

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION	)	
OF CONTROL OF WATFORD INSURANCE	)	HEARING OFFICER'S
COMPANY AND WATFORD SPECIALTY	)	REPORT
INSURANCE COMPANY BY WILLIAM	)	
HOLDING 1, L.P., KELSO GP X	)	
(International), L.P., AND KELSO GP X	)	
(International) LTD.	)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated December 8, 2020 and supplemented through June 21, 2021, William Holding 1, L.P., a Cayman Islands exempted limited partnership (“William Holding 1”), Kelso GP X (International), L.P., a Cayman Islands exempted limited partnership and the general partner of William Holding 1 (“Kelso GP L.P.”), and Kelso GP X (International) Ltd., a Cayman Islands exempted company and the general partner of Kelso GP L.P. (“Kelso GP Ltd.”) (each an “Applicant” and together the “Applicants”), filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of Watford Insurance Company (“WIC”) and Watford Specialty Insurance Company (“WSIC”), both New Jersey domestic property and casualty insurance and reinsurance companies (collectively “the Domestic Insurers”). WIC is a wholly-owned subsidiary of WSIC, which in turn is an indirect wholly-owned subsidiary of Watford Holdings, Ltd. (“WHL”). The Watford companies are a global property and casualty insurance and reinsurance company with operations in Bermuda, the United States, and Europe.

The Applicants will acquire control of the Domestic Insurers by way of a merger (the “Merger”) of Greysbridge Ltd. (“Merger Sub”), a Bermuda exempted company, with and into WHL, a Bermuda holding company whose common shares are registered under the U.S. Securities Exchange Act of 1934 and listed on the NASDAQ stock exchange and the ultimate parent company of the Domestic Insurers. As a result, following the completion of the transactions contemplated by the Merger Agreement, WHL (thereafter, “New WHL”) will survive as a wholly-owned subsidiary of Greysbridge Holdings Ltd., a Bermuda exempted company, (“GHL”) (as the holder of all issued and outstanding common shares of Merger Sub immediately prior to the Merger), as described in detail below.

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 June 21, 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 June 21, 2021, and no comments were received. The record was closed on June 21, 2021.

#### Findings of Fact

William Holding 1, is a recently formed Cayman Islands exempted limited partnership, formed for the purpose of acquiring, holding, managing, and disposing of the investment in GHL and to engage in any activities and transactions incidental to the foregoing. Its sole general partner is Kelso GP L.P. Kelso GP L.P. is a recently formed Cayman Islands exempted limited partnership, formed to act as the general partner of certain Cayman Islands exempted limited partnerships and to engage in any activities and transactions incidental to the foregoing. Its sole

general partner is Kelso GP Ltd. Kelso GP Ltd. is a recently formed Cayman Islands exempted company, formed to act as the general partner of Kelso GP L.P. and to engage in any activities and transactions incidental to the foregoing. Kelso GP Ltd. has individual shareholders, none of whom controls Kelso GP Ltd. as defined under N.J.S.A. 17:27A-1.

WIC was incorporated as of June 4, 1987 and commenced business on August 17, 1987. WSIC was incorporated on September 8, 2015 and commenced business on September 30, 2015.

Pursuant to the Agreement and Plan of Merger included as a part of the Form A Filing, dated as of October 9, 2020, by and among WHL, Merger Sub, and Arch Capital Group Ltd. (“ACGL”), a Bermuda holding company whose common shares are registered under the U.S. Securities Exchange Act of 1934 and listed on the NASDAQ stock exchange, as amended by Amendment No. 1 to the Agreement and Plan of Merger, dated as of November 2, 2020 (as amended, the “Merger Agreement”), Merger Sub will merge with and into WHL, with WHL as the surviving entity as a subsidiary of GHL (as the holder of all issued and outstanding common shares of Merger Sub immediately prior to the Merger).

At the effective time of the Merger (the “Effective Time”), the Applicants and affiliates under their control are expected to hold common equity representing 30% of the ownership of GHL. Pursuant to the Merger Agreement, subject to certain conditions set forth therein, at the Effective Time, (i) each issued and outstanding common share, par value \$0.01 per share, of WHL (the “Common Shares”) (other than (a) shares to be canceled pursuant to the Merger Agreement and (b) restricted share units to be canceled and exchanged pursuant to the Merger Agreement (as described below)), shall be converted into the right to receive \$35.00 in cash, without interest (the “Merger Consideration”), and (ii) each issued and outstanding 8.5% cumulative redeemable preference share, par value \$0.01 per share, of WHL (the “Preference Shares”) shall remain

outstanding as a preference share of New WHL and will be entitled to the same dividend and other relative rights, preferences, limitations and restrictions as are now provided to the Preference Shares.

Pursuant to the Merger Agreement, subject to certain conditions set forth therein, effective as of immediately prior to the Effective Time, (i) each then outstanding restricted share unit under Watford's 2018 Stock Incentive Plan (the "Plan") that is subject to performance metrics shall become fully vested assuming the achievement of the applicable performance metrics at the target level of performance and be canceled in exchange for the right of the holder thereof to receive a single lump sum cash payment, without interest, equal to (a) the Merger Consideration, less (b) any applicable withholding for taxes, and (ii) each then outstanding restricted share unit under the Plan that is not subject to performance metrics shall become fully vested and be canceled in exchange for the right of the holder thereof to receive a single lump sum cash payment, without interest, equal to (a) the Merger Consideration, less (b) any applicable withholding for taxes.

Consummation of the Merger is subject to customary closing conditions, including approval of WHL shareholders by the affirmative votes of not less than 50% of the holders of the outstanding Common Shares and the Preference Shares, voting as a single class, and certain specified regulatory approvals. In addition, ACGL's obligation to consummate the Merger is conditioned on WHL's non-investment grade portfolio not suffering a loss of more than \$208 million from September 30, 2020, through the date that is two business days prior to the closing of the Merger.

ACGL has assigned all of its rights, interests and obligations under the Merger Agreement to GHL in accordance with the terms of the Merger Agreement. GHL is a wholly-owned subsidiary of Arch Reinsurance Ltd. ("ARL"), itself a wholly-owned subsidiary of ACGL.

ACGL has reached an agreement with WP Windstar Investments Ltd. (“WP Windstar”), a controlled affiliate of Warburg Pincus (Bermuda) Private Equity GP, L.P, and Kelso Investment Associates X, L.P. (the “Kelso Fund”), an investment fund managed by Kelso & Company, L.P., whereby: (i) the Co-Investors (affiliates of the Kelso Fund that will be investors in GHL are William Holding 1 and two additional entities for which Kelso GP L.P. is the general partner, William Holding 2, L.P. and William Holding 3, L.P., collectively the “Kelso Investors” together with WP Windstar and ACGL, the “Co-Investors”) will capitalize GHL and obtain common equity interests in GHL in accordance with binding equity commitment letters, an interim investors agreement and a subscription agreement (the “Subscription Agreement”) to be entered into by the Co-Investors and GHL; and (ii) GHL will acquire all of the Common Shares in accordance with the Merger Agreement. It is contemplated that GHL will have an initial capitalization of \$700,000,000, which will be funded immediately prior to the consummation of the Merger and will be comprised of cash proceeds from the sale of GHL common equity to each of the Co-Investors and the contribution by ACGL of all of the Common Shares owned by ACGL to GHL (which will be valued at a price per share equal to the Merger Consideration) such that: (i) each of (a) taken together the Kelso Investors and (b) WP Windstar will pay cash consideration of \$210,000,000, and (ii) ACGL will contribute the 2,500,000 Common Shares it already owns (valued at \$87,500,000) and pay cash consideration of \$192,500,000. Following such payment and contribution, (i) ACGL will hold common equity representing 40% ownership of GHL, (ii) the Kelso Investors will hold common equity representing 30% of the ownership of GHL and (iii) WP Windstar will hold common equity representing 30% ownership of GHL.

GHL will use the cash proceeds from the issuance and sale of its common equity to the Co-Investors to fund the purchase price of the Merger. The Kelso Investors will acquire the funds

necessary for their investment from investment funds managed by Kelso & Company, L.P. (including the Kelso Fund), which will be the holders of non-voting limited partnership interests in the Kelso Investors. Of the Kelso Investors, only William Holding 1 will have a 10% or greater interest in GHL.

Other than as disclosed in this Form A, the Applicants have no present plans or proposals to cause the Domestic Insurers to declare an extraordinary dividend, to liquidate the Domestic Insurers, to sell the Domestic Insurers' assets other than such sales of assets as may be contemplated in the ordinary course of the Domestic Insurers' business, to merge the Domestic Insurers with any other entity, or to make any other material change in the Domestic Insurers' business operations or corporate structure or management.

The Applicants have no current plans to make any changes to the directors or executive officers of the Domestic Insurers, and the executive officers of New WHL following the closing of the proposed transaction are expected to be the current executive officers of WHL. GHL is not expected to have executive officers. The Applicants do not intend to make any material change in New WHL's business operations, corporate structure or management.

Based on the consolidated financial statements filed by the Applicants, the Kelso Fund reported total shareholders' equity of approximately \$1.2 billion in 2020 and \$446 million in 2019, as well as total net before-tax income of \$301 million in 2020 and \$12 million in 2019. The Kelso Fund commenced operation in September 2018, so 2018 financial statements are not available.

#### 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 Insurers will continue to meet the requirements to transact the business for which they are 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 Insurers 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). Kelso does not own any insurers and only operates as a passive investor in insurance-related firms. Arch will continue to manage the operations of Watford. According to the Form E dated November 2, 2020, the respective market share for all insurance entities subject to this transaction in New Jersey is less than 5% except for the following lines of business: credit, excess workers compensation, group accident and health, mortgage guaranty, and other property and casualty. In all lines of business, the transaction meets these exemption standards because the Applicants and the Domestic Insurers do not compete in any other 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 Domestic Insurers. As reported in the applicable financial statements filed by the Applicants, the Applicants had shareholders' equity of \$1.2 billion in 2020 and \$446 million in 2019.

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 reported in the applicable financial statements filed by the Applicants, the Applicants had total net before-tax income of approximately \$301 million in 2020 and \$12 million in 2019. The Kelso Fund commenced operation in September 2018, so 2018 financial statements are not available.

The Applicants will fund their portion of the purchase price to be paid in connection with the Acquisition (approximately \$210 million) from two sources: (1) cash or investments convertible into cash currently held by the Applicants or to be contributed by non-voting limited partners in one or more of the respective Applicants, and (2) borrowed funds under existing credit facilities separately maintained by Kelso. As required by N.J.S.A. 17:27A-2(d)(1)(iv), funds borrowed under the credit facilities will not exceed 50% of the purchase price to be paid (approximately \$105 million). Other than the credit facilities, no other debt will be used to finance any portion of the purchase price for the acquisition. 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 the Domestic Insurers or sell their assets. As set forth above, the Applicants do 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 the Domestic Insurers 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 applicants will attain ultimate control of the Domestic Insurers and there are no anticipated changes to the Domestic Insurers' Board of Directors or executive officers. Following the transaction, the applicants intend to maintain the Domestic Insurers' 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.

6/24/21  
Date

s/Lynn Certo  
Lynn Certo  
Hearing Officer

## Exhibits List

In the Matter of the Acquisition of Control of Watford Insurance Company and Watford Specialty Insurance Company by Kelso GP X (International) Ltd., Kelso GP X (International), L.P., and William Holding 1, L.P. (together the “Kelso Applicants”).

- Exhibit 1 – Form A Statement, received December 21, 2020.
- Exhibit 2 – Preliminary Proxy Statement, received January 5, 2021
- Exhibit 3 – Definitive Proxy Agreement and Voting and Support Agreements, received February 19, 2021
  
- Exhibit 4 – Waiver of 20–day notice of hearing submitted by William Woo, Director, VP & General Counsel, Kelso GP X (International) Ltd, for the Kelso Applicants
  
- Exhibit 5 – Waiver of 20–day notice of hearing submitted by Alexandre Scherer, President and CEO, for Watford Insurance Company and Watford Specialty Insurance Company
  
- Exhibit 6 – Supplement to Form A Statement regarding Acquisition Debt, dated June 4, 2021
- Exhibit 7 – Form A Applicants Organizational Chart
- Exhibit 8 – Supplement to Form A Statement regarding *control* of Warburg Pincus Applicants, received June 7, 2021
  
- Exhibit 9 – Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on June 11, 2021
  
- Exhibit 10 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on June 11, 2021
  
- Exhibit 11 – Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on June 11, 2021