

BEFORE THE INSURANCE COMMISSIONER

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In re the application of NATIONAL MUTUAL ) FINDINGS OF FACT,  
BENEFIT for approval of a Plan of Merger ) CONCLUSIONS OF LAW,  
with WESTERN FRATERNAL LIFE ) AND ORDER  
ASSOCIATION ) (Iowa Code chapter 512B)

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Now therefore, the Commissioner of Insurance, being fully advised in the premises, issues the following findings of fact, conclusions of law and order:

**I. INTRODUCTION**

The Commissioner of Insurance, Doug Ommen, pursuant to the provisions of the Iowa Fraternal Benefit Societies Act – Iowa Code Chapter 512B, has considered the application for approval of a Plan of Merger between NATIONAL MUTUAL BENEFIT (“NMB”), a Wisconsin foreign society, and WESTERN FRATERNAL LIFE ASSOCIATION (“WFLA”), an Iowa domestic society organized under Iowa Code chapter 512B.

The Commissioner reviewed the Plan of Merger to be effective January 1, 2021 or the date the Commissioner approves the Plan of Merger. If the Plan of Merger is approved, NWB will merge with and into WFLA. Upon completion of the merger, WFLA will be the surviving corporation and NWB will cease to exist. As of the effective date of January 1, 2021 or the date the Commissioner approves the Plan of Merger, the merged entity intends to redomesticate to become a Wisconsin-domiciled fraternal benefit society. WFLA is licensed and in good standing with the Iowa Insurance Division (“Division”), and has current financial statements on file with the Division.

**II. JURISDICTION**

The Commissioner has jurisdiction over this proceeding under Iowa Code section 512B.15 (2019).

**III. FINDINGS OF FACT**

The Plan of Merger provides that NMB will merge with and into WFLA on January 1, 2021 or upon receipt of the applicable regulatory approvals. The merged entity will continue to do business as WFLA. All policies issued by NWB which are outstanding on the effective date of the Plan of Merger will be assumed by WFLA. WFLA will, post-

merger, possess all the rights, franchises, and interests of the merged societies in and to every kind of property, real, personal, or mixed, belonging to the societies which will be vested in the WFLA without any other instrument, except that conveyances of real property may be evidenced by proper deeds. Upon completion of the Plan of Merger, WFLA will be the surviving corporation and NMB will be merged into it, thereby ceasing to exist.

#### **IV. SUMMARY OF LAW**

Iowa Code section 512B.15(1) requires a domestic society seeking to merge with a foreign society to file with the Commissioner all of the following:

- a. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger.
- b. A sworn statement by the president and secretary, or corresponding officers of each society, showing the financial condition of the society on a date fixed by the Commissioner.
- c. A certificate of each officer submitting a sworn statement, duly verified, that the merger contract has been approved by a two-thirds vote of the supreme governing body of each society, the vote having been conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail.
- d. Evidence that at least sixty days prior to the action of the supreme governing body of each society to approve the merger contract, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.<sup>1</sup>

Iowa Code section 512B.15(2) states the Commissioner shall approve the proposed Plan of Merger if he is satisfied that the written contract is in conformity with Iowa Code section 512B.15, that the financial statements are correct, and that the merger is just and equitable to the members of each society.

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<sup>1</sup> Iowa Code section 512B.15(4) states that "The affidavit of an officer of the society or of a person authorized by the society to mail a notice or document, stating that the notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees."

## V. FILINGS WITH COMMISSIONER

### 1. Certified Copy of Written Contract

WFLA and NMB have submitted a certified copy of the written contract containing the full terms and conditions of the merger. The Commissioner reviewed a certified copy of all of the following documents:

- The Agreement and Plan of Merger between NMB and WFLA;
- The Representations, Warranties and Covenants between NMB and WFLA;
- The Fraternal Transition Plan;
- Current Articles of Incorporation and Bylaws of NMB; and
- Current Articles of Incorporation and Bylaws of WFLA.

It is reasonable to accept certified copies of the above documents as comprising the written contract with the full terms and conditions of the merger.

### 2. Sworn statements of WFLA and NMB regarding their respective financial conditions.

Craig Van Dyke, President and CEO of WFLA; Donald Nieland, Secretary of WFLA; Dan Shinnick, President and CEO of NMB; and Steve Reindl, Secretary of NMB have submitted sworn statements regarding the following certified financial statements to the Commissioner:

- Audited Annual Statements for WFLA for the years 2015 through 2019;
- Quarterly financial statements for WFLA for 2020;
- Audited Annual Statements for NMB for the years 2015 through 2019; and
- Quarterly financial statements for NMB for 2020.

The Commissioner is satisfied that the financial statements listed above are correct as presented by WFLA and NMB. In addition, the Division has issued an Examination Report of WFLA for the time period from January 1, 2014 through December 31, 2018. The Examination Report is dated as of March 25, 2020. While the Examination Report does not attest to the fair presentation of the financial statements, it does assess significant estimates made by management and evaluates management's compliance with Statutory Accounting Principles. The examination team found no adjustments were required to the financial statements of WFLA.

### 3. Vote of the Supreme Governing Body

The Division received the “WFLA Officers’ Certification of WFLA of Approval of the Merger Agreement by its Board of Directors and Supreme Governing Body” (the “Certification”). WFLA engaged YesElections, an independent election management company, to administer the voting process for the vote of the Supreme Governing Body. The sworn statement, duly verified, attesting to the Certification was signed by Craig Van Dyke, President and CEO, and Donald Nieland, Secretary, of WFLA and attested to the following statements.

5. On April 24, 2020 YesElections / Election America mailed to all delegates of the National Convention on behalf of WFLA, a ballot and instructions to vote for or against the resolution approving the Agreement of Merger which included options to return the paper ballot or to vote electronically. These instructions stated:

*Voting will start on April 25, 2020 and end on May 26, 2020. To ensure maximum participation and accuracy throughout the election process, Western Fraternal has contracted with YesElections as our secure service provider for this election. YesElections will mail to each delegate’s last known address or email address, instructions for completing the electronic ballot, and a paper ballot on April 24, 2020. A help desk will be available at YesElections to answer any of your questions.*

*Ballots must be received by at least two thirds of all 177 delegates for a quorum to be met (118 delegates). If at least two thirds of the ballots have not been returned by May 26, the vote may be extended up to 30 days. Unless the vote is extended, no ballot received after 11:59 pm CDT on May 26 will be counted. The number of votes needed to pass this resolution is “a two thirds vote” of the qualifying ballots returned.*

6. YesElections / Election America sent email voting instructions on behalf of WFLA to all delegates of the National Convention on April 25, 2020, May 13, 2020 and May 20, 2020 that included information that the election would close at 11:59 CDT on May 26, 2020.

7. YesElections / Election America provided certification of the vote count of the election that was approved by resolution of the Board of Directors.

8. 159 out of a total possible 177 ballots were returned as of the close of the election on 11:59 CDT on May 26, 2020 and a quorum was met.

9. The resolution approving the Agreement of Merger was approved by the National Convention of WFLA, its supreme governing body, by a vote of 110 votes in favor of the resolution and 49 votes against, a greater than a 2/3 majority vote.

The Commissioner finds, based upon the above representations, that the merger contract has been approved by a two-thirds vote of the National Convention of WFLA, its supreme governing body, conducted by mail-in paper ballots and electronic voting. The Commissioner also finds that the election process was conducted in a fair and impartial manner.

4. Text of merger contract furnished to members with at least sixty days notice.

The sworn statements of Craig Van Dyke, President and CEO of WFLA and Donald Nieland, Secretary of WFLA, attested to all of the following:

1. The Board of Directors WFLA passed a resolution on January 23, 2020 by a greater than 2/3 majority vote approving the Agreement of Merger and submitting a resolution for approval of the Agreement of Merger to the National Convention of WFLA, its supreme governing body.

2. On February 24, 2020 WFLA mailed via US Mail a copy of the Agreement of Merger to all benefit members of WFLA.

3. On February 24, 2020 WFLA mailed a packet of information that contained the merger documents including the Agreement of Merger to all delegates of the National Convention.

4. The text of the resolution to be voted upon by the National Convention, an explanation of the resolution, instructions on the method of casting and returning the ballot, were published in the official publications of WFLA, the *Fraternal Herald*, on March 15, April 15, and May 15, 2020.

The Commissioner finds that sixty days passed between the February 24, 2020 mailing date and the date of the mailing of ballots to delegates of the National Convention on April 24, 2020. In addition, all members received additional notice of the Agreement of Merger through publication in the *Fraternal Herald* on three separate publication dates.

Under this record, the Commissioner finds that the interests of NMB and WFLA's policyholders are properly protected under the Plan of Merger. The Commissioner further finds that no reasonable objection for approval of the Plan of Merger exists.

#### IV. CONCLUSIONS OF LAW

The legislature has vested discretion in the Commissioner not only to make factual findings, but also to interpret and apply the law. Iowa Code section 512B.15 permits the Commissioner to approve a Plan of Merger if he determines that applicant demonstrates the Plan of Merger is in conformity with this section, that the financial statements are correct and that the merger is just and equitable to the members of each society.

The Commissioner concludes, upon substantial evidence, that the Plan of Merger between NMB and WFLA meets the requirements of Iowa Code section 512B.15, and should be approved.

#### ORDER

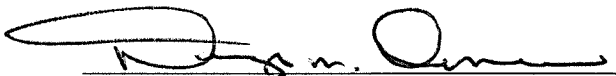
**IT IS THEREFORE ORDERED** that:

Western Fraternal Life Association's application for approval of its Plan of Merger with National Mutual Benefit is **APPROVED**.

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2019). Any action challenging this Order shall comply with the requirements of Iowa Code chapter 17A.

Any application for rehearing shall comply with the requirements of Iowa Code chapter 17A.

Dated this 27<sup>th</sup> day of October, 2020.



By: DOUG OMMEN  
Iowa Insurance Commissioner

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