

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION	)	
OF CONTROL OF LIBERTY DENTAL	)	
PLAN OF NEW JERSEY, INC. AND	)	
LIBERTY DENTAL PLAN	)	
ORGANIZATION OF NEW JERSEY, INC.	)	
BY PROJECT FREEDOM PARENT, INC.,	)	
PROJECT FREEDOM HOLDINGS, INC.,	)	HEARING OFFICER'S
PROJECT FREEDOM HOLDINGS, LLC,	)	REPORT
WCAS XIV, L.P., WCAS XIV CAYMAN, L.P.,	)	
WCAS XIV CO-INVESTORS I LLC, WCAS	)	
XIV CO-INVESTORS II LLC, WCAS XIV	)	
ASSOCIATES LLC, WCAS MANAGEMENT,	)	
L.P., WCAS MANAGEMENT, LLC, DENNIS	)	
SCOTT MACKESY, FREEDOM SPV, INC.,	)	
ATH HOLDING COMPANY, LLC and	)	
ELEVANCE HEALTH, INC.	)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated March 24, 2022, and supplemented by additional filings through September 14, 2022, Project Freedom Parent, Inc. (“Buyer”), Project Freedom Holdings, Inc. (“Buyer Intermediate Holdings”) and Project Freedom Holdings, LLC (“Buyer Holdings”), (collectively, the “Buyer Applicants”); WCAS XIV, L.P. (“Fund 14”), WCAS XIV Cayman, L.P. (“Fund 14 Cayman”), WCAS XIV Co-Investors I LLC (“Fund 14 Co-Investors I”), WCAS XIV Co-Investors II LLC (“Fund 14 Co-Investors II”), (together with Fund 14, Fund 14 Cayman and Fund 14 Co-Investors I, the “WCAS Funds”), WCAS XIV Associates LLC (“WCAS Associates” and together with the WCAS Funds, the “Original WCAS Applicants”), WCAS Management, L.P., WCAS Management, LLC and Dennis Scott Mackesy, an individual (the “WCAS Individual Applicant” and together with the Original WCAS Applicants, WCAS

Management, L.P., and WCAS Management, LLC, the “WCAS Applicants”); Freedom SPV, Inc. (“Freedom SPV”), ATH Holding Company, LLC (“ATH Holding”) and Elevance Health, Inc.<sup>1</sup> (“Elevance Health”), (collectively, the “Elevance Health Applicants” and together with the Buyer Applicants and the WCAS Applicants, the “Applicants”), filed with the Department of Banking and Insurance (the “Department”), an application to acquire control (the “Form A Filing”) of Liberty Dental Plan of New Jersey, Inc. (“LDP-NJ”), a New Jersey licensed Organized Delivery System (“ODS”)<sup>2</sup>, and Liberty Dental Plan Organization of New Jersey, Inc. (“LDPO-NJ”), a New Jersey licensed Dental Plan Organization (“DPO”). LDP-NJ and LDPO-NJ shall hereinafter be referred to collectively as the “Domestic Insurers.” The Form A Filing describes a transaction in which the Applicants will acquire Liberty Dental Plan Corporation (“LDPC”) (the “Proposed Transaction”). The Domestic Insurers are wholly owned subsidiaries of LDPC.

Pursuant to N.J.S.A. 17:27A-2(d), 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 September 29, 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 Form A Filing 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 September 29, 2022, and no comments were received. The record was closed on September 29, 2022.

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<sup>1</sup> Elevance Health, Inc. was formerly known as Anthem, Inc. The name change became effective June 28, 2022

<sup>2</sup> Pursuant to N.J.S.A. 17:48H-16(a) 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.

### Findings of Fact

LDP-NJ (NAIC No. 11159) is a licensed ODS under the laws of the State of New Jersey and was incorporated on May 28, 1978. LDP-NJ was acquired by LDPC on September 1, 2012. LDP-NJ is organized to engage in the business of dental health care administration. LDP-NJ was initially licensed as a DPO but relinquished its DPO license to become a licensed ODS on May 31, 2018. LDPO-NJ (NAIC No. 16372) was formed on February 21, 2018 by LDPC, and licensed as a DPO, on May 31, 2018.

The Buyer Applicants are entities that were formed, on February 23, 2022, for the purpose of effectuating the Proposed Transaction. Buyer and Buyer Intermediate Holdings are corporations formed under the laws of the State of Delaware; and Buyer Holdings is a Delaware limited liability company. As a result of the Proposed Transaction, Buyer will hold 100% of the voting securities of LDPC. Buyer Intermediate Holdings will own 100% of the voting securities of Buyer. Buyer Holdings will own 100% of the voting securities of Buyer Intermediate Holdings and serve as the investment vehicle for a joint venture between Welsh, Carson, Anderson & Stowe (“WCAS”) and Elevance Health. As a result of the Proposed Transaction, Buyer Holdings will become a holding company of the Domestic Insurers. Following the closing of the Proposed Transaction (the “Closing”), the management and operations of Buyer Holdings will be governed by an Amended and Restated Limited Liability Company Agreement to be entered into among Buyer Holdings, WCAS funds, Freedom SPV, and Dr. Amir Neshat.<sup>3</sup>

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<sup>3</sup> Dr. Amir Neshat, an individual, is the current ultimate controlling person of the Domestic Insurers. As a result of the Proposed Transaction, Dr. Amir Neshat will retain beneficial ownership of approximately 15% of the voting securities of the Domestic Insurers.

The WCAS Applicants are part of Welsh Carson, which is a global private investment firm founded in 1979 that specializes in investing in companies in the healthcare and technology industries.

The WCAS Funds are private equity funds for which WCAS Associates serves as the general partner or managing member. WCAS Associates is a Delaware limited liability company, formed on August 25, 2021. WCAS Associates is the general partner of Fund 14, a Delaware limited partnership, and Fund 14 Cayman, a Cayman Islands limited partnership, each formed on September 8, 2021; and the managing member of Fund 14 Co-Investors I and Fund 14 Co-Investors II, each limited liability companies formed under the laws of the State of Delaware on January 5, 2022. Each of the WCAS Funds was formed for general investment purposes, including to acquire, in the aggregate, approximately 45% of the voting membership interests of Buyer Holdings.

WCAS Management, L.P. was formed as a Delaware limited partnership on November 7, 2017 for purposes of providing investment advice, personnel and back-office and administrative services and facilities to the investment funds of Welsh Carson, including the WCAS Funds. WCAS Management L.L.C. was formed as a Delaware limited liability company, on November 7, 2017, to serve as the sole general partner of WCAS Management L.P.

The WCAS Individual Applicant is a managing member of WCAS Associates and a member of WCAS Management L.L.C. and focuses on healthcare investments. The WCAS Individual Applicant joined Welsh Carson in 1998. Prior to joining Welsh Carson, the WCAS Individual Applicant worked for six years at Morgan Stanley Dean Witter in the Investment Research Department, where he was responsible for coverage of the healthcare services sector.

Freedom SPV was incorporated as a Delaware corporation on March 1, 2022, for the purpose of effecting the acquisition of approximately 40% of the voting membership interests of Buyer

Holdings. Freedom SPV is a direct, wholly owned subsidiary of ATH Holding. ATH Holding, a limited liability company formed under the laws of the State of Indiana, is a holding company for certain investments made and subsidiaries held by Elevance Health<sup>4</sup>.

Elevance Health is a corporation formed under the laws of the State of Indiana. Through its subsidiaries, Elevance Health is a health benefits company serving approximately forty-five million members as of December 31, 2021. Elevance Health is an independent licensee of the Blue Cross and Blue Shield Association. Elevance Health, through its subsidiaries, is licensed to conduct insurance operations in all fifty states, the District of Columbia and Puerto Rico.

Elevance Health, formerly known as Anthem, offers a broad spectrum of network-based managed care risk-based plans to Individual, Group, Medicaid and Medicare markets. In addition, Elevance Health provides a broad array of managed care services to fee-based customers, including claims processing, stop loss insurance, provider network access, medical management, care management and wellness programs, actuarial services and other administrative services. Elevance Health also provides services to the federal government in connection with its Federal Health Products & Services business, which administers the Federal Employees Health Benefits Program. Elevance Health provides an array of specialty services both to its subsidiary health plans and also unaffiliated health plans, including pharmacy benefit management services and dental, vision, life, disability and supplemental health insurance benefits, as well as integrated health services.

The Applicants' proposed acquisition of control of the Domestic Insurers will occur pursuant to the Agreement and Plan of Merger, dated February 24, 2022 (the "Agreement"), by and among LDPC, Buyer, Project Freedom Merger Sub, Inc. ("Merger Sub"), and LIBERTY Shareholder

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<sup>4</sup> No person directly or indirectly owns, controls, holds with power to vote or holds proxies representing collectively 10% or more of the voting securities of Elevance Health.

Representative, LLC, a Delaware limited liability company, solely in its capacity as the representative for the Securityholders (as defined in the Agreement).

The Agreement provides that Merger Sub will merge with and into LDPC (the “Merger”), whereupon the separate corporate existence of Merger Sub will cease, and LDPC will continue as the surviving corporation. The Domestic Insurers are currently direct, wholly owned subsidiaries of LDPC. As a result of the Merger, LDPC will become a direct, wholly owned subsidiary of Buyer, and the Domestic Insurers will become indirect, wholly owned subsidiaries of Buyer, which, in turn, will be controlled by the Applicants.

As provided in the Agreement and at the Closing, Buyer will pay the purchase price in cash from funds Buyer receives pursuant to (i) an Equity Commitment Letter, dated February 24, 2022, by and between Fund 14 and Buyer (the “Fund 14 Commitment”); (ii) an Equity Commitment Letter, dated February 24, 2022, by and between ATH Holding and Buyer (the “ATH Commitment”, and together with the Fund 14 Commitment, the “Cash Commitments”); and (iii) certain amounts borrowed under a senior secured term loan facility and a senior secured revolving credit facility created pursuant to a commitment letter with certain lenders party thereto, dated February 24, 2022 (the “Credit Facilities”).

The Applicants will acquire control of the Domestic Insurers as part of the Proposed Transaction. The Applicants represent that appropriate financial and other considerations have been made in allocating approximately \$34 million of the base purchase price to the aggregate value of LDP-NJ and LDPO-NJ (the “Allocation”). The Allocation is less than the aggregate amount of the Cash Commitments.

In connection with the Closing and the Applicants’ payment of funds to effect the Proposed Transaction, the Applicants will allocate or designate a sufficient amount of cash under the Cash

Commitments to the acquisition cost or purchase price for LDP-NJ and LDPO-NJ such that not more than 49% of the Allocation consists of indebtedness under the Credit Facilities, whenever and to the extent that any such allocation or designation as between cash under the Cash Commitments and indebtedness under the Credit Facilities is or may be required or desirable or is requested by the Department. The indebtedness under the Credit Facilities will not be an obligation of, or secured by the capital stock or assets of, either LDP-NJ or LDPO-NJ.

Following the Closing, each Domestic Insurer will continue to maintain its separate corporate existence and substantially continue its operations as currently conducted. The Applicants do not propose to make any changes to the current directors and executive officers of LDP-NJ or LDPO-NJ in connection with the Proposed Transaction. The Applicants have not requested approval from the Department for the Domestic Insurers to declare extraordinary dividends following the Proposed Transaction. Further, the Applicants have no plans to liquidate or sell any assets of LDPC or the Domestic Insurers other than asset sales in the ordinary course of business. Nor do the Applicants have any current plans to make any material changes to the business operations or corporate structure or management of the Domestic Insurers other than as may arise in the ordinary course of business.

#### 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 acquisition of control is effectuated. Each of the factors 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 acquisition of control, the Domestic Insurers would not be able to continue to satisfy the requirements to transact the business for which they are presently licensed.

Second, the acquisition of control will not 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 same type of insurance business in New Jersey as the type written by the Domestic Insurers. Therefore, the transaction meets the exemption standards because the Applicants and the Domestic Insurers do not compete in any lines of business. Accordingly, the acquisition of control 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, the financial condition of the Applicants will not jeopardize the financial condition of the Domestic Insurers. The Buyer Applicants and Original WCAS Applicants are newly formed entities organized for the purpose of effectuating the Proposed Transaction. As such, historical financial statements for the Buyer Applicants and the Original WCAS Applicants are not available. Going forward, Fund 14 will prepare audited consolidated financial statements. The Original

WCAS Applicants provided the Department with a copy of the amended Form D<sup>5</sup>, which Fund 14 and Fund 14 Cayman filed with the U.S. Securities and Exchange Commission. As reflected in that filing, as of April 28, 2022, the limited partners in the WCAS Funds have committed over \$4 billion in the aggregate, which such limited partners are contractually obligated to fund within ten business days of receiving a capital call notice from the WCAS Funds. These contractual capital commitments are irrevocable. Thus, the WCAS Funds have the legal right to call over \$4 billion to make investments and cover any obligations of the WCAS Funds. The Elevance Health Applicants provided Elevance Health's Form 10-K Annual Report, including Audited Consolidated Financial Statements of Elevance Health for the Years Ended December 31, 2017, 2018, 2019, 2020, and 2021. Elevance Health, as of December 31, 2020 and 2021, reported total Shareholder's Equity of \$33.199 billion and \$36.060 billion, respectively.<sup>6</sup>

Fourth, the acquiring parties are solvent. As stated above, historical financial statements for the Buyer Applicants and the Original WCAS Applicants are not available. However, after considering the irrevocable contractual commitments discussed above, the Department is satisfied that no concerns are present. Further, the Individual WCAS Applicant submitted confidential personal financial documents, which were reviewed for adequacy and did not present concern. Ernst & Young LLP issued an unqualified opinion on the Elevance Health, Inc. consolidated balance sheets as of December 31, 2021, and 2020, the related consolidated statements of income, comprehensive income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2021, and the related notes. Elevance Health, Inc.'s operating revenue for the

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<sup>5</sup> Form D is used to file a notice of an exempt offering of securities with the U.S. Securities and Exchange Commission. Federal securities laws require the notice to be filed by companies that have sold securities without registration under the Securities Act of 1933 in an offering made under Rule 504 or 506 of Regulation D or Section 4(a)(5) of the Securities Act.

<sup>6</sup> Source: Elevance Health 2021 10-K, page 71

year ended December 31, 2021, was \$136.943 billion, an increase of \$16.135 billion, or 13.4% from the year ended December 31, 2020.<sup>7</sup> Elevance Health reported Income before tax for the years ended December 31, 2019, 2020 and 2021 was \$7.925 billion, \$6.238 billion and \$5.985 billion, respectively.<sup>8</sup> Operating cash flow for the year ended December 31, 2021, was \$8.364 billion, or approximately 1.4 times net income.<sup>9</sup> Operating cash flow for the year ended December 31, 2020, was \$10.688 billion, or approximately 2.3 times net income.<sup>10</sup> Elevance Health, Inc. maintained consolidated cash, cash equivalents and investments in fixed maturity and equity securities of \$33.660 billion at December 31, 2021. Since December 31, 2020, total cash, cash equivalents and investments in fixed maturity and equity securities increased by \$2.365 billion, primarily due to cash generated from operations.<sup>11</sup> The Applicants have also represented that they will allocate or designate a sufficient amount of cash under the Cash Commitments to the acquisition cost or purchase price for LDP-NJ and LDPO-NJ such that not more than 49% of the Allocation consists of indebtedness under the Credit Facilities.

Fifth, the Applicants do not propose to liquidate the Domestic Insurers or sell their assets. 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

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<sup>7</sup> Source Elevance Health 2021 10-K, page 51.

<sup>8</sup> Source Elevance Health 2021 10-K, page 51.

<sup>9</sup> Source Elevance Health 2021 10-K, page 51.

<sup>10</sup> Source: Elevance Health 2021 10-K, page 47.

<sup>11</sup> Source: Elevance Health 2021 10-K, page 63.

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 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 acquisition of control 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 Form A Filing 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 Form A Filing be approved.

October 11, 2022  
Date

/s/ John Rossakis  
John Rossakis  
Hearing Officer

## Exhibits List

In the Matter of the Acquisition of Control of Liberty Dental Plan of New Jersey, Inc., and Liberty Dental Plan Organization of New Jersey, Inc., by Project Freedom Parent, Inc., Project Freedom Holdings, Inc., Project Freedom Holdings, LLC, WCAS XIV, L.P., WCAS XIV Cayman, L.P., WCAS XIV Co-Investors I LLC, WCAS XIV Co-Investors II LLC, WCAS XIV Associates LLC, WCAS Management, L.P., WCAS Management, LLC, Dennis Scott Mackesy, Freedom SPV, Inc., ATH Holding Company, LLC, and Elevance Health, Inc. (f/k/a Anthem, Inc.)

- Exhibit 1 Form A Statement and related filings dated March 24, 2022
- Exhibit 2 Supplement to Form A Filing dated as of April 15, 2022. Applicants provided biographical affidavits of the officers and directors of Applicants
- Exhibit 3 Applicants' Presentation to the Department dated as of May 31, 2022
- Exhibit 4 Supplement to Form A filing dated as of June 6, 2022. Applicants Submitted Form D/A
- Exhibit 5 Supplement to Form A Filing dated as of July 19, 2022
- Exhibit 6 Supplement to Form A Filing dated as of July 27, 2022
- Exhibit 7 Supplement to Form A Filing dated as of August 12, 2022
- Exhibit 8 Supplement to Form A Filing dated as of August 16, 2022. Applicants Submitted Executed Joint Certificate Concerning Allocation of Purchase Price
- Exhibit 9 Supplement to Form A Filing dated as of August 18, 2022
- Exhibit 10 Supplement to Form A Filing dated as of August 19, 2022
- Exhibit 11 Supplement to Form A filing dated as of September 8, 2022
- Exhibit 12 Amended and Restated Form A dated as of September 14, 2022
- Exhibit 13 Waiver of 20-day notice of hearing submitted by Stephanie H. Dobecki, Esq., Sidley Austin LLP, on behalf of Buyer Applicants and WCAS Applicants
- Exhibit 14 Waiver of 20-day notice of hearing submitted by Caryn M. Glawe, Faegre Drinker Biddle & Reath LLP, on behalf of the Elevance Health Applicants
- Exhibit 15 Waiver of 20-day notice of hearing submitted by Robert Fettman, Debevoise & Plimpton, on behalf of the Domestic Insurers
- Exhibit 16 Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on September 29, 2022
- Exhibit 17 Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on September 29, 2022
- Exhibit 18 Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on September 29, 2022