

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION	)	
OF CONTROL OF WATFORD HOLDINGS	)	HEARING OFFICER'S
LTD. (Bermuda), WATFORD SPECIALTY	)	REPORT
INSURANCE COMPANY, AND WATFORD	)	
INSURANCE COMPANY BY ARCH	)	
CAPITAL GROUP LTD, ARCH	)	
REINSURANCE LTD., GREYSBRIDGE	)	
HOLDINGS LTD., AND GREYSBRIDGE 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, Arch Capital Group, Ltd., a public limited liability company organized under the laws of Bermuda (“ACGL”), Arch Reinsurance, Ltd., a Bermuda company licensed as a Class 4 general business insurer (property/casualty) and a Class C long-term insurer (life and annuity)(“ARL”), Greysbridge Holdings, Ltd., a newly formed holding company (“GHL”), and Greysbridge, Ltd., a newly formed entity (“Merger Sub”) (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, and Watford Holdings Ltd. (Bermuda), a Bermuda based publicly traded company (“WHL”) (collectively “the Domestic Insurers”). WIC is a wholly-owned subsidiary of WSIC, which in turn is an indirect wholly-owned subsidiary of WHL. The Watford companies are a global property and casualty insurance and reinsurance company with operations in Bermuda, the United States, and Europe. ACGL serves

as the holding company for various operating subsidiaries within the Arch Capital Group. ARL is a direct wholly owned subsidiary of ACGL. GHL is currently a direct, wholly owned subsidiary of ARL.

The Applicants will acquire control of the Domestic Insurers by way of a merger (the “Merger”) of WHL, the parent company of WIC and WISC, with and into Merger Sub, a newly formed Bermuda company that will serve as a merger vehicle wholly owned by GHL. Merger Sub will be owned by ACGL, Kelso Investors (“Kelso”) and Warburg Pincus Investors (“Warburg Pincus”) with ACGL owning 40% of the new entity, Kelso and Warburg Pincus will have 30% ownership respectively. Upon consummation of the Transaction, Arch, Kelso and Warburg Pincus will be the owners of all of the capital stock of WHL, which will become an indirect, wholly owned subsidiary of ACGL through the Merger Sub 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

ACGL is a public limited liability company organized under the laws of Bermuda that serves as the holding company for the various operating subsidiaries within the Arch Capital Group. Its operating subsidiaries write insurance, reinsurance and mortgage insurance on a worldwide basis with a focus on specialty lines.

ARL is a Bermuda company licensed by the Bermuda Monetary Authority as a Class 4 general business insurer (property/casualty) and a Class C long-term insurer (life and annuity). ARL underwrites property/casualty, life and mortgage insurance, and reinsurance in the United States and other countries. ARL is a direct, wholly-owned subsidiary of ACGL.

GHL is a newly-formed holding company formed for the purposes of this proposed transaction and currently a direct, wholly-owned subsidiary of ARL. GHL will serve as a vehicle for facilitating co-investment by the Co-Investors (Kelso and Warburg Pincus) in the new WHL.

The Merger Sub is a newly-formed entity formed to effect the Merger and a direct, wholly-owned subsidiary of GHL.

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, GHL, Merger Sub, and ACGL and 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.

The Applicants will acquire all of the common shares of WHL for a price of \$35.00 per share. This all-cash consideration is valued at approximately \$700 million and represents a premium of approximately 96% to WHL’s unaffected closing common share price on September 8, 2020, the last trading day prior to media reports about the possibility of a transaction between WHL and ACGL.

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 will assign its interests and obligations under the merger agreement to a newly formed entity of which ACGL will own approximately 40%, and funds managed by Warburg Pincus and Kelso will each own approximately 30%.

ACGL will own WHL jointly with Kelso and Warburg Pincus. ARL will contribute the 2.5 million shares of WHL common stock it owns and contribute cash up to \$192.5 million for a total consideration of \$280 million; Kelso will contribute cash up to \$210 million; and Warburg Pincus will contribute cash up to \$210 million. ARL, Kelso, and Warburg Pincus have provided a confidential Subscription Agreement that will govern their respective rights and obligations as shareholders of GHIL.

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 WHL following the closing of the proposed transaction are expected to be the current executive officers of WHL. The Applicants do not intend to make any material change in WHL's business operations, corporate structure or management.

Based on the consolidated financial statements filed by the Applicants, the Applicants had shareholders' equity of approximately \$15.0 billion in 2020; \$12.4 billion in 2019; and \$10.0 billion in 2018. The Applicants reported a net before-tax income of \$1.7 billion in 2020, \$1.9 billion in 2019, and \$714 million in 2018.

#### 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). 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. Based on the consolidated financial statements filed by the Applicants, the Applicants had shareholders' equity of approximately \$15.0 billion in 2020; \$12.4 billion in 2019; and \$10.0 billion in 2018.

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 three-year period immediately prior to the date of the proposed acquisition. The Applicants reported a net before-tax income of \$1.7 billion in 2020, \$1.9 billion in 2019, and \$714 million in 2018. ACGL's estimated total cash on hand balance (including cash equivalents and without taking into account the proceeds of any debt offering) was approximately \$861 million, which is more than adequate to cover 100% of the total consideration of \$280 million. The Applicants expect to finance the

cash component of the Proposed Transaction through available 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 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 executive officers and only a change in the Board of Directors. 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 Arch Capital Group Ltd., Arch Reinsurance Ltd., Greysbridge Holdings Ltd., and Greysbridge Ltd. (together the “Arch Applicants”).

Exhibit 1 – Form A Statement, received November 4, 2020.

Exhibit 2 – Amended and Restated Form A filing, received December 21, 2021

Exhibit 3 – Preliminary Proxy Statement, received January 5, 2021

Exhibit 4 – Definitive Proxy Agreement and Voting and Support Agreements, received February 19, 2021

Exhibit 5 – Waiver of 20–day notice of hearing submitted by Maamoun Rajeh, Chairman & CEO, Arch Capital Group Ltd., for the Arch Applicants

Exhibit 6 – Waiver of 20–day notice of hearing submitted by Alexandre Scherer, President and CEO, for Watford Insurance Company and Watford Specialty Insurance Company

Exhibit 7 – Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on June 11, 2021

Exhibit 8 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on June 11, 2021

Exhibit 9 – Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on June 11, 2021