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Brackbill, Robert

From: Brackbill, Robert
Sent: Tuesday, March 27, 2012 3:25 PM
To: 'jack.stover@bipc.com'
Subject: UPE/Highmark Form A Filing: Letter from Deputy Commissioner Stephen Johnson
Attachments: 20120327120658523.pdf

Mr. Stover,

Please see the attached letter from Deputy Commissioner Stephen Johnson.

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March 27, 2012

Jack M. Stover, Esquire
Buchanan Ingersoll & Rooney PC
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101-2121

RE: UPE's March 5, 2012 and March 13, 2012 Responses to Pennsylvania Insurance Department's January 9, 2012 Information Request Regarding the Application of UPE for Approval of the Acquisition of Control of Highmark, Inc. and its Pennsylvania Domiciled Insurance Subsidiaries

Dear Mr. Stover:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of UPE's March 5, 2012 and March 13, 2012 Responses to the Department's January 9, 2012 Information Request (the "1/9/12 Request").

The purpose of this letter is to review a number of specific issues. However, the fact that certain issues are contained in this letter does not diminish the priority or necessity of UPE responding to the other requests set forth in the 1/9/12 Request.

Requests 2.4.3.1-7 - Amount and sources of funding, etc.

A. Requests 2.4.3.1 through 2.4.3.7 provides:

"2.4.3.1 Describe the amount and source of funds for any funding, contributions, loans or advances currently anticipated to be made by Highmark, any Highmark Affiliate, (including but not limited to [the] UPE and/or by the UPE Provider Sub) to": UPE (2.4.3.2); the UPE Provider Sub (2.4.3.3); WPAHS (2.4.3.4); any WPAHS Affiliate (2.4.3.5); Highmark (2.4.3.6); and/or any other Highmark Affiliate (2.4.3.7).

B. The Response is based solely on the Affiliation Agreement and does not fully respond to the Request.

C. Action Required: Please provide additional information to fully respond to Requests 2.4.3.1 to 2.4.3.7 or provide the following certification to the Department: "UPE [and/or Highmark] certifies that, other than as set forth in the Affiliation Agreement, no funding, contributions, loans or advances are currently

anticipated to be made (including any funding, contributions, loans or advances) by Highmark, any Highmark Affiliate (including but not limited to UPE and/or by the UPE Provider Sub) to UPE, the UPE Provider Sub, WPAHS, any WPAHS Affiliate, Highmark and/or any other Highmark Affiliate either before or after the Transaction is completed.”

Request 2.4.3.9 - Criteria used in determining Consideration.

A. Request 2.4.3.9 provides:

“2.4.3.9 Explain in detail the criteria used in determining the nature and amount of the Consideration and provide a copy of all Expert Opinions relating thereto.”

B. “Consideration” is defined in the 1/9/2012 Request as “. . . funds or other consideration. . . used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document). . . .”

C. Action Required: Please respond to the following supplemental questions:

- (1) According to the Response, the decision regarding the "final" amount was "informed" by due diligence work completed by Alvarez Marsal ("AM"). What does this mean?
- (2) After the delivery of the AM report, what action was taken by management to determine the Consideration amount?
- (3) Other than the AM report, were any other relevant Expert Opinions or other relevant data received or reviewed by any Highmark and WPAHS Entity?
- (4) If any such data or reports referenced in C(3) above exist, please provide a copy of this information.

Request 3.1 - Pre- and/or post-closing filings, consents and/or approvals.

A. Request 3.1 provides:

“3.1 Are there any pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4?”

B. This Response does not directly respond to the question posed in the Request.

- C. In addition, the Response is limited to cross-references to UPE's Responses to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5) 3.3 and 3.5. The March 13, 2012 non-confidential letter to you referenced the fact that those Responses were not complete.
- D. Action Required:
- (1) Please provide a certification that there are no pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4 and other than those disclosed in Response to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5) 3.3 and 3.5.
 - (2) Also, please respond to the March 13, 2012 non-confidential letter action requirement regarding UPE's Response to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5) 3.3 and 3.5.

Request 4.2.13.

- A. Request 4.2.13 provides:
- “Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.”
- B. The Response “we understand” is not a direct and complete answer to the Request.
- C. The Response does not describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.
- D. Action Required:
- (1) UPE or Highmark must make affirmative statements in the Response as if such statements were provided in a Form A filing that is filed pursuant to section 1402 of the Act (40 P.S. § 991.1402;
 - (2) Please describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and if not, why not.

Request 4.3.10 - Copies of grant and loan agreements.

A. Request 4.3.10 provides:

“4.3.10 Provide a full and complete copy of all grant and loan agreements for all financial commitments made from Highmark and/or Highmark Affiliates to WPAHS and/or WPAHS Affiliates.”

B. The Response discusses documents only related to the Transaction.

C. Action Required:

- (1) Response to Additional Question - Are there any funding agreements (in whatever form) between any Highmark Affiliates (including the Highmark Foundation, which we understand is an independent 501(c)(3) nonprofit corporation that is funded exclusively or almost exclusively by Highmark)?
- (2) If so, kindly provide a description and copy of these.

Request 4.4.2.1 - Description of governance, reporting lines and regulatory oversight.

A. Request 4.4.2.1 provides:

“4.4.2.1 Provide a detailed description of governance, reporting lines and structure for regulatory oversight of economic transfers between UPE, the UPE Provider Sub and/or any Highmark and WPAHS Entity.”

B. The Response very generally describes the governance and structure of various entities once the Transaction is completed. It says nothing about the “regulatory oversight of economic transfers between UPE, the UPE Provider Sub and/or any Highmark and WPAHS Entity.”

C. Action Required: Response to Additional Questions - What specific controls, regulatory oversight, reporting lines and/or regulatory structure, if any, will exist specifically with respect to:

- (1) Economic transfers, directly or indirectly (irrespective of how characterized), between Highmark and (i) UPE; (ii) the UPE Provider Sub; (iii) WPAHS; and/or (iv) any WPAHS Affiliate?
- (2) Economic transfers, directly or indirectly (irrespective of how characterized), between UPE and (i) Highmark; (ii) the UPE Provider Sub; (iii) WPAHS; and/or (iv) any WPAHS Affiliate?
- (3) Economic transfers, directly or indirectly (irrespective of how characterized), between the UPE Provider Sub and (i) UPE; (ii) Highmark; (iii) WPAHS; and/or (iv) any WPAHS Affiliate?

- (4) Economic transfers, directly or indirectly (irrespective of how characterized), between WPAHS and (i) the UPE Provider Sub; (ii) UPE; (iii) any WPAHS Affiliate; and/or (iv) Highmark?
- (5) Economic transfers, directly or indirectly (irrespective of how characterized), and reporting lines, if any, between any WPAHS Affiliate and (i) WPAHS; (ii) the UPE Provider Sub; (iii) UPE; and/or (iv) Highmark?

Request 4.4.4 - Changes to employment levels.

- A. Request 4.4.4 provides:

“4.4.4 Identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.”
- B. The Response states that UPE does not anticipate “any significant changes to employment levels at Highmark or WPAHS.” The information request asked for identification of “any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.” The Response does not fully respond to Request 4.4.4.
- C. Action Required: Please fully identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved. This includes all anticipated changes in staffing (regardless of whether an employment relationship exists) including physicians.

Request 5.1.1.6 - Restrictions to geographic areas.

- A. Request 5.1.1.6 provides:

“Any contract, agreement or document that defines or restricts the geographic area in which the entity does business or the products(s) it offers.”
- B. The Response is a general cross-reference to the Responses to Requests 4.6.3 and 5.1.1.5. It is unclear from the Response exactly what documents are being referenced and there is no statement that the documents cross-referenced are all of the responsive documents.
- C. Action Required: Please list specific pages or Bates stamp references with respect to the cross-referenced material. Also, please provide a certification that the cross-referenced material comprises all of the contracts, agreements or documents that define or restrict the geographic area in which the Applicant, Highmark, each

Highmark Affiliate, the UPE Provider Sub, WPAHS and each WPAHS Affiliate does business or with respect to the product(s) any of them offers.

Request 5.2.5.2 - Anticipated changes to providers and/or provider networks.

- A. Request 5.2.5.2 provides:
- “5.2.5.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.”
- B. The Response is inadequate as it is merely provides a cross-reference to a yet-to-be-submitted confidential response to Request 4.2.14, which does not necessarily involve the same information as that sought in response to Request 5.2.5.2.
- C. Request 4.2.14 relates to expansion or termination of products and services not “anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction.” It is entirely possible that there are changes in providers and/or provider networks that do not involve the “expansion or termination of products and services.”
- D. Action Required:
- (1) Please provide a Response to Request 5.2.5.2 that focuses specifically on anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction.
 - (2) If there are no anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction other than any expansion or termination of products and services discussed in UPE’s Response to Request 4.2.14, please submit a certification to that effect.

Request 6.1 – Section 5922(d) of PA Non Profit Law.

- A. Request 6.1 provides:
- “If the entity is a membership corporation, discuss how each Highmark and WPAHS Entity has complied or plans to comply with section 5922(d) of the Non Profit Law and its bylaws concerning member or subscriber approval of the Transaction.”
- B. In its Response to this Request, UPE states:
- “The structure of the Transaction does not involve a merger or consolidation that would be subject to section 5922(d) of the Nonprofit

Law. As such, no action needs to be taken by any entity that is a membership corporation on account of section 5922(d) of the Nonprofit Law.”

- C. UPE’s statement in response to Request 6.1 that the Transaction does not constitute a merger or consolidation and Ms. Dermody’s statement (referenced beginning on page 6 of the March 13, 2012 letter to you regarding Request 3.4.1 (Hart/Scott/Rodino)) that the Transaction constitutes a consolidation appear inconsistent.
- D. Action Required: Please review the Response to Request 6.1 and the Dermody letter and advise what effect the different positions have with respect to the Transaction.

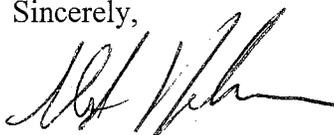
No Affirmative Statement Provided.

- A. In many Responses, UPE either states “UPE believes”; “as far as UPE is aware”; “we understand”; or provides other qualifying language when providing information in response to the 1/9/12 Request, including, without limitation:
 - (1) Request 4.1.2 (Licensee Status).
- B. Action Required: UPE, Highmark and/or WPAHS must make affirmative statements to the Department as if such statements were provided in a Form A filing that is filed pursuant to Section 1402 of the Act (40 P.S. § 1402).

Please be advised that the Department reserves the right to request additional information and documentation, above and beyond the requests set forth in the 1/9/12 Request and in this letter, based on its continued review of the Form A filings, including UPE’s March 5, 2012, March 13, 2012, and prior Responses and additional responses to be made by UPE. These requests are continuing requests and Applicants should promptly update their Responses as soon as new information becomes available. Feel free to contact the Department for clarification.

As UPE has requested expedited treatment of the filing, the Department requests that you respond to this letter on or before April 10, 2012.

Sincerely,



Stephen J. Johnson, CPA
Deputy Insurance Commissioner
Office of Corporate and Financial Regulation