STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF CONTROL OF MDADVANTAGE INSURANCE COMPANY OF NEW JERSEY BY MAG MUTUAL HOLDING COMPANY, MAGMUTUAL INTERMEDIATE HOLDING COMPANY AND MAG MUTUAL INSURANCE COMPANY	)))))))	HEARING OFFICER'S REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated August 15, 2022, as amended and restated by filing dated November 21, 2022, MAG Mutual Holding Company ("MMHC"), MAGMUTUAL Intermediate Holding Company ("MIHC") and MAG Mutual Insurance Company ("MMIC"), (hereinafter collectively referred to as the "Applicants"), filed with the New Jersey Department of Banking and Insurance (the "Department") an application to acquire and change control (the "Form A Filing") of MDAdvantage Insurance Company of New Jersey (the "Domestic Insurer") from MDAdvantage Holdings, Inc. ("MDA Holdings" or the "Seller").

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on December 13, 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 December 13, 2022. No comments were received and the record was closed on December 13, 2022.

Findings of Fact

The Domestic Insurer (NAIC Company Code 11498) is a New Jersey domestic stock insurance company, licensed as a property and casualty insurance company. The Domestic Insurer was incorporated on August 14, 2002, under the laws of the State of New Jersey, as MIIX Advantage Insurance Company of New Jersey. Effective August 1, 2004, the Domestic Insurer's name was changed to MDAdvantage Insurance Company of New Jersey. The Domestic Insurer is a wholly owned subsidiary of MDA Holdings, a privately held New Jersey corporation. The Domestic Insurer writes medical professional liability ("MPL") coverage in the states of Connecticut, Delaware, New Jersey, and Pennsylvania. The Domestic Insurer is also licensed as an insurer in the District of Columbia and the states of Maryland, Massachusetts, Rhode Island, Virginia, and West Virginia.

MMIC (NAIC Company Code: 42617) is a Georgia domestic stock insurance corporation, which was incorporated on August 19, 1981, under the laws of the State of Georgia. MMIC wholly owns two licensed insurance companies: Professional Security Insurance, formed under the laws of Arizona, and West Virginia Mutual Insurance Company, formed under the laws of West Virginia. MMIC also wholly owns OurCell Captive, P.C.C., Inc., incorporated under the laws of the District of Columbia. MMIC primarily writes MPL, hospital professional liability, management liability, business owners, workers' compensation, and cyber coverages in the forty-nine States and the District of Columbia, in which it is licensed. In New Jersey, MMIC and its affiliate, Professional Security Insurance Company, primarily write MPL and workers' compensation coverages. MMIC is a direct, wholly owned subsidiary of MIHC, which in turn is a direct, wholly owned subsidiary of MMHC, a mutual holding company. MMHC is the ultimate parent company of MMIC.

MIHC was duly incorporated under the laws of the State of Georgia as a domestic for-profit corporation on July 27, 2017. MIHC was formed to hold MMIC, as part of MMIC's reorganization into a holding company in 2017. MIHC is a direct wholly owned subsidiary of MMHC.

MMHC (NAIC Group Code: 04130) is a Georgia mutual insurance holding company that was formed on August 31, 2017, in connection with the conversion of MMIC from a mutual insurance company to a stock insurance company and the creation of a mutual insurance holding company system (the "MagMutual Group"). The MagMutual Group includes two holding companies, MMHC, the ultimate parent corporation of the MagMutual Group, and MIHC. No person directly or indirectly owns, controls, holds with power to vote or holds proxies representing collectively ten percent (10%) or more of the voting membership interests in MMHC.

The proposed acquisition will be effectuated pursuant to a stock purchase agreement dated August 11, 2022, as amended and restated on November 21, 2022 (the "Purchase Agreement"). The Applicants propose to acquire 100% of the issued and outstanding common shares of the Domestic Insurer from the Seller. As consideration for the purchased shares, MMIC will pay to the Seller an amount equal to the sum of: (a) the aggregate amount of statutory capital and surplus of the Domestic Insurer; plus (b) $17,700,000, subject to upward or downward adjustments; plus (c) an amount up to $3,000,000 for reimbursement of the Seller's transaction costs; minus (d) an amount up to $24,000,000 (the "Policyholder Retention Allocation"[1]); minus (e) $2,000,000 to be held back for satisfying potential severance and related payment obligations of Seller; minus (f) $2,500,000 for an escrow fund; minus (g) $640,000 for satisfying retention bonuses for four employees (the "Purchase Price").

[1] See below for additional information regarding the Policyholder Retention Allocation.

In connection with the proposed acquisition, the Applicants will seek all governmental approvals necessary to effectuate the Policyholder Retention Allocation, as set forth in the Purchase Agreement. The purpose of the Policyholder Retention Allocation is to retain existing business for MMIC while the parties focus on organizational integration following the consummation of the proposed acquisition. Through the Policyholder Retention Allocation, the Applicants will distribute or otherwise allocate an amount up to $24,000,000 in the form of a mutual policyholder cash dividend or premium credit to (i) all holders of MPL insurance policies with the Domestic Insurer who are located in New Jersey and are in compliance with the terms and conditions of such policies as of the consummation of the acquisition, who renew their MPL policies with the Domestic Insurer following the consummation of the acquisition; and (ii) other medical professionals in New Jersey who are issued an MPL policy by the Domestic Insurer within two years of the consummation of the acquisition.

In a separate filing with the Department, the Domestic Insurer has requested approval to declare and distribute to the Seller a one-time extraordinary dividend in an amount up to $95,000,000 at or prior to the consummation of the proposed acquisition. The Applicants and Seller believe that the one-time extraordinary dividend would be an efficient approach to settle balances due for the Purchase Price, as it would reduce excess surplus of the Domestic Insurer while still leaving it capitalized above regulatory requirements.

The source of all of funds for the acquisition are the Applicants. The Applicants are borrowing no funds for the acquisition. The nature and amount of consideration for the acquisition was determined through arms-length negotiations. The Applicants have plans for the Domestic Insurer to declare an extraordinary dividend after closing of the proposed acquisition, subject to approval by the Department. The Applicants have no plans to liquidate nor sell any assets of the Domestic Insurer other than asset sales in the ordinary course of business.

The Applicants intend to appoint a slate of new directors and officers for the Domestic Insurer, each of whom is experienced in the insurance industry and currently affiliated with MMIC. The Applicants will retain Patricia A. Constante, the current Chairman and Chief Executive Officer of the Domestic Insurer, following the closing of the proposed acquisition, for one year. For a period of six months, the Applicants will also retain four senior executives of the Domestic Insurer. The Applicants are also assuming the employment agreements for an additional four retained executives for a period of three years. The Applicants plan to employ the rest of the employees of the Domestic Insurer. MMIC will assume most of the finance, investment, technology, legal and human resources functions of the Domestic Insurer immediately following closing of the proposed acquisition.

After consummation of the proposed acquisition, the Domestic Insurer will maintain its separate existence but operate as a wholly owned subsidiary of MMIC. After closing and with approval of the Department, the Domestic Insurer will become a part of MMIC's Intercompany Pooling Agreement as a 100% cedant. All of the Domestic Insurer's liabilities, including future liabilities, will be transferred to MMIC and the Domestic Insurer will only retain necessary operating capital plus a buffer to maintain adequate risk-based-capital. In addition, the Domestic Insurer will file a tax allocation agreement and a cost sharing agreement with MMIC for approval by the Department.

The Applicants provided three-year pro-forma financial projections of the Domestic Insurer. Surplus is projected to decrease from $63,009,000 at year-end 2022 to $19,000,000 at year-end 2023 and $19,174,000 at year-end 2024. The decrease in surplus is primarily due to the post-closing extraordinary dividend referenced above. The Applicants intend to seek regulatory approval for same after the Domestic Insurer becomes a member of the MMIC Intercompany Pooling Agreement as a 100% cedant.

The Applicants provided an audited unqualified opinion of MMHC's consolidated financial statements, on a statutory accounting basis, for the years ended December 31, 2017, through December 31, 2021. The year-end 2021 Balance Sheet reflects total members' surplus of $1,120,074,000, a $168,721,000 increase from year end 2020 surplus of $951,353,000.

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 Domestic Insurer 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 Domestic Insurer 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. However, the statute, by its terms, does not apply if, as an immediate result of the acquisition, the combined market share of the involved affiliated insurers would not exceed twelve percent of the total market; and the market share increases by no more than two percent of the total market. <u>See,</u> N.J.S.A. 17:27A-4.1(b)(2)(d).

As of year-end 2021, the New Jersey MPL marketplace available direct written premium was approximately $509 million. The Domestic Insurer ranked third in the state with upwards of

$34 million in direct written premium, which comprised close to 6.7% of the MPL market. MMIC had roughly 0.36% of available MPL premium. Therefore, as a result of the proposed transaction, the combined market share will be approximately 7% of the MPL marketplace, representing an increase of less than 1%. Accordingly, the formula set forth in N.J.S.A. 17:27A-4.1(d) does not apply to the proposed transaction. See, N.J.S.A. 17:27A-4.1(b)(2)(d).

While Applicants do expect growth with the union of the two companies, the initial focus will be on policyholder retention and organizational integration. Further, the Policyholder Retention Allocation being offered to new policyholders for the two-year period after the closing of the proposed acquisition is not anticipated to alter this analysis. Thus, it does not appear that the proposed transaction will substantially lessen competition or tend to create a monopoly in New Jersey.

Third, it does not appear that the financial condition of the Applicants will jeopardize the financial condition of the Domestic Insurer. The Applicants provided audited financial statements for the years ended December 31, 2017 through December 31, 2021. For the last five years, the Applicants had positive net income as well as substantial members' surplus.

Fourth, it appears that the financial condition of the Applicants is such that they have been solvent on a basis of statutory 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 and 2020, the related consolidated statements of income, comprehensive income, shareholders' equity, cash flows and the related notes. Based on the audited consolidated statutory financial statements, MMHC had total members' surplus of approximately $1.1 billion in 2021, $951 million in 2020 and $877 million in 2019; and reported net income, after taxes, of approximately $15.7 million in 2021, $38.7 million in 2020, and $12.7 million in 2019. MMIC had total capital and surplus of approximately $1 billion in 2021, $857 million in 2020 and $824 million in 2019; and reported net income, after taxes, of approximately $13.6 million in 2021, $37 million in 2020 and $16.7 million in 2019. 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 businesses. 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 Domestic Insurer or sell their assets. Through an intercompany reinsurance pooling agreement, all business will be ceded to MMIC. All the Domestic Insurer's liabilities (including future liabilities) will be transferred to MMIC, and the Domestic Insurer will only retain necessary operating capital plus a buffer to maintain adequate risk-based-capital. Any outstanding balances between MMIC and the Domestic Insurer will be reconciled through quarterly inter-company transfers. Further, MMHC will provide, commencing on the date of Closing (to the extent the intercompany reinsurance pooling agreement is not renewed or is otherwise terminated mid-term or is insufficient to satisfy the claims obligations of the Domestic Insurer), a guaranty as a secondary source of payment to satisfy those claims obligations of the Domestic Insurer. As mentioned above, the Applicants expect to request post-closing extraordinary dividends to move capital to the parent level as part of the Applicants' capital management process. The Domestic Insurer will remain a licensed insurer in New Jersey and will serve as a regional hub platform for the combined companies in the Mid-Atlantic region of the country.

Sixth, subject to approval by the Department and after amending the Domestic Insurer's bylaws and articles of incorporation, the incoming executive officers and directors of the Domestic

Insurer will be Neil E.S. Morrell (CEO), Edmund Lynch (President), Naveed Anwar (Treasurer) and William S. Kanich, MD, JD (Secretary). 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 Domestic Insurer 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.

December 15, 2022
Date

/s/ John Rossakis
John Rossakis
Hearing Officer

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Exhibits List

In the Matter of the Acquisition of Control of MDAdvantage Insurance Company of New Jersey ("Domestic Insurer") by Mag Mutual Holding Company, Mag Mutual Intermediate Holding Company, and Mag Mutual Insurance Company (collectively, the "Applicants")

Exhibit 1	Form A Statement and related filings dated as of August 15, 2022
Exhibit 2	News release dated as of August 15, 2022. Applicants submitted information prior to the filing of the Form A Statement
Exhibit 3	Amended and Restated Form A filings dated as of November 21, 2022
Exhibit 4	Amended and Restated Form A Statement dated as of November 21, 2022 received on November 22
Exhibit 5	Supplemental information dated as of November 30, 2022. Applicants provided Board of Directors Certified Copy of Resolution and executed Form A Statement dated as of November 30, 2022
Exhibit 6	Supplemental information received on December 5, 2022. Applicants provided executed Board of Directors Certified Copy of Resolution.
Exhibit 7	Waiver of 20–day notice of hearing submitted by Cynthia J. Borrelli, Esq., Principal, Bressler Amery and Ross, on behalf of the Applicants.
Exhibit 8	Waiver of 20–day notice of hearing submitted by Jeffrey S. MacDonald, Esq., on behalf of the Domestic Insurer.
Exhibit 9	Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on December 5, 2022
Exhibit 10	Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on December 5, 2022
Exhibit 11	Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on December 5, 2022