

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION )  
OF CONTROL OF SUPERIOR VISION OF ) AMENDED ORDER APPROVING  
NEW JERSEY, INC. BY HIGHMARK ) ACQUISITION  
HEALTH AND HIGHMARK INC. )

I have read the Amended Hearing Officer's report dated August 10, 2018 regarding the above-captioned matter that was amended to correct inadvertent data errors regarding the applicants and the source of funding. I concur with the Hearing Officer's finding that the changes do not alter the analysis set forth in the original Hearing Officer's Report dated July 23, 2018 approved pursuant to Order No. A18-103, and I concur with the recommendation contained in the Amended Report. Accordingly, pursuant to N.J.S.A. 17:27A-2, I hereby reaffirm my approval of the proposal of Highmark Health and Highmark Inc. to acquire control of Superior Vision of New Jersey, Inc.

8/10/18  
Date

McCaride  
Marlene Caride  
Commissioner

Jc amended order sup vision highmark/orders

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION )  
OF CONTROL OF SUPERIOR VISION OF ) AMENDED HEARING OFFICER'S  
NEW JERSEY, INC. BY HIGHMARK ) REPORT  
HEALTH AND HIGHMARK INC. )

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated January 30, 2018, as supplemented through April 9, 2018, Highmark Health and Highmark Inc. (collectively, “the applicants”) filed with the Department of Banking and Insurance (“Department”) an application to acquire control (“the Form A filing”) of Superior Vision of New Jersey, Inc. (“Superior Vision” or “the ODS”), a New Jersey domestic licensed organized delivery system<sup>1</sup>.

This amended Hearing Officer’s Report corrects certain inadvertent errors contained in the Hearing Officer’s Report dated July 23, 2018, adopted by the Commissioner of Banking and Insurance (“Commissioner”) pursuant to Order no. A18-103, to properly reflect the monetary denominations of the applicants’ total assets and operating gain. In addition, the Report revises the description of how the applicants paid the consideration for the transaction. The changes do not alter the analysis, substance or recommendation of the prior Report. In fact, the changes in monetary denomination as set forth in the Form A filing demonstrate that the applicants have more assets and operating gain than as set forth in the prior report, and further supports the analysis and conclusions set forth in the prior Report and herein. This Report is identical to the prior Report in all other respects. All analyses contained herein are based on the information supplied by the applicants as recited above.

---

<sup>1</sup> Pursuant to N.J.S.A. 17:48H-16a. and N.J.A.C. 11:22-4.10, a licensed ODS organized under the laws of the State of New Jersey is treated as a domestic insurer for purposes of the Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 to -14.

The ODS is a direct, wholly-owned subsidiary of Superior Vision Benefit Management Corporation., a New Jersey Corporation, which is, in turn, a direct, wholly-owned subsidiary of Block Vision Holdings Corporation, a Delaware corporation, which is, in turn, a direct, wholly-owned subsidiary of Superior Vision Corp., a Delaware corporation, which is, in turn, a direct, wholly-owned subsidiary of Wink Holdco., Inc. (“Wink Holdco”), a Delaware corporation, which is, in turn, a direct, wholly-owned subsidiary of Wink Parent, Inc., a Delaware corporation (“Wink Parent”).

In addition, certain investment funds in the Centerbridge III group of companies (“the Centerbridge Funds”) that are controlled by CCP III Cayman GP Ltd., a Cayman Islands exempted company (“CCP”), collectively own approximately 84.9 percent of the issued and outstanding voting securities of Wink Parent, and Highmark Inc. (“Highmark”) owns approximately 5.2 percent of the issued and outstanding voting securities of Wink Parent. No person other than Centebridge Capital Partners III, L.P., which is one of the Centerbridge Funds, owns 10 percent or more of the issued and outstanding voting securities of Wink Parent.<sup>2</sup>

Pursuant to N.J.S.A. 17:27A-2d, a public hearing was held on the Form A filing on June 13, 2018, 2018. 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-2b. Public comments were allowed to be submitted through the close of business on June 13,

---

<sup>2</sup> Concurrently with the filing of this Form A, the FFL Investors (as defined in the Stockholder Agreement) and certain of the affiliates (collectively, “FFL”) have filed with the Department a Form A in connection with a proposed increase in the issued and outstanding voting securities of Wink Parent owned by FFL from approximately 9.9 percent of the issued and outstanding voting securities of Wink Parent to approximately 23.1 percent (the “FFL Form A”).

2018. No comments were received. No other documents were required and the record was closed on June 13, 2018.

### Findings of Fact

Superior Vision was formed on September 15, 2006, and commenced business in New Jersey on December 20, 2011. Superior Vision does not currently assume any risk.

Highmark Health is a Pennsylvania nonprofit corporation based in Pittsburgh, Pennsylvania, is the lead company in an integrated healthcare and health insurance delivery and financing system which is the second largest in the nation based on revenue. Highmark Health and its affiliated companies serve nearly 50 million Americans in all 50 states.

The Highmark Health organization consists of the following businesses:

- The Highmark Health health plans business includes Highmark and its “Blue-branded” subsidiaries and affiliates, which serve the health insurance needs of consumers, businesses and government entities.
- Allegheny Health Network and its affiliates, which provide health care delivery, research, medical education and wellness services.
- HM Home & Community Services.
- Visionworks, which provides exams, eyeglasses, contact lenses and services at retail optical stores in the United States.
- United Concordia Companies, Inc. and its subsidiaries, which provide dental services through a national network of dentists.
- HM Insurance group, which works to protect United States businesses and their employees from health-related financial risk.

- HM Health Solutions, which provides innovative, technology-based solutions that support the multiple product lines of health plans.

Highmark Inc. (“Highmark”) is a Pennsylvania-domiciled nonprofit corporation which is a direct, wholly-controlled subsidiary of Highmark Health. Highmark is licensed by the Pennsylvania Insurance Department to operate a nonprofit hospital plan and a nonprofit professional health services plan pursuant to the Pennsylvania Health Plan Corporations Act. The applicants stated that Highmark and its health insurance subsidiaries and affiliates collectively are among the 10 largest health insurers in the United States and comprise the fourth-largest Blue Cross and Blue Shield-affiliated organization. The applicants also stated that Highmark and affiliates operate health insurance plans in Pennsylvania, Delaware and West Virginia that serve five million members and hundreds of thousands of additional members through the BlueCard program. Its diversified businesses serve group customer and individual needs across the United States through stop-loss and dental insurance, retail vision services and other related businesses. Highmark is an independent licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield companies.

The applicants have no present plans to make any material changes in the business operations or corporate structure of management of the ODS. In addition, the applicants have no present plans for the ODS to declare an extraordinary dividend following the closing, to liquidate the ODS, to sell any of the ODS’s assets (other than asset sales in the ordinary course of business), or to merge the ODS with any person. As a result, following the closing of the proposed acquisition, the day-to-day management of the ODS will continue to be performed by the current senior management and officers of the ODS, and will not be performed by the directors of CCP. Further, no director of CCP will serve on the board of the ODS.

The applicants stated that, on August 8, 2017, HVHC LLC (“HVHC”), a Delaware-domiciled limited liability company that is a direct, wholly-owned subsidiary of Highmark, and WDV Acquisition Corp. (“WDV Acquisition”) agreed to purchase (“the Transaction”) all of the outstanding common stock of Davis Vision, Inc. (“Davis Vision”), a direct, wholly-owned subsidiary of HVHC. WDV Acquisition is a Delaware corporation that is a direct, wholly-owned subsidiary of Wink Holdco formed by the Centerbridge Funds for the purposes of entering into the Transaction.

The closing (“the Closing”) of the Transaction occurred on December 1, 2017 (“the Closing Date”) after receipt of all required regulatory approvals. As a result of the Transaction, the Superior Vision group of companies, including the ODS (and the group of companies controlled by Superior Vision Corp., a direct subsidiary of Wink Holdco), and the Davis Vision group of companies (and the group of companies controlled by WDV Acquisition, which is also a direct subsidiary of Wink Holdco) became “sister” affiliated groups of companies owned by the same indirect parent, Wink Parent.

In connection with the Transaction, Highmark agreed to make an investment in Wink Parent, representing approximately 5.2 percent of the issued and outstanding voting securities of Wink Parent (“Wink Parent Voting Common Stock”) (“the Wink Parent Investment”). As part of this investment, Highmark obtained certain rights, including the right to designate a member of the Wink Parent board of directors (“the Wink Parent Board Designee”). The Wink Parent board of directors currently has five members (subject to change, from time to time, pursuant to the Stockholder Agreement). After appointment of the Wink Parent Board Designee to the Wink Parent board of directors, and designation and appointment of a Wink Parent board member by

FFL, subject, in each case, to receipt of required regulatory approvals (including this Form A and the FFL Form A), the Wink Parent board of directors will have seven members.

Highmark stated that it expects to appoint the individual identified in the Form A filing as the Wink Parent Board Designee, subject to replacement by Highmark from time to time.

The applicants stated that the funds used by the applicants to purchase the Wink Parent Voting Common Stock on December 1, 2017 in the Wink Parent Investment was derived from the proceeds from the sale of all of the outstanding stock of Davis Vision, Inc. in the Transaction or cash on hand, with no portion sourced from borrowed funds.

The applicants stated that they have no present plans or proposals to cause the ODS to issue an extraordinary dividend, to liquidate the ODS, to sell any of the ODS's assets (except in the ordinary course of business), or to merge the ODS with any person or persons or to make any other material change in any of the ODS's corporate structure, business operations or management. The applicants stated that, immediately following the consummation of the proposed acquisition of control, the ODS will continue to maintain its separate corporate existence.

As noted above, Highmark has certain designation rights with respect to the board of directors of Wink Parent. The applicants stated that any matters addressed at the Wink Parent board level relevant to the ODS would, therefore, be subject to review by the Wink Parent Board Designee or successors. In addition, Highmark will continue to have the right as a shareholder of Wink Parent to vote on certain matters potentially relevant to the ODS.

The applicants also stated that they reserve the right to review any of the ODS's businesses, assets, corporate structure, dividend policy, capitalization, operating properties, business policies, articles of incorporation, by-laws, management and personnel and, subject to

applicable state insurance regulatory requirements, to take action in furtherance of changes thereto that the Applicants deem appropriate in light of such review or future developments.

As reported in applicable financial statements, Highmark Health had total net assets of approximately \$6.5 billion in 2017; \$5.1 billion in 2016 and \$5.2 billion in 2015. In addition, Highmark Health had an operating gain of approximately \$338 million in 2017 and \$63 million in 2016.

### Analysis

N.J.S.A. 17:27A-2d(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 percent 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 ODS 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. Superior Vision was formed on September 15, 2006, commenced business in New Jersey on December 20, 2011, and is currently licensed and in good standing. There is nothing in the record to indicate that after the proposed acquisition the ODS would not be able to continue to satisfy the requirements to transact the business for which it is presently licensed.

Second, it does not appear that the acquisition of the ODS will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2d(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1d shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. In the present matter, based on the countrywide data for 2017 that was available at the time of the filing, the applicants indirectly will maintain the same 5.2 percent control of the ODS. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the market. See N.J.S.A. 17:27A-4.1b(2)(d). Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1. Thus, it does not appear that the acquisition of the ODS will 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 ODS. As reported in the applicable financial statements filed by the applicants, Highmark Health had partner's capital of approximately \$6.5 billion in 2017; \$5.1 billion in 2016 and \$5.2 billion in 2015.

Fourth, it appears that the financial condition of the applicants is such that they have been solvent on a generally accepted accounting principles basis for the period that they have been in existence. As set forth above, based upon the filing, Highmark Health had substantial shareholders' equity, indicating it has been in a sound and viable financial condition for the relevant period. In addition, Highmark Health had an operating gain of approximately \$338 million in 2017 and \$63 million in 2016. Finally, no debt will be incurred by the applicants in connection with the proposed acquisition. As noted above, the applicants paid the amount of consideration allocable to the acquisition of Wink Parent voting common stock from proceeds of

the sale of the outstanding stock of Davis Vision, Inc. or cash-on-hand. 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 ODS or sell its assets. As set forth above, the applicant intends to continue the current operations of the ODS with the addition of a designee to the board of the ODS's parent, with all rights and responsibilities such entails.

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 ODS are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. The persons who will serve as officers and directors of the ODS are those presently in those positions with the ODS, with addition of Board Designee. In addition, the persons who will operate the ODS have had substantial experience in the insurance business.

Seventh, there is nothing in the record from which it may be concluded that the acquisition 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 acquisition 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 acquisition be approved.

8/10/18  
Date

  
Jonathan Cuttler  
Hearing Officer

jc ho report sup vision highmark amended/orders

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

**EXHIBIT LIST**

IN THE MATTER OF THE ACQUISITION OF CONTROL OF SUPERIOR VISION OF NEW  
JERSEY NEW JERSEY, INC.

BY  
HIGHMARK HEALTH AND HIGHMARK, INC.

- Exhibit 1.....Form A application submitted January 30, 2018
- Exhibit 2.....Amendment Number One to Form A submitted April 9, 2018
- Exhibit 3.....Waiver of 20 day notice of hearing, submitted by Cynthia Borrelli,  
of Bressler, Amery and Ross, on behalf of the Applicants,  
dated June 1, 2018
- Exhibit 4.....Waiver of 20 day notice of hearing, submitted by Cynthia Borrelli,  
of Bressler, Amery and Ross, on behalf of Superior Vision of New Jersey,  
dated June 1, 2018
- Exhibit 5.....Affidavit of Publication of Notice of Public Hearing for notice published in  
the Trenton Times on Wednesday, June 6, 2018.
- Exhibit 6.....Affidavit of Publication of Notice of Public Hearing for notice published  
in the Newark Star Ledger on Wednesday, June 6, 2018.
- Exhibit 7.....Affidavit of Publication of Notice of Public Hearing for notice published  
in the Asbury Park Press on Wednesday, June 6, 2018.

jc exhibits list sup vision highmark/orders