STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF CONTROL OF HEALTHIER NEW JERSEY INSURANCE COMPANY BY BARNABAS HEALTH, INC. DBA RWJBH CORPORATE SERVICES, INC.	))))))	HEARING OFFICER'S REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated December 7, 2020, as supplemented through August 9, 2021, Barnabas Health, Inc. dba RWJBH Corporate Services, Inc., a not for profit, tax exempt corporation organized under the laws of the State of New Jersey ("Barnabas Health" or "the Applicant"), filed with the Department of Banking and Insurance ("the Department") an application to acquire control ("the Form A filing") of Healthier New Jersey Insurance Company ("HNJIC" or "the Domestic Insurer"), a New Jersey licensed health insurer that is a wholly owned subsidiary of New Jersey Collaborative Care, LLC ("NJCC") which was formed by Horizon Healthcare Services, Inc. ("HHSI") and Hackensack Meridian Health, Inc. ("HMH") (collectively "Founding Members").

NJCC was formed with each of the Founding Members holding 500 membership units or a 50% interest in NJCC. In 2020, Applicant acquired from HMH 99 non-voting Membership Interests in the parent (the "Initial Acquisition"). The Initial Acquisition resulted in acquisition of nine and nine-tenths percent (9.9%) of the outstanding Membership Interests of NJCC, and 9.9% indirect ownership in the Domestic Insurer. The Initial Acquisition did not provide the Applicant any voting position on the Board of Directors of either the parent or the Applicant or other governance rights. The proposed transaction is for one (1) additional Membership Interest which will increase Barnabas Health's ownership to 10% with an option to purchase an additional 50 Membership Interests for a total potential ownership of 15%. With the proposed 10% ownership, Barnabas Health would gain one seat on the Board of Directors of HNJIC and NJCC. Upon the effective date of the purchase, HNJIC will remain a wholly owned subsidiary of NJCC and will be indirectly owned 50% by HHSI, 40% by HMH, and 10% by Barnabas Health.

Pursuant to N.J.S.A. 17:27A-2(d) and after notice was provided in papers of general circulation and on the Department's website, a public hearing was held on the Form A filing on August 9, 2021. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The hearing panel and Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2(b). Public comments were allowed to be submitted to the Department through the close of business on August 9, 2021, and no comments were received. The record was closed on August 9, 2021.

Findings of Fact

HNJIC was incorporated on October 17, 2019. HNJIC commenced business as a health insurer in New Jersey on January 13, 2020.

Barnabas Health and its affiliates represent the largest academic health care delivery system in New Jersey with a service area covering nine counties with five million people. The system includes: eleven acute care hospitals; three acute care children's hospitals and a pediatric rehabilitation hospital with a network of outpatient centers; a 100-bed behavioral health center; two trauma centers; the State's largest behavioral health network; home care and hospice programs; fitness and wellness centers; retail pharmacy services and two accountable care organizations. Barnabas Health and its affiliates do not currently transact insurance in New Jersey and have not transacted insurance in New Jersey during the past five years.

Barnabas Health has an additional focus on providing medical education and clinical research by collaborating with Rutgers University and its two medical schools. In 2015, Horizon, along with several of New Jersey's health systems, including the Barnabas Health, formed the OMNIA Health Alliance – a Statewide health alliance to deliver healthcare to consumers and employers. In 2019, the Founding Members entered into a joint venture and formed HNJIC to sell Medicare Advantage products to further the value-based program goals of the OMNIA Health Alliance. Barnabas Health is seeking to enter into the Proposed Transaction to become a member of the joint venture and align with the value-based program goals of the Founding Members.

The Applicant proposes to further acquire one (1) additional non-voting Membership Interest in the parent (the "Proposed Acquisition"), effected pursuant to a Membership Interests Purchase Agreement, dated as of November 12, 2020. The Proposed Acquisition will increase Barnabas Health's ownership to 10%. With the proposed 10% ownership, Barnabas Health would gain one seat on the Board of Directors of both HNJIC and NJCC. Upon the effective date of the purchase, HNJIC will remain a wholly owned subsidiary of NJCC and will be indirectly owned 50% by HHSI, 40% by HMH, and 10% by Barnabas Health.

The Proposed Transaction is valued at $15,370.89 excluding pre-closing adjustments and not subject to any financing contingency. The Proposed Transaction will not result in acquisition debt of the Applicant as the purchase will be funded from cash on hand.

In exchange for the Membership Interest to be acquired as a result of the Proposed Transaction, as set forth in Section 1.03(a) of the Concurrent Purchase Agreement, the Applicant will pay to the HMH an amount (the "Purchase Price") equal to: (i) 110% of the Year 1 Valuation (as defined in Schedule A of the Concurrent Purchase Agreement) divided by 500, which shall be payable by the Applicant on March 31, 2021, or on another date mutually agreed by the Founding Members and the Applicant, (ii) 110% of the Year 2 Valuation (as defined in Schedule A of the Concurrent Purchase Agreement) divided by 500, which shall be payable by the Applicant on March 31, 2022, or on another date mutually agreed by the Founding Members and the Applicant, and (iii) the sum of the Capital Contributions (as defined in the Concurrent Purchase Agreement) made by MHM immediately prior to the closing with respect to the Membership Interest to be acquired, calculated by totaling, for each Capital Contribution made by MHM as of immediately prior to the closing, (A) the total amount of such Capital Contribution divided by (B) the number of Membership Interests owned by MHM at the time of such Capital Contribution, which shall be payable by the Applicant at closing.

Following completion of the Proposed Transaction, the Applicant has no present plans for HNJIC to declare an extraordinary dividend. The Applicant has no plans to liquidate, sell any assets of HNJIC other than asset sales in the ordinary course of business, or to merge HNJIC with any person or persons. The Applicant has no current plans to make any material changes in the business operations or corporate structure or management of HNJIC other than as may arise in the ordinary course of business.

Based on the consolidated financial statements filed by the Applicant, Barnabas Health, a not-for-profit, tax exempt corporation, reported net assets, with and without donor restrictions of approximately $4.8 billion in 2020 and $3.9 billion in 2019. Barnabas Health reported a before-tax net income of $907 million in 2020 and $603 million in 2019.

Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

> (1) The Commissioner shall approve any merger or other acquisition of control … unless, after a public departmental hearing thereon, he [or she] finds that:
>
> (i) After the change of control the domestic insurer … would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
>
> (ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein … [applying the competitive standard as set forth in the statute];
>
> (iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
>
> (iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;
>
> (v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

> (vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
>
> (vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Upon a thorough review of the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, HNJIC will continue to meet the requirements to transact the business for which it is presently licensed pursuant to Title 17 of the New Jersey Statutes. HNJIC was incorporated on October 17, 2019 and commenced business as a health insurer in New Jersey on January 13, 2020. There is nothing in the record to indicate that after the proposed transaction the Company would not be able to continue to satisfy the requirements to transact the business for which they are presently licensed.

Second, it does not appear that the proposed transaction will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1(d) shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the overall market share of the involved insurers after the acquisition. See N.J.S.A. 17:27A-4.1(b)(2)(d). The Applicant does not currently transact insurance in New Jersey and has not transacted insurance in New Jersey during the past five years. The Applicant does not have any market share in any relevant insurance market. HNJIC did not write any business in 2020. The pro forma financials indicate that HNJIC projects to write $181.0 million in business in 2021, which would place the market share at 0.54%. HNJIC's projected market share development is not dependent upon the proposed transaction and would add less than 1% to the total written premiums, which would not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1 because it does not substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, it does not appear that the financial condition of the Applicant will jeopardize the financial condition of the Company. As reported in the applicable financial statements filed by the Applicant, the Applicant had net assets of approximately $4.8 billion in 2020; $3.9 billion in 2019; and $3.3 billion in 2018.

Fourth, it appears that the financial condition of the Applicant is such that it has been solvent on a basis of generally accepted accounting principles for the three-year period immediately prior to the date of the proposed acquisition. As set forth above, the Applicant had substantial shareholders' equity for the three-year period immediately preceding the proposed acquisition. Also, the Applicant reported a before-tax net income of $907 million in 2020 and $603 million in 2019. Further, the consideration for the transaction will be paid from cash on hand. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the Applicant does not propose to liquidate HNJIC or sell its assets. As set forth above, the Applicant does not intend to change the business operations, corporate structure, management, or general plan of operations other than may arise in the ordinary course of business.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience, and integrity of the persons who will control the operations of HNJIC are such that it would not be in the best interest of the policyholders and of the public to permit the acquisition of control. Following the transaction, the Applicant intends to maintain HNJIC's business operations, corporate structure, and management.

Seventh, there is nothing in the record from which it may be concluded that the proposed transaction is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

Recommendation

Based on the foregoing analysis, the hearing panel and Department staff recommend that the proposed transaction be approved.

Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed transaction be approved.

8/31/2021
Date

s/ Lynn Certo
Lynn Certo
Hearing Officer

LC HNJIC by Barnabas Hearing Officer Report/Orders

Exhibits List

In the Matter of the Acquisition of Control of Healthier New Jersey Insurance Company (the "Domestic Insurer") by Barnabas Health, Inc. dba RWJBH Corporate Services, Inc. (the "Applicant" or "Barnabas Health")

Exhibit 1 – Form A Statement, received December 22, 2020

Exhibit 2 – Pre – Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Acquisition, dated May 3, 2021

Exhibit 3 – Waiver of 20 – day notice of hearing submitted by Luisa Charbonneau, President CEO, for Healthier New Jersey Insurance Company doing business as Braven Health

Exhibit 4 – Waiver of 20 – day notice of hearing submitted by John Doll, Chief Financial Officer, for Barnabas Health, Inc.

Exhibit 5 – Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on August 2, 2021

Exhibit 6 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on August 2, 2021

Exhibit 7 – Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on August 2, 2021

LC HNJIC by Barnabas Exhibits List/Orders