

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION)	
OF CONTROL OF BONDEX INSURANCE)	
COMPANY BY BUILDERS INSURANCE)	HEARING OFFICER'S
GROUP, INC AND BUILDERS INSURANCE)	REPORT
(A MUTUAL CAPTIVE COMPANY))	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated January 24, 2022, amended and restated dated May 5, 2022, and amended and restated dated July 8, 2022. Builders Insurance Group, Inc. (“Builders Group”) and Builders Insurance (A Mutual Captive Company) (“Builders Insurance”), (each referred to hereafter as an “Applicant” and collectively, “Applicants”) formed under the laws of the State of Georgia, filed with the New Jersey Department of Banking and Insurance ("the Department") an application to acquire and change control ("the Form A filing") of Bondex Insurance Company (“Bondex Company”), a domestic insurer.

This transaction is part of an agreement whereby the Applicants will acquire control of Bondex Company through Builder Group’s acquisition of 100% of the issued and outstanding shares of Bondex Insurance Group, Inc. (“BIG”), the current owner of 100% of the issued and outstanding securities of Bondex Company.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on August 15, 2022. 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 through the close of business on August 15, 2022. No comments were received. Additional background information for certain officers and directors

of the Applicant was received on August 19, 2022 which did not affect the analysis. No other documents were required, and the record was closed on August 19, 2022.

Findings of Fact

Bondex Company is a licensed property and casualty insurance company incorporated on March 20, 2007, under the laws of the State of New Jersey. Bondex Company is a wholly owned subsidiary of BIG, a corporation formed under the laws of the State of New Jersey. BIG was known formerly as CB Holdings Group, Inc. prior to its name change on December 23, 2016. Bondex Company writes surety and fidelity bonds in the states of Delaware, Massachusetts, New Jersey, New York, and Pennsylvania.

The Applicants intend to acquire 100% of the issued and outstanding shares of BIG from Lionel Jorge and Philip Tobey (collectively, the “Sellers”). BIG is the owner of 100% of the issued and outstanding securities of the Bondex Company (500,000 common shares at \$2.00 par value). The purchase price for 100% of the issued and outstanding shares of BIG will be the Total Surplus maintained by the Bondex Company as of the closing date plus \$2,000,000. After the proposed acquisition, Builders Insurance plans to dissolve BIG and distribute 100% of the issued and outstanding shares of the Bondex Company to Builders Group. As a result, the Bondex Company will become a direct wholly-owned subsidiary of Builders Group, with Builders Insurance as the ultimate controlling person.

Builders Group is a direct wholly owned subsidiary of Builders Insurance, a Mutual Captive Company formed in Georgia. Builders Group was formed in 1999 under the laws of the State of Georgia. Builders Group is a holding company for licensed insurers: American Builders Insurance Company (“ABIC”), incorporated under the laws of the State of Delaware; National

Builders Insurance Company (“NBIC”), incorporated under the laws of the State of Delaware; and Specialty Builders Insurance Company (“SBIC”), incorporated under the laws of the State of Georgia. For the past five years, Builders Group has been engaged in the business of owning and managing its five subsidiaries, three of which are insurers, which are engaged principally in issuing and servicing workers’ compensation, general liability, builders’ risk, package, and umbrella liability insurance.

Builders Group is the source for all the funds for the acquisition. Builders Group is not borrowing any funds for the acquisition and its source of funds for the acquisition are accumulated cash from the operations of its existing subsidiaries. The nature and amount of consideration for the acquisition was determined through arms-length negotiations.

The Applicants have no present plans for the Bondex Company to declare extraordinary dividends. Further, the Applicants have no plans to liquidate, sell any assets of the Bondex Company other than asset sales in the ordinary course of business. The Applicants intend to appoint a slate of new directors and officers for the Bondex Company, each of whom is experienced in the insurance industry and currently affiliated with BIG. The Applicants have no current plans to make any material changes in the business operations. Applicants plan to continue operating the Bondex Company as an issuer of surety bonds on significant construction projects in the jurisdictions in which the Bondex Company is admitted and authorized to write surety business.

The Applicants provided three years of pro-forma financial projections for the Bondex Company. Surplus is projected to increase from \$16,900,000 at year-end 2022 to \$27,690,000 at year-end 2024. The Applicants project growth in direct premiums written through expansion to additional states and additional capacity due to anticipated increases in financial ratings.

Applicants, Builders Insurance and Builders Group, provided audited consolidated financial statements for the years ended December 31, 2016, through December 31, 2021. Based on the audited consolidated statutory financial statements filed by Applicants, Builders Insurance reported Capital and Surplus of \$345,378,397, \$306,566,492, and \$296,830,576, for the years ended 2021, 2020, and 2019, respectively. Based on audited consolidated financial statements filed by Applicants, Builders Group reported Stockholders' Equity of \$168,531,262, \$131,839,979, and \$105,551,038 for the years ended 2021, 2020, and 2019, respectively.

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, the Bondex Company 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. There is nothing in the record to indicate that, after the proposed transaction, the Bondex 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 Applicants do not transact the type of insurance business in New Jersey of the type written by the Bondex Company. Accordingly, the transaction meets the exemption standards because the Applicants and the Bondex Company do not compete in any lines of business. Accordingly, the proposed transaction will 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 Applicants will jeopardize the financial condition of the Bondex Company. Applicant Builders Insurance reported Admitted Assets of \$806,499,858, \$765,289,105, and \$739,679,461, for the years ended 2021, 2020, and 2019, respectively. Applicant Builders Group reported Assets of \$759,721,550, \$717,089,953, and \$660,537,278 for the years ended 2021, 2020, and 2019, respectively. Builders Group provided their audited financials for the years ended December 31, 2016 through December 31, 2021. As noted above, Builders Group reported total stockholder's equity of \$168,531,262 at year-end 2021. Applicant Builders Insurance reported Capital and Surplus of \$345,378,397 at year-end 2021.

Fourth, it appears that the financial condition of the Applicants is such that they have been solvent on a basis of generally accepted accounting principles for the two-year period immediately prior to the date of the proposed acquisition. The Applicants' external auditor issued unqualified opinions on the Applicants' financial statements, including consolidated balance sheets as of December 31, 2021, 2020, and 2019, the related consolidated statements of income,

comprehensive income, shareholders' equity, and cash flows for each of the three years in the period ending December 31, 2021, and the related notes. Based on audited consolidated statutory financial statements, Builders Insurance reported net before-tax income of \$22,345,143, \$4,836,423, and \$4,142,353 for the years ended December 31, 2021, 2020, and 2019, respectively. Based on audited consolidated financial statements, Builders Group reported net before-tax income of \$9,227,108, \$5,395,085, and \$3,845,480, for the years ended December 31, 2021, 2020, and 2019, respectively. As stated above, the Applicants are not borrowing any funds for the acquisition and their source of funds for the acquisition are accumulated cash from the operations of its existing subsidiaries. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the Applicants do not propose to liquidate the Bondex Company or sell its assets. The Applicants do not intend to change the business operations of the Bondex Company. The Applicants plan to appoint a slate of new directors and officers to the Bondex Company. Each prospective new director or officer is an insurance industry veteran and currently affiliated with the Applicants.

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 the Bondex Company are such that it would not be in the best interest of the policyholders and of the public to permit the acquisition of control.

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.

August 23, 2022
Date

s/ Jacqueline Dilks-Brotman
Jacqueline Dilks-Brotman
Hearing Officer

Jd Bondex by builders HO rpt

Exhibits List

In the Matter of the Acquisition of Control of Bondex Insurance Company (the “Domestic Insurer”) by Builders Insurance Group, Inc., and Builders Insurance (A Mutual Captive Company) (the “Applicants”)

- Exhibit 1 Form A Statement and Related Filings dated January 24, 2022
- Exhibit 2 Amended and Restated Form A Statement dated May 5, 2022, and Amended and Restated Stock Purchase Agreement dated May 4, 2022, Submitted Due to a Change in the Structure of the Transaction
- Exhibit 3 Supplement to the Amended and Restated Form A dated as of May 9. Applicants Submitted Disclosure Schedules to the Amended and Restated Stock Purchase Agreement filed with the Department on May 5, 2022
- Exhibit 4 Amendment No. 1 (dated June 24, 2022) to the Amended and Restated Form A Statement, which Attaches an Exhibit for the Amended Program Management and Agency Agreement and the Corresponding Underwriting Guidelines
- Exhibit 5 Second Amended and Restated Form A Statement dated as of July 8, 2022, to Add Builders Insurance (A Mutual Captive Company), as an acquiring party
- Exhibit 6 Biographical Affidavit for A. Barner received on July 11, 2022
- Exhibit 7 Supplement to Form A filing dated as of July 27, 2022 Submitting Biographical Affidavits for Officers and Directors of Builders Insurance
- Exhibit 8 Waiver of 20–day Notice of Hearing submitted by Cynthia J. Borrelli, Esq., Principal, Bressler Amery and Ross, on behalf of Bondex Insurance Company
- Exhibit 9 Waiver of 20–day Notice of Hearing submitted by Cynthia J. Borrelli, Esq., Principal, Bressler Amery and Ross, on behalf of the Applicants
- Exhibit 10 Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on August 8, 2022
- Exhibit 11 Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on August 8, 2022
- Exhibit 12 Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on August 8, 2022