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Bybee, Cressinda

From: Bybee, Cressinda
Sent: Tuesday, December 11, 2018 4:08 PM
To: 'Spencer, Scott H.'
Subject: PCA/PIPE/PPIX - Plans of Conversion
Attachments: PCA PIPE PPIX 2018 IRL

Good Afternoon Scott - See attached initial review letter. Feel free to call me to discuss any of the items within the letter.

Thank you,
Cris

Cressinda E. Bybee | PIR | Chief, Company Licensing Division
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December 11, 2018

Scott Spencer, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101

Re: Professional Casualty Association, Physicians' Insurance Program Exchange,
and Positive Physicians Insurance Exchange – Reciprocal-to-Stock Conversions

Dear Mr. Spencer:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of the subject application. Based upon this preliminary review, the Department has compiled the below list of additional items necessary to the review of the filing. Your responses and any related documents will become part of the public files, unless you have asserted the confidentiality of the information and the Department has accepted such assertion. When preparing your response, please reference the number of the Department's request to which you are responding.

1. Application

- a. Provide copies of the resolutions in which the various boards adopted the Plans and subsequent amendments.
- b. Provide a stamped copy of the Articles of Incorporation filed with the Department of State for PCA Conversion Corp., PIPE Conversion Corp., PPIX Conversion Corp. and Positive Physicians Holdings, Inc.
- c. Positive Physicians Insurance Company – Amended and Restated Articles of Incorporation – FIFTH paragraph (with footnote – 112,500 shares at \$10 per share) is not consistent with the filing application (page 4, para. 3 – 150,000 shares at \$5 per share). The required minimum paid up capital upon conversion will be \$750,000 with required paid in surplus of \$350,000.
- d. The department will not approve PPIX's request for permission to pay a \$1,125,000 dividend on the closing date to Positive Physicians Holdings, Inc. Dividends from the converting insurer for the purpose of establishing the minimum required capitalization of the surviving stock insurance company have historically only been permitted in the case of a conversion within a mutual holding company structure.

- e. Please address compliance with 991.1403(c)(3)(ii). The bylaws of Positive Physicians Holdings, Inc., Section 3.1. Committees. does not include language setting out the requirement for independent director representation on each committee and in a quorum.
- f. Provide a copy of the term sheet and definitive loan documents between Positive Physicians Holdings, Inc. and Legacy Texas Bank (referenced on page 9 of the application).
- g. Provide a copy of the exchangeable note and principal loan documents in connection with the credit facility to Diversus.
- h. Provide copies of all merger agreements.
- i. Provide the status of Certificate of Authority applications filed by PPIX in Michigan and South Carolina.
- j. The application included a request for approval of the Management Agreement. The Management Agreement should be filed as a Form D with Doug Coleman, assigned analyst for PCA/PIPE/PPIX.

2. Plan of Conversion

- a. 4.(a) Independent Appraiser. Please explain the statement: “The Valuation Range will be based upon ... the adjusted statutory surplus of PCA, PIPE, and PPIX on a combined basis as converted to a stock company” It is my understanding that Feldman valued each company individually and did not look at the value of the combined companies. Please explain.
- b. 4.(e)(ii) Please explain the statement: “To the extent that shares of Common Stock remain unsold ... Holdco shall have the right ... to accept... from the Standby Purchaser or from ICG” Similar language also appears in subparagraph (iii). Please explain given that ICG is a Standby Purchaser.
- c. Exhibit B – Eligible Stockholders of Diversus, Inc. – Please identify the “Eligible Stockholders of Diversus, Inc.” including the class and amount of stock holdings in Diversus, Inc. Identify the amount of stock of Positive Physicians Holdings, Inc. each eligible stockholder of Diversus will be entitled to purchase under the Plans.

3. Proxy Statement

- a. The Conversion (page 5, paragraph 1) – “The Conversion involved a series of transaction by which PPIX will convert from a reciprocal insurance exchange to a stock insurance company. Following the Conversion, PPIX will merge into PPIX

Conversion Corp....” Isn’t the means by which the conversion occurs through the merger of PPIX into PPIX Conversion Corp.?

- b. Provide the form of proxy (for each company) to be solicited from eligible subscribers under 3502(h).

4. General

- a. Provide copies of any comments received that are not already on file with the department.
- b. Describe A.M. Best’s reaction to the series of transactions.
- c. Provide the number of Eligible Members and report on each company’s success in obtaining addresses for all such members.
- d. Provide the form of notice required under Section 3507 of the Act to persons whose policies are issued after adoption of the plan, but before its effective date.
- e. Provide a copy of each exchange’s subscriber surplus contribution agreement highlighting any discussion regarding a subscriber’s right to a return of their surplus contribution.

Feel free to contact me at (717) 783-2144 or cbybee@pa.gov to discuss any of the above requests.

Sincerely,



Cressinda E. Bybee
Chief, Company Licensing Division