GLENN AGRE BERGMAN & FUENTES

Andrew K. Glenn
aglenn@glennagre.com
1185 Avenue of the Americas, 22nd Floor
New York, NY 10036
212.970.1600

February 28, 2025

<u>VIA EMAIL</u>
<u>OCICompanyLicensing@Wisconsin.gov</u>

The Honorable Nathan Houdek
Commissioner of Insurance
Wisconsin Office of the
Commissioner of Insurance
125 S. Webster Street
Madison, Wisconsin 53703
Attn: Chris Martin, Division of Financial Regulation

Re: Proposed Acquisition of Control of Ambac Assurance <u>Corporation by American Acorn Corporation, and others</u>

Dear Commissioner Houdek:

We represent an ad hoc group (the "**Ad Hoc Group**") of holders of a majority of the Auction Market Preferred Shares ("**AMPS**") issued by Ambac Assurance Corporation ("**AAC**"), a wholly-owned subsidiary of Ambac Financial Group, Inc. ("**AFG**" and, together with AAC, the "**Company**"). We write to provide relevant information in response to the request, dated June 28, 2024, to approve a proposed acquisition of AAC (the "Acquisition").

Pursuant to Wisc. Stat. Ann. § 611.72, the Commissioner is required to make certain findings in connection with the consideration of a proposed acquisition of control over a stock insurance corporation such as that proposed here. These findings, include, among other things, 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. Wisc. Stat. Ann. § 611.72(3)(am)(3)-(4).

The Ad Hoc Group does not believe that a domestic stock insurance corporation can meet these statutory requirements where it does not make adequate efforts to ensure that all of its financial obligations will be repaid in accordance with their terms. Here, the Ad Hoc Group has serious concerns as to whether AAC will satisfy its obligations under the AMPS.

The AMPS have been outstanding since 2004, and the holders of the AMPS enjoy a liquidation preference in the aggregate amount of $116 million. No dividend payments have been made in respect of the AMPS since 2009. The terms of the AMPS include restrictions on payments to holders of AAC common stock. Indeed, the Company has conceded in filings with the Securities & Exchange Commission ("**SEC**") that:

> dividends may not be paid on the common stock of AAC unless all accrued and unpaid dividends on the AMPS for the then current dividend period have been paid, provided that dividends on the common stock may be made at all times for the purpose of, and only in such amounts as are necessary for, enabling AFG (i) to service its indebtedness for borrowed money as such payments become due or (ii) to pay its operating expenses. If dividends are paid on the common stock as provided in the prior sentence, dividends on the AMPS become cumulative until the date that all accumulated and unpaid dividends have been paid on the AMPS.[1]

Dividends cannot be paid to the common shareholders in the event of a liquidation or winding up of the business until the AMPS liquidation preference is paid in full.[2] Further, under Wisconsin law, dividends may not be paid to common shareholders if such dividend would (i) render the corporation unable to pay its debts as they become due in the usual course of business or (ii) result in the corporation's total assets being less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights of preferred shareholders. Wisc. Stat. Ann. § 180.0640(3).

As a threshold matter, the Acquisition contemplates a sponsored run-off of AAC; thus, AAC ***is in liquidation*** and ***is winding up its affairs***. Indeed, AAC has not written any policies since 2008. And because a liquidation has already commenced, the AMPS holders have a liquidation preference that bars distributions to AAC's common shareholders until the AMPS are paid in full.

We do not have access to AAC's confidential projections and business plan for the Company. However, the Proxy Statement filed by the Company with the SEC in connection with the proposed Acquisition now under Your Honor's consideration shows nearly a billion dollars

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1 *See* AAC Articles of Incorporation § 6.

2 *See* AAC Articles of Incorporation § 6(b).

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flowing to shareholders before the AMPS liquidation preference is paid.[3] The Proxy Statement discloses that AAC's parent, AFG, will receive $420 million in exchange for its equity upon closing of the Acquisition, and that the acquiror will receive approximately $575 million of dividends from AAC before the holders of the AMPS receive their liquidation preference ***in 2052***. Proxy Statement at 43. Below is the relevant excerpt from the Proxy Statement[4]:

The following table sets forth the estimated amounts of total distributable cash of AAC, calculated using the above prospective financial assumptions as provided by and approved by Ambac management for use by Moelis for purposes of its financial analyses and opinion described in the section of this proxy statement captioned "*Proposal No. 1—The Sale Proposal—Opinion of Ambac's Financial Advisor*" (amounts may reflect rounding):

($ in millions)	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
Risk Adjusted Assets	$ 1,164	$ 1,281	$ 1,270	$ 1,208	$ 1,198	$ 1,185	$ 1,146	$ 1,109	$ 1,092	$ 1,101	$ 1,185	$ 1,050	$ 1,036	$ 992	$ 492
Risk Adjusted Liabilities	$ (1,092)	$ (1,078)	$ (1,064)	$ (1,052)	$ (1,042)	$ (1,035)	$ (1,012)	$ (942)	$ (935)	$ (929)	$ (924)	$ (899)	$ (905)	$ (433)	$ (329)
Total Distributable	$ —	$ 203	$ 206	$ 156	$ 156	$ 149	$ 135	$ 166	$ 156	$ 173	$ 261	$ 151	$ 131	$ 560	$ 163
Surplus Notes	—	$ 203	206	156	156	149	135	166	156	135	—	—	—	—	—
AMPS	—	—	—	—	—	—	—	—	—	1	1	1	1	1	1
Common Equity	—	—	—	—	—	—	—	—	—	37	260	151	130	559	163

($ in millions)	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053
Risk Adjusted Assets	$ 388	$ 357	$ 337	$ 336	$ 409	$ 305	$ 275	$ 277	$ 351	$ 129	$ 127	$ 123	$ 115	$ 113	$ 4
Risk Adjusted Liabilities	$ (316)	$ (304)	$ (290)	$ (279)	$ (256)	$ (247)	$ (244)	$ (250)	$ (186)	$ (54)	$ (41)	$ (26)	$ (9)	$ (1)	$ 7
Total Distributable	72	53	47	58	153	59	31	26	164	74	86	96	105	112	11
Surplus Notes	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
AMPS	1	1	1	1	1	1	1	1	1	1	1	1	1	116	0
Common Equity	71	52	46	57	152	58	30	26	164	8	11	10	11	14	4

Although the Proxy Statement concedes that "[t]he AMPS must be fully repaid before making a liquidating distribution to common stockholders of AAC," it also asserts, without explanation, that such liquidation will not occur until 2052. Thus, the delay in payment to the holders of the AMPS is predicated entirely on the erroneous position that AAC is not liquidating, when, in fact, it already is.

Our concerns are further exacerbated by AFG's recent acquisition of a majority of the equity of Beat Capital Partners, Ltd. ("**Beat**"), a transaction that appears to have been funded, in part, by a $65 million of co-investment from AAC.[5] It is unclear whether this purported investment provided any benefit to AAC or whether any unconflicted fiduciary acted for AAC in determining to make this investment. There are many undisclosed details of this transaction, but the apparent use of AAC's cash to fund an acquisition by AFG -- which will ultimately inure to the benefit of the acquiror while legacy stakeholders remain unpaid -- is troubling.

We recognize that the Commission's responsibility is to protect Wisconsin policyholders, but it is also to protect the public's interest in the subject corporation. We respectfully submit that the Commission should carefully scrutinize these matters to ensure that the acquiror is not exalting its economic interests over those of other stakeholders in violation of their legal rights because the acquiror also may take actions that ultimately jeopardize the legal rights of policyholders too.

3 The Proxy Statement is available at: https://www.sec.gov/Archives/edgar/data/874501/000119312524214664/d844490ddefm14a.htm
4 Proxy Statement at p. 43.
5 *Id.* at 2.

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If you have any questions or need more information, please contact me at aglenn@glennagre.com.

Respectfully submitted,

GLENN AGRE BERGMAN & FUENTES LLP

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