

## Quorum Requirement for Special Amalgamated Special Meeting of Policyholders

The District of Columbia Department of Insurance, Securities and Banking (“DISB”) is reviewing the demutualization application (the “Application”) of Amalgamated Casualty Insurance Company (“Amalgamated” or the “Company”). In connection with its review, the DISB has requested a memorandum from the Company providing additional context regarding quorum requirements for mutual insurance companies and data, if available, regarding member voting participation at special policyholder meetings for other mutual companies that have converted from mutual to stock form through subscription rights conversion offerings.

### Quorum Requirements for Mutual Companies

Amalgamated’s bylaws govern the quorum requirement for policyholder meetings, including both regular and special policyholder meetings.

***Section V:** A quorum at any meeting of the Policyholders shall consist of a majority of the members represented in person or by proxy. When a quorum is present at any meeting, a majority of the voting members thereat shall decide any question that may come before the meeting. In the absence of a quorum, those present may adjourn the meeting to a future date, but until a quorum is secured may transact no other business.*

As currently drafted, Amalgamated’s bylaws require that a majority (i.e., greater than 50%) of members be present in person or by proxy to establish a quorum. As previously articulated to DISB, Amalgamated’s quorum requirement is very unusual compared to other mutual companies. We have provided a summary below of quorum requirements for two groups of mutuals based on the data available to us. The first group includes recent property and casualty mutual companies that have demutualized where we have data available.

Mutual Company (Lead Carrier)	State of Domicile	Quorum Requirement (Members or % Members)
<b><u>Conversion Offerings</u></b>		
Nodak Insurance Company	ND	50
Positive Physicians Insurance Exchange <sup>(1)</sup>	PA	None
Illinois Casualty Company	IL	25
<b><u>Sponsored Demutualization Acquisitions</u></b>		
NorCal Mutual	CA	10%
Medical Liability Insurance Company	NY	10%

<sup>(1)</sup> Reciprocal.

The second group is a summary based on research performed by Stevens & Lee, P.C. (“Stevens & Lee”) and memorialized in a memorandum included as Exhibit B in the most recent response to Interrogatories.

Mutual Company	State of Domicile	Quorum Requirement (Members or % Members)
<b>Group 1 (Company Specific)</b>		
Rockingham Mutual	VA	3%
Penn Mutual Life	PA	250
Small Mutual in Virginia	VA	50%
Harleysville Mutual	PA	25
Nationwide	IL	20
State Farm	OH	Note <sup>(1)</sup>
<b>Group 2 (Summarized) <sup>(2)</sup></b>		
3 Companies		1
4 Companies		5 or 7
<sup>(1)</sup> State Farm is not known. However the company's website states that policyholders must contact the company for a proxy. Indicates that State Farm does not engage in a proxy solicitation process and therefore has a de minimis quorum requirement.		
<sup>(2)</sup> Group 2 Companies include: Old Guard Mutual (PA), New Castle Mutual (DE), Mid-Size Mutual in Central PA (PA), Small County Mutual Northeast PA (PA), Small County Mutual Central PA (PA), Mid-Size New Jersey Mutual (NJ), and Mass Mutual (MA).		

Because mutual members do not generally view themselves as owners of the mutual company in which they have a policy, member participation at regular and special policyholder meetings is typically very low. As shown above, most mutuals have addressed this practical reality by establishing a low quorum requirement in their corporate bylaws. Amalgamated has historically addressed this practical reality by using proxies (the “General Proxies”) to ensure a quorum at regular and special policyholder meetings. Current management inherited this practice and is under the understanding that the practice dates back to the Company’s founding in 2938. Below we have provided data made available to us by our financial advisor showing member voting participation for three recent property and casualty companies that demutualized and completed a conversion offering.

Issuer in Initial Public Offering	Ticker	Converting Mutual (Primary Carrier)	State of Domicile of Converting Mutual	Eligible Members	Voting Members	Voting Members as % of Eligible Members
NI Holdings, Inc. <sup>(1)</sup>	NODK	Nodak Insurance Company	ND	27,915	4,197	15%
Positive Physicians Holdings, Inc. <sup>(2)</sup>	PPHI	Positive Physicians Insurance Exchange	PA	N/A	67	N/A
ICC Holdings, Inc.	ICCH	Illinois Casualty Company	IL	6,635	N/A	N/A
<sup>(1)</sup> Hired a third-party proxy solicitation firm. <sup>(2)</sup> Reciprocal.						

As shown above, voter participation for Positive Physicians was nominal. Voter participation for the Nodak transaction was approximately 15%. This was due in large part because Nodak hired a third-party proxy solicitation firm, as Amalgamated intends to do. The Company expects to retain Georgeson, a well-known, professional proxy solicitation firm. As shown above, past data would suggest that obtaining 50% voter participation from mutual policyholders will be extremely difficult, even with the assistance of a third-party proxy solicitation firm.

As stated in our application, Amalgamated has proposed to use the General Proxies, if necessary, solely for the purpose of establishing a quorum at the special meeting of policyholders to consider the Plan. As stated in the Application, only the Special Proxies will count as voting members to consider the Demutualization Plan. We reiterate here that Amalgamated’s use of both the General Proxies, for the sole purpose of establishing a quorum, and the Special Proxies,

as the voting members to consider the Demutualization Plan, is consistent with the Company's bylaws, which states that (a) "a quorum at any meeting of the Policyholders shall consist of a majority of the members represented in person or by proxy" and (b) "a majority of the **voting members** thereat shall decide any question that may come before the meeting". We also reiterate here that the Company believes that this interpretation of the Company's bylaws is consistent with Robert's Rules and, in addition, our corporate counsel has confirmed our interpretation.

DISB has expressed reluctance regarding use of the General Proxies at all. In an effort to be constructive and move the Application review process forward, the Company is amenable to an alternative approach. An alternative to use of the General Proxies is to amend the Company bylaws to reduce the quorum requirement. There is considerable data, as demonstrated above, supporting the fact that Amalgamated's quorum requirement is atypically high for mutual companies. However, recognizing DISB's desire, which the Company also shares, to ensure that a **representative number** of voting members participate at the special meeting of policyholders to consider the Plan, the Company has proposed to lower the quorum requirement in its bylaws from a majority of members (i.e., greater than 50%) to 25%. The Company believes that this quorum requirement is (a) meaningfully in excess of mutual industry standards and ensures that a **representative number** of voting members must participate at the special meeting of policyholders to consider the Plan, and (b) a percentage of members from which the Company believes, with the assistance of its third-party proxy solicitation firm, it can obtain Special Proxies. The Company submits that having the demutualization transaction "stuck" in limbo, simply because the Company cannot establish a quorum due to general member apathy, would not serve the interests of anyone, including the Company's members.

The Company believes this proposed approach is appropriate and it will withdraw its request to use its General Proxies to establish a quorum if such an amendment is permitted. The Company believes it is appropriate to do so for two reasons:

- The quorum requirements in the last several demutualizations were either *de minimis* or substantially below a majority of members.
- Second, mutual members are not the equivalent of shareholders in a corporation because, unlike shareholders who have a clear economic interest in their corporation, members have no material economic interest in a mutual insurance company under the DC Code.

### **Appropriate Standard in Light of Member Interest**

No provision of the DC Code, nor, to our knowledge and the knowledge of our advisers, in any other state law, establishes a quorum requirement for mutual insurance companies undertaking a demutualization. Counsel for the DISB has directed the Company to two potential sources of authority in the DC Code. While the Company's legal advisers believe that these sources do not in fact have any legal bearing on the issue at hand, the two sources of authority in the DC Code mentioned by DISB counsel are: (1) the rules for business corporations owned by their shareholders or (2) the rules for non-stock corporations controlled by their members.

Counsel for the DISB noted that the quorum requirement for business corporations is a majority of shareholders. See DC Code section 29-305.25, which states: “Unless the articles of incorporation provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. Furthermore, for certain fundamental transactions, the quorum requirement is specified as a majority of shares outstanding, which cannot be altered by a provision of the articles of incorporation. See e.g., DC Code section 29-309.04(5) regarding the approval of mergers.

The majority quorum requirement for business corporations, in particular for considering “fundamental transactions”, makes sense. Shareholders of a business corporation have invested money for the purpose of profit; stock in a corporation is their real property and shareholders have a material interest in any transaction that affects their economic interest in their corporation. For example, a merger could adversely affect shareholders because of economic dilution and shareholders should have the right to approve such a transaction, as their ownership in the corporation is their property.

That is not the case for the members of a mutual insurance company. Members pay premiums in exchange for insurance coverage pursuant to their insurance contract. Members do not invest in a mutual insurance company with the expectation of profit, and, in fact, have no material economic interest in the mutual insurance company other than its continued ability to fulfill the promises it has made under its policies of insurance.

Of the two sources of analogous authority in the DC Code, Amalgamated believes the more appropriate provision of the DC Code to look to for guidance are the quorum rules for member controlled, nonprofit companies. While Amalgamated is not a nonprofit, its members are more similar to members of a nonprofit company than they are shareholders of a business corporation because, in each case, the members do not have a material economic interest in the entity. Instead, their interest is the fulfillment of the promises and mission of the entity. In the case of Amalgamated, that is keeping its promise under its insurance contracts. In the case of a nonprofit, it is keeping the promise of its nonprofit mission (e.g., a hospital serving a local community).

Under the DC Code, the default quorum requirement for nonprofit corporations is a majority of members. See DC Code section 29-405.24. However, the DC Code specifically allows nonprofit corporations to establish a lower quorum requirement. See DC Code section 29-405.26. Unlike the rules for business corporations, this ability to establish a lower quorum requirement is not constrained by more specific statutes regarding fundamental transactions. A reduced quorum requirement also may be used for fundamental transactions. See DC Code section 29-409.04 regarding mergers, DC Code section 29-410.02 regarding the disposition of assets, or DC Code section 412.02 regarding dissolution.

For the reasons discussed above, Amalgamated believes that of the two sources of analogous authority in the DC Code, the status of a member of a mutual insurance company is more akin to the status of a member of a member-controlled nonprofit corporation than the status of a shareholder of a business corporation. Therefore, Amalgamated believes it would be

appropriate for DISB to allow an amendment to Amalgamated's bylaws that establishes a lower quorum requirement. However, once again, Amalgamated is cognizant of the DISB's concern that the demutualization should not be approved by a very small number of members. Accordingly, Amalgamated has proposed a 25% quorum requirement, which is well in excess of the quorum requirements of mutual companies in general and, also, companies that have recently demutualized.