

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402  
: and 1403 of the Insurance Holding  
Application of Wilmington Insurance : Companies Act, Article XIV of the  
Company in Support of the Request for : Insurance Company Law of 1921, Act  
Approval to Acquire Control of Freedom : of May 17, 1921, P. L. 682, as  
Advantage Insurance Company : amended, 40 P.S. §§991.1401,  
: 991.1402 and 991.1403  
:  
: Order No. ID-RC-19-24

**DECISION AND ORDER**

AND NOW, on this 20<sup>th</sup> day of December, 2019, 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. Freedom Advantage Insurance Company (“FAIC”) is a domestic stock casualty insurance company organized pursuant to the laws of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania.
2. Freedom Advantage Corporation (“FA Corp”) is an insurance holding company organized pursuant to the laws of Pennsylvania with its principal place of business in King of Prussia, Pennsylvania. FA Corp currently directly holds 100% of the issued and outstanding stock of FAIC.

### Identity of Applicant

3. Wilmington Insurance Company (“WIC”) is an unauthorized foreign stock casualty insurance company organized pursuant to the laws of Delaware with its principal place of business in Wilmington, Delaware.
4. Wilmington Holdings Corporation (“WH Corp”) is an insurance holding company organized pursuant to the laws of Delaware with its principal place of business in Wilmington, Delaware. WH Corp currently directly holds 100% of the issued and outstanding stock of WIC.
5. Gearson Partners Holdings, L.P. (“Gearson”) is a limited partnership organized pursuant to the laws of Delaware with its principal place of business in Wilmington, Delaware. Gearson currently directly holds 100% of the issued and outstanding stock of WH Corp.
6. Wilmington Holdings G.P., LLC (“WH GP”) is a limited liability company organized pursuant to the laws of Delaware with its principal place of business in Wilmington, Delaware. WH GP is currently the general partner of Gearson.
7. David N. Gearhart (“Mr. Gearhart”) is an individual with his primary business address in Wilmington, Delaware.
8. Marshall P. Schutt (“Mr. Schutt”) is an individual with his primary business address in Wilmington, Delaware.
9. Clifford R. Thompson (“Mr. Thompson”) is an individual with his primary business address in Wilmington, Delaware.
10. Mr. Gearhart, Mr. Schutt and Mr. Thompson are the sole members of WH GP.
11. Mr. Gearhart, Mr. Schutt and Mr. Thompson are the sole ultimate controlling persons of WIC.

### **Acquisition Filing**

12. 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.
13. On September 19, 2019, 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 WIC for

approval to acquire control of FAIC.

14. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

#### **Department Procedures**

15. On October 5, 2019, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by WIC and such notice invited interested persons to submit comments to the Department regarding the Application for thirty (30) days following the date of the publication (“Comment Period”).
16. The Department received no comments regarding the Application during the Comment Period.

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

17. As described in the Application, on September 5, 2019, FAIC and WIC entered into a Stock Purchase Agreement (“the Agreement”).
18. As described in the Application and pursuant to the Agreement, WIC intends to purchase 100% of the issued and outstanding stock of FAIC from FA Corp (“the Acquisition”).
19. As described in the Application, the source of funds would be from cash on hand.
20. As described in the Application and subsequent to the Acquisition, WIC would directly control 100% of the issued and outstanding stock of FAIC.
21. As described in the Application, Mr. Gearhart, Mr. Schutt and Mr. Thompson would become the sole ultimate controlling persons of FAIC as a result of the Acquisition.

#### **Standards for Review**

22. 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.
23. 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

24. 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.
25. 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.
26. The classes 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).
27. The minimum paid up capital stock and paid in surplus required of a stock insurer for each class of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. §386).
28. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), FAIC is required to maintain a minimum paid up capital stock of \$750,000 and a minimum paid in surplus of \$375,000 to write the lines of insurance for which it is presently licensed.
29. Upon completion of the Acquisition, FAIC 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

30. The acquisition of control of a Pennsylvania domiciled 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”).
31. The acquisition of control of FAIC will not lessen competition or tend to create a monopoly in the Commonwealth because WIC is not licensed to transact the business of insurance in Pennsylvania and there are no other insurance companies within its holding company system.

### Financial Condition of Applicant

32. 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).

33. The Department has reviewed the financial information submitted by WIC and the personal financial information submitted by its ultimate controlling persons, Mr. Gearhart, Mr. Schutt and Mr. Thompson.
34. The financial condition of WIC, Mr. Gearhart, Mr. Schutt and Mr. Thompson would not pose any impediments to the change in control nor jeopardize the financial condition of FAIC.

Plans for the Acquired Insurer

35. 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.
36. 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.
37. As stated in the Application, WIC has no future plans or proposals to declare any extraordinary dividend, to liquidate FAIC, to sell its assets, to merge or consolidate it with any person or persons or to change its corporate structure.
38. As stated in the Application, Anthony Verdi, the current chief financial officer, secretary and treasurer of FAIC will remain in his current roles upon completion of the Acquisition, however the remaining board of directors and executive officers of FAIC will be replaced with representatives of the current board of directors and executive officers of WIC.
39. 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

40. 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.
41. Biographical affidavits for all of the officers and directors of WIC were reviewed by the Department.
42. The Department is satisfied that the persons who would control the operations of FAIC 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

43. 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.
44. 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

45. 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.
46. The Department has evaluated the transaction as set forth by the Application as to whether it is in compliance with the laws of Pennsylvania.
47. 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 FAIC.
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;
  - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public; or,
  - 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 FAIC.
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**

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

The application of Wilmington Insurance Company (“WIC”) in support of the request for approval to acquire control of Freedom Advantage Insurance Company (“FAIC”) as set forth in the application, is hereby approved, subject to this Order and the following condition:

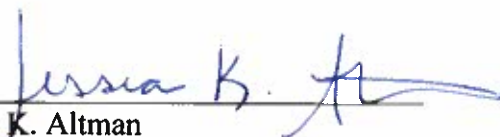
1. WIC shall provide to the Department a list of closing documents within five (5) days after consummation of the subject transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of consummation.
2. For a period of two (2) years after the effective date of the subject transaction, FAIC shall not close or cease actively doing business from Pittsburgh, Pennsylvania, without application to and the prior written approval of the Department.
3. For a period of three (3) years after the effective date of the subject transaction, FAIC shall not attempt to redomesticate to another jurisdiction without the prior written approval of the Department.
4. For three (3) years following the effective date of the acquisition, FAIC will be prohibited from declaring or paying any dividends, returns of capital or any other type of distributions, without the prior approval of the Commissioner, unless said distribution has been approved by the Department as a transaction between affiliates filed under the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of



1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§991.1401 et seq.

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