

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402  
: and 1403 of the Insurance Holding  
Application of Cigna Corporation and : Companies Act, Article XIV of the  
Halfmoon Parent, Inc. in Support of the : Insurance Company Law of 1921, Act  
Request for Approval to Acquire Control : of May 17, 1921, P. L. 682, as  
of Medco Containment Life Insurance : amended, 40 P.S. §§991.1401,  
Company : 991.1402 and 991.1403  
: :  
: Order No. ID-RC-18-12

DECISION AND ORDER

AND NOW, on this 24<sup>th</sup> day of October, 2018, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Holding Companies Act and in consideration of the documents, presentations and reports received, as well as other inquiries and studies as permitted by law, the Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

**Identity of Parties**

Identity of PA Domestic Insurer

1. Medco Containment Life Insurance Company (“Medco”) is a domestic stock life insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in St. Louis, Missouri.
2. Express Scripts Holding Company, Inc. (“Express Scripts”) is a Delaware corporation with its principal place of business in St. Louis, Missouri. The stock of Express Scripts is publicly traded on the Nasdaq Global Select Market. Medco is an indirect wholly-owned subsidiary of Express Scripts.

3. No person controls 10% or more of the voting securities of Express Scripts.
4. Express Scripts is the ultimate controlling person of Medco.

#### Identity of Applicant

5. Cigna Corporation (“Cigna”) is a Delaware corporation with its principal place of business in Bloomfield, Connecticut. The stock of Cigna is publicly traded on the New York Stock Exchange. No person controls 10% or more of the voting securities of Cigna.
6. Halfmoon Parent, Inc. (“Holdco”) is a newly-formed Delaware corporation with its principal place of business in Bloomfield, Connecticut. Holdco is a direct wholly-owned subsidiary of Cigna. Cigna and Holdco are collectively hereinafter referred to as “Applicants.”
7. Halfmoon I, Inc. (“Merger Sub 1”) is a newly-formed Delaware corporation with its principal place of business in Bloomfield, Connecticut. Merger Sub 1 is a direct wholly-owned subsidiary of Holdco.
8. Halfmoon II, Inc. (“Merger Sub 2”) is a newly-formed Delaware corporation with its principal place of business in Bloomfield, Connecticut. Merger Sub 2 is a direct wholly-owned subsidiary of Holdco.

#### **Acquisition Filing**

9. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1922, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. (“Insurance Holding Companies Act”), provides that all changes in control of domestic insurers must be filed with the Commissioner for approval or disapproval.
10. On April 20, 2018, the Insurance Department of the Commonwealth of Pennsylvania (“Department”) received an application (which together with all material received subsequently is hereinafter referenced as “Application”) from Applicants for approval to acquire control of Medco.
11. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

#### **Department Procedures**

12. On May 12, 2018, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Applicants and such notice invited interested persons to submit comments to the Department regarding the Application for 30 days following

the date of the publication (“Comment Period”).

13. The Department received no comments regarding the Application during the Comment Period.

#### **Description of the Proposed Acquisition**

14. As described in the Application, on March 8, 2018, Cigna, Express Scripts, Holdco, Merger Sub 1 and Merger Sub 2 entered into an Agreement and Plan of Merger (“the Merger Agreement”).
15. As described in the Application and pursuant to the Merger Agreement, Applicants will acquire indirect control of Medco upon the closing of the following transactions contemplated by the Merger Agreement (collectively, the “Merger”):
  - a) Merger Sub 1 will merge with and into Cigna, the separate corporate existence of Merger Sub 1 will cease, and Cigna will continue as the surviving corporation. Each share of common stock of Merger Sub 1 will be converted automatically into one share of common stock of Cigna. Subject to certain customary exceptions, each share of common stock of Cigna will be converted into one share of common stock of Holdco. As a result, Cigna will become a direct, wholly-owned subsidiary of Holdco.
  - b) Concurrently, Merger Sub 2 will merge with and into Express Scripts, the separate corporate existence of Merger Sub 2 will cease, and Express Scripts will continue as the surviving corporation. Each share of common stock of Merger Sub 2 will be converted automatically into one share of common stock of Express Scripts. Subject to certain customary exceptions, each issued and outstanding share of common stock of Express Scripts will be converted automatically into 0.2434 of a share of common stock of Holdco and the right to receive \$48.75 in cash consideration, subject to applicable withholding taxes (together the “Merger Consideration”). As a result, Express Scripts will become a direct, wholly-owned subsidiary of Holdco.
16. Pursuant to the Merger Agreement and the filings to be made with the Secretary of State of the State of Delaware to implement the Merger, the consummation of the Merger will result in the certificate of incorporation and by-laws of each of the surviving companies being amended and restated in the form of the certificate of incorporation and the by-laws of the non-surviving merger sub companies.
17. As described in the Application, upon the closing of the Merger, Cigna-legacy shareholders collectively are expected to own approximately 64% of Holdco, and Express Scripts-legacy shareholders collectively are expected to own approximately

36% of Holdco.

18. As described in the Application, common stock received by Cigna stockholders and Express Scripts stockholders in the Merger are expected to be listed on the New York Stock Exchange.
19. As described in the Application, no person, as a result of receiving the stock consideration in connection with the Merger, will control 10% or more of the voting securities of Holdco following the Merger.
20. As described in the Application, immediately after the Merger, Holdco will be renamed Cigna Corporation and Cigna will be renamed a name that is yet to be determined.
21. As described in the Application, Cigna expects to use cash on hand and debt financing to fund the cash component of the Merger Consideration.
22. As described in the Application and subsequent to the Merger, Holdco would indirectly control 100% of the issued and outstanding stock of Medco.
23. As described in the Application, Holdco would become the sole ultimate controlling person of Medco as a result of the Merger.

#### **Standards for Review**

24. Section 1402(f)(1) of the Insurance Holding Companies Act establishes the standards for approval of an application for a change in control of a domestic insurer.
25. An application for a change in control must be approved unless the Department finds any one of certain enumerated conditions to be present.

#### **Licensing Requirements**

26. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act, the Commissioner reviews the requirements for continued licensure of the domestic insurer being acquired.
27. Specifically, the Department reviews whether the domestic insurer would 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 after the acquisition.
28. The lines of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law (40 P.S. §382).

29. The minimum paid up capital stock and paid in surplus required of a stock insurer for each line of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. §386).
30. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Medco is required to maintain a minimum paid up capital stock of \$1,100,000 and a minimum paid in surplus of \$550,000 to write the lines of insurance for which it is presently licensed.
31. Upon completion of the Acquisition, Medco will have the statutory minimum paid up capital stock and paid in surplus to satisfy the requirements to write the lines of insurance for which it is presently licensed.

#### Competitive Impact

32. The acquisition of control of a domestic insurer is subject to review and analysis under Section 1402(f)(1)(ii) of the Insurance Holding Companies Act to determine whether the effect of the acquisition of control would be to substantially lessen competition in this Commonwealth or tend to create a monopoly therein, as per 40 P.S. §991.1402(f)(1)(ii) (the "competitive standard").
33. In applying the competitive standard, the informational requirements of Section 1403(c)(2) and the standards of Section 1403(d)(2) are applicable.
34. The proposed acquisition of control qualifies for the exemptions set forth in Section 1403(b)(2)(v)(A)-(C) of the Insurance Holding Companies Act for all lines of business as contained in the annual statement required to be filed by insurers licensed to do business in this Commonwealth.
35. The acquisition of control of Medco will not lessen competition or tend to create a monopoly in the Commonwealth because the market shares of those insurance company subsidiaries of the Applicants licensed to transact the business of insurance in Pennsylvania and the market shares of the insurance company subsidiaries of Express Scripts licensed to transact the business of insurance in Pennsylvania, as stated in the Application, do not exceed the market share levels established in Section 1403 of the Insurance Holding Companies Act.

#### Financial Condition of Applicant

36. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the financial condition of the acquiring person(s).

37. The Department has reviewed the pro forma combined consolidated statements of Cigna and Express reflecting the results of the transaction.
38. Based upon the information provided, the combined consolidated balance sheet projected total assets of \$152,075 million, and shareholders' equity of \$40,981 million.
39. The Department does not find that the financial condition of Holdco is such that it might jeopardize the financial stability of Medco or prejudice the interests of policyholders.

Plans for the Acquired Insurer

40. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the plans or proposals which the acquiring party has for the insurer.
41. In particular, the Department reviewed 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, to determine whether it is:
  - a) Unfair or unreasonable;
  - b) Fails to confer a benefit upon policyholders; or
  - c) Not in the public interest.
42. As stated in the Application, Applicants have no present plans or proposals to cause Medco to declare any extraordinary dividend, to liquidate Medco, to sell the assets of Medco, to merge Medco with any person or persons, or to make any other material change to Medco's business operations or corporate structure or management.
43. As stated in the Application, upon closing of the Merger, the board of directors of Holdco shall consist of 14 directors, comprising of:
  - a) Eight independent members of the board of directors of Cigna as of immediately prior to the closing,
  - b) The Chief Executive Officer of Cigna,
  - c) A named physician who was appointed as an independent director of Cigna, effective as of the earlier of December 1, 2018, or of the date on which the Merger is completed; and,

- d) Four independent members of the Board of Directors of Express Scripts as of immediately prior to the closing.
44. As stated in the Application, the board of directors of Merger Sub 2 (all representatives of Cigna) will replace the board of directors of Express Scripts post-merger.
45. As stated in the Application, except as may be determined by Cigna in its sole discretion prior to the closing, the existing executive officers of Express Scripts will continue to serve as the executive officers of Express Scripts post-merger.
46. As stated in the Application, Applicants have no present plans or intentions to change the directors or executive officers of Medco or Medco Health Solutions, Inc., Medco's direct parent company.
47. There is no basis in the record from which it may be concluded that the plans or proposals which the acquiring party has for the insurer are unfair or unreasonable or fails to confer a benefit upon policyholders or are not in the public interest.

#### Management

48. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the competence, experience and integrity of the persons who will control the operations of the acquired insurer.
49. Biographical affidavits for all representatives of Cigna who currently serve and/or will serve on the board of directors and/or as executive officers of Holdco, Cigna and/or Express Scripts after the Merger were reviewed by the Department.
50. The Department is satisfied that the persons who would control the operations of Medco have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.

#### Hazardous or Prejudicial to Insurance Buying Public

51. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department evaluates whether the merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.
52. As stated in the Application, Applicants claim that the combined company will be positioned to continue to deliver industry-leading medical cost trend and enhanced quality of care to its member. Additionally, Applicants claim that the combined company's expanded repository of actionable data will allow for early prediction, prevention and interventions for diseases and conditions, leading to better health care

outcomes.

53. There is insufficient evidence in the record from which it may be concluded that the acquisition will likely be hazardous or prejudicial to the insurance buying public.

#### Compliance with the Pennsylvania Laws

54. When analyzing an application for an acquisition of control involving a domestic insurer under Section 1402 of the Insurance Holding Companies Act, the Department reviews the transaction to determine whether the merger, consolidation or other acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A.
55. The Department has evaluated the transaction as set forth by the Application as to whether it is in compliance with the laws of Pennsylvania.
56. If any of the above Findings of Fact are determined to be Conclusions of Law, they shall be incorporated in the Conclusions of Law as if fully set forth therein.

#### CONCLUSIONS OF LAW

1. Under Section 1402 of the Insurance Holding Companies Act, the Department has jurisdiction to review and approve the change in control of ASIC.
2. Under Section 1402 of the Insurance Holding Companies Act, the Department must approve an application for a change in control unless the Department has found that:
  - a) The insurer will not be able to satisfy the requirements for the issuance of a license to operate the line or lines of business for which they are presently licensed;
  - b) The change in control will substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein;
  - c) The financial condition of the acquiring company is such as might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;
  - d) Any plans to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make material changes in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurers and not in the public interest;



- e) 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 and the general public to permit the acquisition of control ; or,
  - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
  - g) The acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.
3. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner has not found that any of the above conditions are present with respect to the change in control of ASIC.
4. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

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: Order No. ID-RC-18-12

ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”) hereby makes the following Order:

The application of Cigna Corporation and Halfmoon Parent, Inc. (collectively hereinafter referred to as “Applicants”) in support of the request for approval to acquire control of Medco Containment Life Insurance Company (“Medco”) as set forth in the application, is hereby approved, subject to this Order and the following conditions:


1. Applicants shall provide to the Department a list of closing documents within five (5) days after consummation of the subject transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of consummation.
2. Express Scripts Holding Company, Inc. and its subsidiaries are prohibited from including a “most favored nation” provision, whether written or oral, in any agreement with any Cigna-affiliated health insurer licensed in Pennsylvania.
3. Applicants shall develop, implement, monitor the operation of and enforce strict compliance with a firewall policy. The firewall policy shall be in a form and substance acceptable to the Department. Within thirty (30) days after consummation of the subject transaction, Applicants shall file with the Department, for the review and approval of the Department, a comprehensive firewall policy. Applicant shall not make any material amendment, waive enforcement of or terminate any material provision of the approved firewall policy without the approval of the Department. Approved

firewall policy implementation and enforcement shall be subject to review and/or examination by the Department, or consultants retained by the Department at the expense of the Applicants, to the extent that the Department believes that such review and/or examination is in the public interest.

4. Applicants have represented in the Application that certain consumer benefits will be achieved as a result of the proposed transaction. As such, Applicants shall provide to the Department annually, and for the first 3 years following the closing of the transaction, documentation detailing the progress Applicants have made in achieving the projected outcomes (i.e. delivery of industry-leading medical cost trend, enhanced quality of care and better health care outcomes). Said documentation shall be filed on or before May 1 and shall not be a public record.

This Order is effective immediately and valid for one (1) year, provided no material changes are made to the transaction prior to consummation. This one year limitation does not apply to any conditions prescribed by the Department in the Order.



  
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Jessica K. Altman  
Insurance Commissioner  
Commonwealth of Pennsylvania