

STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Form A)
Application of NEA 17 GP, LLC, NEA)
Partners 17, L.P., New Enterprise Associates)
17, L.P., Senior Housing NewCo, LLC, Senior)
Housing Buyer, Inc. and Mohamad)
Makhzoumi of Good Samaritan Insurance Plan)
of North Dakota, LLC)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER APPROVING
ACQUISITION OF CONTROL

FILE NO. CO-21-818

INTRODUCTION

On February 11, 2021, NEA 17 GP, LLC, a Delaware limited liability company (“NEA 17 GP”), NEA Partners 17, L.P., a Delaware limited partnership (“NEA Partners 17”), New Enterprise Associates 17, L.P., a Delaware limited partnership (“NEA 17”), Senior Housing NewCo, LLC, a Delaware limited liability company (“NewCo”), Senior Housing Buyer, Inc., a Delaware corporation (“Buyer” and, together with NEA 17 GP, NEA Partners 17, NEA 17 and NewCo, the “Entity Applicants”), and Mohamad Makhzoumi, an individual (the “Individual Applicant” and, together with the Entity Applicants, the “Applicants”), formally filed with the North Dakota Insurance Department (the “Department”), a Form A Statement Regarding the Acquisition of Control of a Domestic Insurer (the “Form A”). The Form A was submitted pursuant to N.D.C.C. Ch. 26.1-10 and concerned the Applicants’ proposed acquisition of Innovative Long Term Care Management, Inc., a Delaware corporation (“ILTCM”), which would result in an indirect change of control of Good Samaritan Insurance Plan of North Dakota, LLC, a North Dakota domestic health maintenance organization (the “Insurer”).

In connection with the Form A, the Applicants submitted an Agreement and Plan of Merger, dated January 20, 2021, (the “Merger Agreement”), by and among ILTCM, NewCo, Buyer, Senior Housing Merger Sub, Inc., a Delaware corporation and a direct, wholly owned

subsidiary of Buyer (“Merger Sub”), and HEP Management Corporation, a Delaware corporation, acting solely in its capacity as the representative of the Securityholders (as defined in the Merger Agreement). Pre- and post-closing organizational charts, biographical affidavits for the directors and executive officers of the Entity Applicants and the Individual Applicant, financing documents related to the transaction, three-year financial projections for the Insurer, and financial statements of the Applicants, were also attached as exhibits to the Form A.

On February 11, 2021, a public notice was issued by North Dakota Insurance Commissioner Jon Godfread (the “Commissioner”) setting a public hearing concerning the transaction for March 4, 2021 as provided in N.D.C.C. § 26.1-10-03(4). Notice of the public hearing was provided by the Applicants to Insurer as provided in N.D.C.C. § 26.1-10-03(4)(b).

The public hearing regarding the proposed transaction was held before the Commissioner at 3:00 p.m. on March 4, 2021, via videoconference. The Applicants appeared through their counsel, Jeffrey Thomas of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. and provided both pre-filed and oral testimony from Liyuan Huang, a Principal at New Enterprise Associates (“NEA”). The Insurer participated via videoconference through Will Saunders, a Director and Vice President of the Insurer. The Department appeared through Helene Herauf, attorney for the Department, and provided oral testimony from Matt Fischer, Chief Examiner for the Department.

Through the public notice of hearing that was issued, the general public was invited to make comments concerning the proposed transaction. The public was also invited to make comments concerning the proposed acquisition during the hearing. No members of the general public came forward at any time during the hearing to submit comments regarding the proposed transaction.

The matter of the acquisition of control of the Insurer by the Applicants has been considered by the Department based upon the Form A, the pre-filed written testimony received into evidence at the hearing, oral testimony submitted in connection with the hearing, and other documents filed with the Commissioner and made a part of the record.

After considering and reviewing all the documents, instruments, testimony, and materials filed or submitted in this matter, the Commissioner makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

A. Applicants' Background and Significant Affiliates

1. NEA 17 GP, NEA Partners 17 and NEA 17 are part of NEA, which is a global private investment management firm founded in 1977. NEA has over \$20 billion of committed capital since its founding.

2. NEA 17 GP is a member-managed Delaware limited liability company and has no directors or executive officers. The sole business of NEA 17 GP is to act as the general partner of NEA Partners 17. None of the twelve managing members of NEA 17 GP owns 10% or more of the voting membership interests of NEA 17 GP.

3. NEA Partners 17 is a Delaware limited partnership and has no directors or executive officers. The sole business of NEA Partners 17 is to act as the general partner of NEA 17. The sole general partner of NEA Partners 17 is NEA 17 GP. The limited partners of NEA Partners 17 constitute NEA Partners 17's only investors, and the investment funds of NEA Partners 17 comprise proceeds from investments and capital contributions from its limited partners. The limited partners of NEA Partners 17 are passive investors with no operational control or voting power over NEA Partners 17.

4. NEA 17 is a Delaware limited partnership and has no directors or executive officers. Its sole general partner is NEA Partners 17. The general partner and the limited partners of NEA 17 constitute NEA 17's only investors, and the investment funds of NEA 17 comprise proceeds from investments and capital contributions from its general partner and limited partners. The limited partners of NEA 17 are passive investors with no operational control or voting power over NEA 17.

5. NewCo, was formed as a Delaware limited liability company on October 9, 2020 for the purpose of effecting the proposed transaction. NewCo is managed by a board of managers. Immediately following the closing of the proposed transaction, it is expected that NEA 17 will own approximately 64% of NewCo's voting membership interests and will be the only member of NewCo that will own 10% or more of NewCo's voting membership interests.

6. Buyer was incorporated as a Delaware corporation on October 12, 2020 for the purpose of effecting the proposed transaction and acquiring 100% of the voting securities of ILTCM. Buyer is controlled by its sole shareholder, NewCo. From time to time, Buyer may evaluate and execute on opportunities to invest in additional companies involved in the healthcare industry.

7. The Individual Applicant is one of twelve managing members of NEA 17 GP and is the President and sole director of Buyer. Because the Individual Applicant also has management roles related to certain other Entity Applicants in the chain of control of Buyer, the Individual Applicant may be deemed to ultimately control the Entity Applicants.

B. Insurer's Background and Significant Affiliates

1. The Insurer is a North Dakota domestic health maintenance organization.

2. Good Samaritan Insurance Plan, LLC, a Delaware limited liability company, currently owns 100% of the Insurer's issued and outstanding voting membership interests.

3. The Insurer is an indirect, partially owned subsidiary of ILTCM.

C. Form A Filing and Related Procedural History

1. On February 11, 2021, the Applicants filed the Form A regarding the proposed transaction with the Commissioner pursuant to N.D.C.C. § 26.1-10-03. The Form A provides the entire and complete information required by N.D.C.C. § 26.1-10-03. On February 11, 2021, a public notice was issued by the Commissioner to set a public hearing concerning the transaction on March 4, 2021 as provided in N.D.C.C. § 26.1-10-03(4). Notice of the public hearing was provided by the Applicants to the Insurer. The public hearing regarding the proposed transaction was held before the Commissioner at 3:00 p.m. on March 4, 2021 via videoconference. The Commissioner left the record open for seven days following completion of the public hearing. The open period of the record was extended for another seven days and this extension was agreed upon by both parties. The record was ultimately closed on March 18th.

D. Proposed Transaction

1. Subject to approval from the applicable regulatory authorities, Merger Sub intends to merge with and into ILTCM with ILTCM continuing as the surviving company.

2. ILTCM will become a wholly owned subsidiary of Buyer, which, in turn, is controlled by the other Entity Applicants and the Individual Applicant.

E. Requirements for Issuance of a Certificate of Authority

1. The transaction will not negatively affect the Insurer's level of capital and surplus. Following the acquisition, the Insurer will have the same management who will hold the same positions as they held prior to the acquisition.

2. Following the acquisition, the Insurer's policies and procedures for complying with applicable laws will be the same as they were prior to the acquisition. Accordingly, following the acquisition, the Insurer will still satisfy the requirements for issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.

F. Competition in Insurance and Impact on Insurance Buying Public

1. No affiliate of the Applicants is licensed to transact insurance in the State of North Dakota.

2. Pursuant to N.D.C.C. § 26.1-10-03.1(2)(b)(4)(b), the transaction meets the pre-acquisition notification exemption standards because it will not result immediately in an increase in market share in any line of business in North Dakota. Consequently, the effect of the acquisition by the Applicants will not tend to substantially lessen competition or tend to create a monopoly in any line of insurance in North Dakota.

3. Testimony from Liyuan Huang during the hearing established that the Applicants do not have any plans to make any material changes to the Insurer's policies currently issued to policyholders.

G. Applicants' Financial Status

1. The Applicants submitted all requested financial statements, organizational charts, and biographical affidavits for their directors and executive officers with the Form A.

2. The financial condition of the Applicants is such that the financial condition of the Insurer would not be jeopardized by the acquisition. Furthermore, the acquisition will not prejudice the interests of the Insurer's policyholders.

H. Plans and Proposals for the Domestic Insurer

1. Following the closing of the transaction, the Insurer will continue to maintain its separate corporate existence and substantially continue its operations as currently conducted.

2. The Applicants have no present plans or proposals to liquidate the Insurer, to sell its assets, to consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management.

I. Applicant's Management

1. The Entity Applicants are managed by professionals, including the Individual Applicant, who have demonstrated competence, experience, and integrity in financial services operations and who possess significant corporate and commercial experience. The competence, experience, and integrity of such individuals is such that it would not be against the interests of the policyholders of the Insurer or against the interests of the general public if the Applicants were permitted to acquire control of the Insurer.

J. Effect of the Acquisition on the Insurance Buying Public

1. The Insurer will be managed substantially consistent with the way it is currently managed and, given the experience and financial strength of the Applicants, the acquisition will not be hazardous or prejudicial to the insurance buying public.

K. Department's Recommendation

1. Matt Fischer, Chief Examiner with the Department, reviewed the Form A and all of the corresponding exhibits.

2. Mr. Fischer, on behalf of the Department, testified that he considered the criteria outlined in N.D.C.C. § 26.1-10-03(4)(a) through (f) and concluded that: (i) following the acquisition, the Insurer would still satisfy the current capital and surplus requirements under North

Dakota law for issuance of a certificate of authority to write the lines of insurance for which it is presently licensed; (ii) the proposed acquisition would not have the effect of substantially lessening competition in insurance in North Dakota or tend to create a monopoly; (iii) the financial condition of the Applicants will not jeopardize the financial stability of the Insurer or prejudice the interests of Insurer's policyholders[, and in fact would strengthen the financial position of the Insurer and the interests of the Insurer's policyholders by providing access to the strong capital base of the Applicants]; (iv) there was no evidence that the Applicants had any plans 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; (v) the evidence suggested that the competence, experience and integrity of the directors, officers and management of the Applicants, including the Individual Applicant, are such that it will be in the interests of the Insurer and of the public to permit the acquisition to occur; and (vi) there is no evidence that the acquisition is likely to be hazardous or prejudicial to the insurance buying public.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the proposed acquisition pursuant to N.D.C.C. ch. 26.1-10.
2. The Form A and its exhibits meet all of the filing requirements provided pursuant to N.D.C.C. § 26.1-10-03.
3. The Applicants have met the procedural requirements of N.D.C.C. Ch. 26.1-10 regarding seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.

4. The hearing in this matter was duly noticed and conducted pursuant to the requirements of N.D.C.C. § 26.1-10-03(4) and an order approving or disapproving the proposed acquisition may be issued based upon the Form A filed with the Commissioner by the Applicants.

5. The Commissioner shall approve an acquisition of control governed by N.D.C.C. § 26.1-10-03 unless the Commissioner finds that:

- a. After the change of control, the domestic insurance company would not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.
- b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in North Dakota.
- c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of its policyholders.
- d. The plans or proposals which the acquiring party has to liquidate the insurance company, 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 company and not in the public interest.
- e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.

f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

6. The proposed acquisition of control of North Dakota domestic insurer Good Samaritan Insurance Plan of North Dakota, LLC constitutes a change of control under the provisions of N.D.C.C. Ch. 26.1-10 and is subject to prior approval of the Commissioner.

7. Based on the Findings of Fact, the evidence does not suggest that any of the events or conditions listed in N.D.C.C. § 26.1-10-03(4) would occur or exist after the acquisition of control; therefore, the evidence does not form a basis upon which the proposed acquisition of Good Samaritan Insurance Plan of North Dakota, LLC by the Applicants should be denied.

8. Considering the entirety of the evidence contained in the record, it is appropriate to approve the transaction.

NOW, THEREFORE, based upon the representations and sworn testimony of the parties and the above Findings of Fact and Conclusions of Law, the Commissioner enters an Order as follows:

ORDER

The proposed acquisition of Good Samaritan Insurance Plan of North Dakota, LLC by NEA 17 GP, LLC, NEA Partners 17, L.P., New Enterprise Associates 17, L.P., Senior Housing NewCo, LLC, Senior Housing Buyer, Inc. and Mohamad Makhzoumi, in accordance with the provisions of the Form A Statement Regarding the Acquisition of Control of a Domestic Insurer filed with the North Dakota Insurance Department is **HEREBY APPROVED**.

The Commissioner will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

Dated this 22nd day of March, 2021.



Jon Godfread, Commissioner
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