Pursuant to Section 7312(d)(4)(B), the consideration to be given to policyholders will be allocated in a fair and equitable manner.

8. Prosperity shall reimburse SBLI for all expenses incurred in relation to the Sponsored Demutualization up to \$4 million within 60 days of the Plan Effective Date. Pursuant to Section 7312(d)(4)(C), it is in the interest of the policyholders of SBLI that any additional costs of the Demutualization be borne by SBLI.

9. Pursuant to Section 7312(d)(4)(D), the Plan is fair and equitable to policyholders, taking into account the legitimate economic interests of participating policyholders as delineated in Section 7312.

10. Pursuant to Section 7312(d)(5), sufficient assets have been allocated to the Closed Block as of December 31, 2012 (including provision for subsequent adjustments) to produce cash flows which, together with anticipated revenue from the Closed Block Policies, can reasonably be expected to support the payment of claims, expenses and the continuation of current dividend scales, if the experience underlying such dividend scales continues, and for appropriate adjustments in such scales if the experience changes.

11. Consistent with Section 7312(d), the funding of the Closed Block will be updated to December 31, 2013, the statement date preceding the adoption of the Plan, and brought forward to the effective date of the Demutualization, using methods which would have been used had the Closed Block been established on December 31, 2013. The assets allocated to the Closed Block will be adjusted, subject to the Department's approval, to reflect the update to the statement and effective date. Specifically, the adjustment to the Closed Block will be performed as follows:

- a. Within six months of the Plan Effective Date, SBLI will provide the Department with an unaudited balance sheet reflecting the performance of the Closed Block that is certified as true by SBLI's Chief Executive Officer and Chief Financial Officer;
- b. Within one year of the Plan Effective Date, SBLI will provide the Department with an audited balance sheet for the Closed Block, performed in accordance with statutory accounting principles and issued by an accounting firm of national reputation, and a proposed adjustment to the Closed Block to update the funding of the Closed Block to December 31, 2013 and the Plan Effective Date;
- c. The adjustment to the Closed Block must be approved by the Department before it is made and SBLI shall reasonably cooperate with any requests for information made by the Department in connection with its review of the proposed funding adjustment;

- d. SBLI shall not pay, nor shall Prosperity cause SBLI to pay, the first installment of interest due on the Capital Note before providing the Department with an unaudited balance sheet within six months of the Plan Effective Date; and
 - e. SBLI shall not pay, nor shall Prosperity cause SBLI to pay, any interest after the first installment due on the Capital Note or any dividend before a proposed funding adjustment to the Closed Block is approved by the Department.
12. Reasonable provisions have been established under the Plan for the appropriate protection of individual participating policies that are excluded from the Closed Block.
 13. The Plan was adopted by the Board in compliance with Section 7312(e)(1).
 14. The Plan sets forth the purpose of the proposed Demutualization, the form of the proposed Demutualization, the manner and basis by which the Demutualization will take place, the consideration to be given to Eligible Policyholders in exchange for their 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 SBLI and Prosperity with regard to issuing non-participating business, in compliance with Section 7312(e)(1)(A) through (H).
 15. The Policyholder Consideration to be given in exchange for the Eligible Policyholders' membership interests complies with Section 7312(e)(2).
 16. Eligible Policyholders shall receive their share of the Policyholder Consideration within 60 days of the Plan Effective Date.
 17. Notice of the public hearing and the policyholder vote was provided to Eligible Policyholders through a mailing and newspaper publication in compliance with Sections 7312(e)(3), (i), and (k)(1).
 18. The policyholder notices and accompanying documents, including the Policyholder Information Booklet, contained sufficient information about the proposed Demutualization to enable Eligible Policyholders to make an informed decision regarding the Plan and, for that reason, were approved by the Department pursuant to Sections 7312(i) and (k)(1).
 19. Pursuant to Section 7312(e)(4), copies of the Plan, as adopted, were submitted to the Department.
 20. The public hearing was conducted in compliance with Section 7312(i).

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

22. The policyholder vote was conducted 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.

23. Pursuant to Section 7312(k)(3), the Department supervised the vote as necessary to ensure a fair and accurate vote.

24. Pursuant to Section 7312(k)(4), Department personnel were appointed as inspectors of the vote.

25. Pursuant to Section 7312(k)(5), policyholder representatives either were or could have been present for the vote.

26. Pursuant to Section 7312(k)(6), the Department has no reason to believe that the policyholder mailing lists knowingly omitted any policyholders eligible to receive notice of the Demutualization, public hearing, and policyholder vote.

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

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

29. Pursuant to Section 7312(o), following the Sponsored Demutualization, the directors of SBLI will resign and be replaced by a board designated by Prosperity.

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

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

32. Section 7312(w) prohibits SBLI's officers, directors, and employees, or any SBLI affiliate, including the family members of such persons and their spouses, from acquiring any voting securities in SBLI, unless purchased from a registered broker dealer.

33. SBLI officers, directors and employees are prohibited from receiving any compensation, other than regular salary or fees, in connection with the Demutualization.

34. Pursuant to Section 7312(j), the Plan, in whole and in part, does not violate the New York Insurance Law, is fair and equitable to policyholders, is not detrimental to the public,

and, after giving effect to the Demutualization, SBLI will have an amount of capital and surplus reasonably necessary for its future solvency.

35. As set forth in Section IV above, the Acquisition Application is approved, subject to the following conditions, which shall remain in effect for a period of five years following the completion of the Acquisition of Control:

- a. In the event SBLI's total adjusted capital falls below 425% of its authorized control level RBC, SBLI shall obtain prior written approval of the Department before paying any dividends to its shareholders.
- b. In the event SBLI's total adjusted capital falls below 425% of its authorized control level RBC, SBLI shall obtain prior written approval of the Department before making any payment of interest or principal on any outstanding capital notes.
- c. SBLI shall file a revised Plan of Operations for the Department's prior written approval before undertaking any of the following actions, which would significantly deviate from the Plan of Operations submitted in connection with the Sponsored Demutualization: (1) the volume of new premium sales would reasonably be expected to cause SBLI's total adjusted capital to fall below 425% of its authorized control level RBC; (2) SBLI enters into any reinsurance transaction(s) with Prosperity or any affiliate that in the aggregate exceeds 5% of SBLI's statutory reserves; or (3) SBLI's "Higher Risk Asset Percentage" would rise above 10.5% of the (a) sum total carrying value of all of SBLI's investment assets that are rated below NAIC 3, listed on Schedule BA or carry an RBC charge equivalent to a security rated below NAIC 3, (b) divided by the total carrying value of all of SBLI's investment assets;

36. The issuance of the Capital Note complies with the requirements of Section 1323(a) and is not adverse to the interests of SBLI's policyholders pursuant to Section 1323(b).

37. Pursuant to Section 1411(d), the Stock Redemption Plan is reasonable and equitable.

38. SBLI's amended Charter and By-laws are consistent with the requirements of Section 7312(e)(1)(C) and Article 12 of the New York Insurance Law.

39. SBLI may resume writing new insurance business subject to all applicable requirements under the Insurance Law.

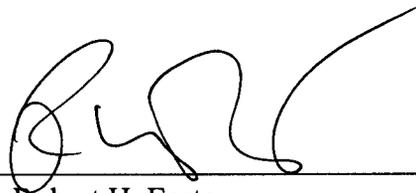
40. All of the objections to the Sponsored Demutualization raised at the public hearing or in the written submissions have been considered. Upon consideration of the hearing record as well as the other materials described here, and for the reasons specified in this Decision, none of these objections, individually or in the aggregate, merits a decision that the Plan is not fair and equitable as required by Section 7312 or that the Plan should not be approved as provided, and subject to the conditions set forth, herein.

THEREFORE, for the reasons set forth herein, the Sponsored Demutualization and the applications for approval of the issuance of the Capital Note, the Stock Redemption Plan and the amendments to SBLI's Charter and By-laws (including SBLI's name change) are hereby approved.

Dated: New York, New York
October 8, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By: _____



Robert H. Easton
Executive Deputy Superintendent
Insurance Division