

July 23, 2025

**VIA EMAIL (OCICompanyLicensing@wisconsin.gov)**

The Honorable Nathan D. Houdek, Commissioner of Insurance  
 Lauren U. Van Buren, Esq., Chief Legal Counsel  
 Office of the Commissioner of Insurance (“OCI”)  
 State of Wisconsin  
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 Madison, WI 53703-3474

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**Re: Proposed Acquisition of Control of Ambac Assurance Corporation by  
 American Acorn Corporation, and others**

Dear Commissioner Houdek and Ms. Van Buren:

Together with our co-counsel, Husch Blackwell, White & Case represents an ad hoc group of noteholders (collectively, the “Group”) who are holders of approximately 54% of the outstanding 5.1% surplus notes (the “Surplus Notes”) issued by Ambac Assurance Corporation (“AAC”), a wholly-owned insurance company subsidiary of Ambac Financial Group, Inc. (“Holdco,” and together with AAC, the “Company”).

We write regarding the proposed transaction between Holdco and American Acorn Corporation (“Acorn”), an affiliate of Oaktree Capital Management, L.P. (“Oaktree,” and together with Acorn, the “Hedge Fund Acquirer”), whereby Holdco will sell its legacy financial guaranty businesses, including AAC, to the Hedge Fund Acquirer (the “AAC Acquisition”).

The Group has grave concerns regarding the proposed transaction, as well as the conduct of AAC’s management and board of directors, who are conflicted and are ignoring their fiduciary duties to the stakeholders of AAC.

**Background**

As a result of the global financial crisis and the related deterioration of AAC’s financial condition, in 2010, AAC worked with the OCI to establish a segregated account, which then became the subject of a rehabilitation proceeding. In connection with the plan of rehabilitation for the segregated account, AAC settled certain financial guaranty insurance policy claims by issuing Surplus Notes to unpaid policyholders.<sup>1</sup> In 2018, as part of a consensual restructuring agreement with its major policyholders that enabled the segregated account to emerge from rehabilitation through a second amended plan of rehabilitation, AAC used Surplus Notes to satisfy 12.5% of existing claims under financial guaranty policies (with policyholders agreeing to forgive an additional 6.5% of their policy claims). Through these settlements, policyholders

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<sup>1</sup> In the June 7, 2010 Settlement Agreement (as amended by the Waiver and Amendment dated as of February 12, 2018, the “Settlement Agreement”), the Company made a number of contractual commitments to the holders of AAC Surplus Notes. These incorporate a requirement for AAC to obtain approval from the OCI for certain actions, under a test that requires the OCI to first determine that the proposed agreement, payment, or transaction is reasonable and fair to the interests of AAC and its policyholders. See Settlement Agreement §§ 1.01, 3.04.

contributed to the successful restructuring of AAC by accepting Surplus Notes and a policy claim reduction in lieu of the cash payments that they were otherwise promised.

The Surplus Notes matured in June 2020. But based on the OCI's findings with respect to AAC's financial condition, the Surplus Notes have not been satisfied and interest continues to accrue but remains unpaid—meaning that more than \$1 billion is currently owed by AAC under the Surplus Notes. Despite this obligation to AAC's creditors, Holdco has engineered a *de facto* dividend through the AAC Acquisition that would circumvent the deferred payment obligation that AAC gave to its policyholders under the rehabilitation plan and leave AAC in a materially worse position.

Over the last few years, several monoline insurers in runoff made the decision to accelerate their winddowns through entry into novation transactions. As opposed to allowing their holding companies to dictate terms for their own benefit, these transactions were designed by the insurance companies to accelerate the winddown process, *protect policyholders and creditors*, and provide residual value to equity holders only after the insurer's policies and creditor claims were resolved.

By contrast, the AAC board prioritized a large cash payment for Holdco over providing value and stability to AAC. While Holdco stands to receive a closing payment of more than \$400 million, AAC's balance sheet would not improve. And, to make matters worse, the AAC Acquisition will likely damage AAC's financial position by destroying its valuable tax assets and leaving AAC in the hands of a hedge fund that will be charged with investing AAC's cash (presumably for a fee). All within the context of an insurance company that has not been permitted to even pay interest on its matured Surplus Notes. The Group believes that the decisions that have been made by the AAC board (which prefer Holdco over AAC) represent a clear breach of its fiduciary responsibilities to the stakeholders of AAC.

## **Problems With the Proposed AAC Acquisition**

### ***Conflicts of Interests Concerns***

The Holdco and AAC boards of directors consist of the same members. Management of Holdco is also the management of AAC. There is no independent director on the AAC board to advocate for the best interests of AAC and its stakeholders.

The fact that the AAC board is beholden to the interests of Holdco gives it every incentive to work for the benefit of Holdco, and to ignore corporate opportunities that would strengthen AAC's position. While the Company has disclosed only limited details concerning the process that led to the AAC Acquisition, the Proxy Statement dated September 6, 2024 (the "Proxy Statement") did disclose the existence of a joint proposal that was made by two prospective buyers that contemplated (i) the purchase of the equity of Ambac UK for between \$275 million and \$300 million and (ii) that the buyer would work with AAC on a strategic reinsurance transaction regarding AAC's insurance portfolio.<sup>2</sup> While this transaction may not have raised significant cash for Holdco, it would have significantly strengthened AAC's balance sheet and accelerated and de-risked the runoff of AAC's insured exposures. But AAC's board chose not to pursue that proposal.

Another example of Holdco's domination of AAC for its own benefit is AAC's investment in Beat Capital Partners Ltd. ("Beat"). This transaction, which was funded, in part, by \$62 million from AAC, was structured to benefit Holdco, at the expense of AAC. While the transaction was styled as a purchase of Beat equity by Holdco and AAC on equal terms, the economic reality of the transaction was far different.

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<sup>2</sup> See Proxy Statement at 35-36.

That is because while both AAC and Holdco initially bought the same equity interest and therefore shared the right to participate in any appreciation of Beat, the transaction documents make clear that upon closing of the AAC Acquisition, AAC was required to sell its equity interests to Holdco at a fixed rate of return. This means that while both AAC and Holdco funded the transaction, the upside opportunity was reserved for Holdco alone. This is yet another example of AAC's conflicted board and management working for the benefit of their true constituency, Holdco, rather than AAC and its creditors.<sup>3</sup>

And the AAC board members' conflict is not limited to their incentive to advance Holdco's interests. They are also personally benefiting from the proposed transaction. Holdco disclosed certain information regarding the equity compensation that members of the joint AAC/Holdco board will earn upon the closing of the AAC Acquisition. Specifically, if the stock of AAC is sold, over 84,000 unvested Holdco stock awards held by Holdco/AAC board members will vest and over 341,000 outstanding vested Holdco stock awards will be settled as a result of the sale.<sup>4</sup> This will put additional cash in the directors' pockets.

In addition, the Proxy Statement disclosed that the board of directors and named executive officers collectively owned approximately 4.8% of the stock of Holdco (which is in addition to the stock awards that would vest on closing) as of the September 3, 2024 record date.<sup>5</sup> Recent disclosures indicate that the share ownership has increased to 6.2% as of the April 3, 2025 record date.<sup>6</sup> Every dollar diverted from AAC and its creditors to Holdco increases the value of those shares.

We respectfully submit that any review of the proposed AAC Acquisition should be designed to ensure that the OCI and all stakeholders receive answers to the following questions:

- Who was the fiduciary for AAC and its stakeholders (independently from Holdco) in the negotiations?
- What other alternative transactions at the insurance company (AAC) were considered?
- Was there any evaluation of transaction structures that could have provided benefits to AAC?
- Did Holdco management's desire for a cash payment that could be used to purchase a new insurance business (i.e., Beat) result in corporate opportunities at AAC being ignored or discarded?

### ***Tax Concerns***

The AAC Acquisition was structured in a manner that will result in AAC's loss of valuable tax assets, while Holdco's tax assets would be preserved.<sup>7</sup> **First**, in its effort to obtain a large cash payment at Holdco, it appears that the Company has failed to honor its commitment to the OCI and AAC's former policyholders that it would "use its best efforts to preserve use of the NOLs realized by the holding company system led

<sup>3</sup> Holdco and AAC may point to the fact that this transaction was the subject of a lawsuit in the Supreme Court of the State of New York that was recently resolved in their favor. It is important to note that the lawsuit centered on the limited question of whether the Beat transaction was approved by the OCI. While the court ruled that the transaction was covered by the OCI's September 2022 pre-approval letter, the court made no finding with respect to whether the transaction was fair to AAC or its stakeholders. To the contrary, the court was clear that in its view, this was a question exclusively within the purview of the OCI.

<sup>4</sup> See Proxy Statement at 55-56 (non-employee director holdings as of August 31, 2024).

<sup>5</sup> See *id.* at 98.

<sup>6</sup> See Proxy Statement dated April 11, 2025 at 31 (available at: <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000874501/a4c83ea2-3a2f-4e5a-ab0b-bd7ced63280a.pdf>).

<sup>7</sup> See the Company's June 5, 2024 Strategic Update Presentation at p. 7, which highlights that one positive financial impact of the AAC Acquisition is that Holdco "preserves \$1.3 billion of NOLs." The Company's investor presentation is available at: [https://s202.q4cdn.com/597253230/files/doc\\_presentation/2024/Ambac-Strategic-Update-June2024-FINAL.pdf](https://s202.q4cdn.com/597253230/files/doc_presentation/2024/Ambac-Strategic-Update-June2024-FINAL.pdf).

by [Holdco] for the benefit of [AAC] and its subsidiaries.”<sup>8</sup> Specifically, the sale of the stock of AAC will result in a corporate deconsolidation, meaning AAC will no longer be able to utilize Holdco’s \$1.3 billion of net operating losses to offset any taxable gains.<sup>9</sup> **Second**, because the transaction will result in AAC having a change of control for tax purposes, AAC’s ability to use its own net operating losses to offset future tax obligations relating to the insurance runoff may be compromised or eliminated entirely.

The impact of the AAC Acquisition on the tax obligations of AAC must be thoroughly investigated and scrutinized.<sup>10</sup> We are available to discuss our analysis with the OCI or any tax expert that the OCI may engage under Section 601.43(3) of the Wisconsin insurance administration statute. Wis. Stat. § 601.43(3).

### ***Investment Concerns***

There are also questions about the impact of the sale of the insurance companies to a hedge fund with limited experience managing a monoline insurer, including:

- Will it impact management of AAC’s investment portfolio, including favoring positions dictated by the Hedge Fund Acquirer rather than those that are most prudent?
- Will it change AAC’s investment strategy or risk profile?
- Does the Hedge Fund Acquirer intend to charge fees (including management fees and/or investment fees) against insurance company assets relating to the management of the investment portfolio and/or AAC’s investments in the products and/or funds controlled by affiliates of the Hedge Fund Acquirer?
- Are there other intercompany transactions that the Hedge Fund Acquirer will pursue that might impact AAC’s winddown?

The OCI should consider that the Hedge Fund Acquirer may later take actions that ultimately threaten the legal rights of AAC’s policyholders and stakeholders.

### **Conclusion**

Consistent with OCI’s responsibility to protect Wisconsin policyholders and the interests of stakeholders of AAC, Section 611.72 of the Wisconsin Statutes, which governs domestic stock and mutual insurance corporations, requires certain findings in connection with the consideration of a proposed acquisition of control over a stock insurance corporation, such as the transaction proposed here. This includes findings that (i) “[t]he financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic stock insurance corporation or its parent insurance holding corporation, or prejudice the interests of its Wisconsin policyholders” and (ii) “[t]he plans or proposals which the acquiring party has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, merge it with any person or make any other material change in its business or corporate structure or management, are fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest. Wis. Stat. § 611.72(3)(am)(3)-(4).

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<sup>8</sup> See Stipulation and Order, dated February 22, 2024, ¶ 7.

<sup>9</sup> See June 5, 2024 Strategic Update Presentation, *supra* note 7.

<sup>10</sup> Based on the AAC’s insurance statutory filings, it appears that AAC has regularly had taxable income that was offset by net operating losses. See, e.g., AAC’s Annual Statement for 2023, dated February 27, 2024, at 14.12 (stating that AAC and its subsidiaries had approximately \$25 million of taxable income during 2023 that was fully offset by its net operating losses and other tax attributes) (available at: [https://s202.q4cdn.com/597253230/files/doc\\_earnings/2023/q4/filing/Ambac-Assurance-Quarterly-Statutory-Statement-Q4-2023-FINAL.pdf](https://s202.q4cdn.com/597253230/files/doc_earnings/2023/q4/filing/Ambac-Assurance-Quarterly-Statutory-Statement-Q4-2023-FINAL.pdf)).

Given the clear conflicts of interests and the harm that the AAC Acquisition will cause to AAC, we respectfully request that it not be approved. The transaction is designed to allow Holdco to profit from AAC while leaving AAC's policyholders, creditors, and other stakeholders in a materially worse position. This is exactly what Wisconsin law charges the OCI with preventing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'BP', is written over a horizontal line.

**Brian Pfeiffer**

White & Case LLP

Counsel to the Ad Hoc Group of AAC Surplus Noteholders

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