

**STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE**

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In the Matter of the Acquisition of Control of  
Ambac Assurance Corporation, the “Domestic Insurer”

by

American Acorn Corporation (American Acorn),  
American Acorn Holdings LLC,  
Oaktree Opportunities Fund XII Holdings  
(Delaware), L.P., Oaktree Fund GP, LLC,  
Oaktree Fund GP I, LP, Oaktree Capital I GP, LLC,  
Oaktree Capital Holdings, LLC,  
Oaktree Capital Group Holdings, LP,  
Oaktree Capital Group Holdings GP, LLC,  
Bruce Karsh, Howard Marks, and Sheldon Stone

OCI Case No. 25-C46550

Petitioner.

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**MOTION BY ESM MANAGEMENT LLC AND ALIGN PRIVATE CAPITAL  
TO INTERVENE**

ESM Management LLC and Align Private Capital, on behalf of certain managed funds (the “Proposed Intervenors”), by their undersigned counsel, hereby move, pursuant to Wis. Stat. § 227.44(2m), to be admitted as parties to this contested case proceeding and, in support of this motion, state as follows:

1. Ambac Assurance Corporation (“AAC”) is a Wisconsin-domiciled insurer authorized to transact surety and financial guaranty insurance. AAC has operated as a financial guaranty insurer, and its principal business was the guaranty of timely payment of principal and periodic interest when due on credit obligations.

2. In 2010, with the approval of the Wisconsin Office of the Commissioner of Insurance (“OCI”), AAC established and operated a segregated account pursuant to Wis. Stat.

§ 611.24(2) (the “Segregated Account”). AAC established the Segregated Account for the purpose of segregating certain segments of its liabilities, and consenting to the subsequent rehabilitation of the Segregated Account under Chapter 645 of the Wisconsin Statutes.

3. 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. 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 insurance policies (with policyholders agreeing to forgive an additional 6.5% of their policy claims). Through these settlements, policyholders contributed to the restructuring of AAC.

4. AAC currently has more than \$1,075 million in surplus notes outstanding, including unpaid capitalized and accrued interest (the “Surplus Notes”). The Surplus Notes matured in June 2020 but have received no payments since February 2018 allegedly due to AAC’s financial condition.

5. The Proposed Intervenors are the beneficial holders of approximately 27.2% of the Surplus Notes that are outstanding (excluding holdings by AAC itself).

6. The issues to be considered in this matter are the proposed plan for the acquisition of control of AAC by American Acorn Corporation (“American Acorn”), an affiliate of Oaktree Capital Management, L.P. (“Oaktree,” and together with American Acorn, the “Proposed Acquirer”), from Ambac Financial Group, Inc. (“AFG”), AAC’s direct parent company, and whether the proposed plan for acquisition complies with Wis. Stat. § 611.72.

7. Pursuant to a stock purchase agreement between AFG and American Acorn, all issued and outstanding shares of AAC will be sold to American Acorn for \$420,000,000, subject

to adjustment as described in the purchase agreement. At the same time, AFG will issue to American Acorn a warrant for a number of shares of common stock, par value \$0.01, representing 9.9% of the fully diluted shares of AFG common stock as of March 31, 2024.

8. Proposed Intervenors have an interest in ensuring that the acquisition of AAC does not undermine AAC's ability to comply with its financial obligations to Proposed Intervenors or subordinate the Proposed Intervenors' interests to those of AFG.

9. No proposed plan of merger or other plan for acquisition of control of any domestic stock insurance corporation or its parent insurance holding corporation participating in the transaction may be executed unless it has been approved by the Commissioner. Wis. Stat. § 611.72(2).

10. Wisconsin Stat. § 611.72(3)(am) creates a five-part test for the Commissioner to use when evaluating the acquisition by the Proposed Acquirer of AAC. This includes required findings that (a) "[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 (b) "[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).

11. A class 1 hearing under Wis. Stat. § 611.72 in the matter of the plan for acquisition of control of AAC, will be held before Rebecca Easland, duly appointed hearing examiner, on September 3, 2025. Chapter 227 applies to the hearing. Wis. Stat. § 601.62(2)

12. Pursuant to Wis. Stat. § 227.44(2m), “[a]ny person whose substantial interest may be affected by the decision following the hearing shall, upon the person’s request, be admitted as a party.” Wis. Stat. § 227.44(2m). “Shall” is presumed mandatory. *See Bank of N.Y. Mellon v. Carson*, 2015 WI 15, ¶21, 361 Wis. 2d 23, 859 N.W.2d 422.

13. “Substantial interest” as interpreted under Wis. Stat. § 227.52 requires a demonstration that the proposed party “demonstrate both that it sustained the alleged injury due to the agency decision, and that the injury is to an interest which the law recognizes or seeks to regulate or protect.” *Waste Management of Wisconsin, Inc. v. Department of Natural Resources*, 144 Wis. 2d 499, 505, 424 N.W.2d 685.

14. The Proposed Intervenors easily satisfy the Wis. Stat. § 227.44(2m) standard for intervention as they have a substantial interest that may be affected by the decision in this matter.

15. Indeed, Proposed Intervenor also satisfies the stricter standing requirements for review of an administrative decision: (1) that the agency’s decision will or threatens to cause injury, and (2) that this interest is recognized by law. *Fox v. Wis. Dept. of Health & Soc. Servs.*, 112 Wis. 2d 514, 524 (1983); *also Foley-Ciccantelli v. Bishop’s Grove Condo. Ass’n*, 2011 WI 36, ¶49, 333 Wis. 2d 402, 797 N.W.2d 789.

16. First, approval of the acquisition threatens to impair Proposed Intervenor’s legal and financial interests. That is because the structure of the proposed transaction ensures that the value being paid by the buyer is paid exclusively to AFG, and not to AAC. This ensures that none of the more than \$400 million being paid by the buyer benefits any of AAC’s creditors (including the Proposed Intervenors).

17. Second, the Proposed Intervenor's interest in enforcing their contractual rights are clearly recognized under Wisconsin law. *State v. Rippentrop*, 2023 WI App 15, ¶68, 406 Wis. 2d 692, 987 N.W.2d 801 ("Generally speaking, public policy favors the enforcement of contracts").

18. No current party adequately represents the Proposed Intervenor's interests. There is no independent fiduciary acting on behalf of AAC's creditors. Without intervention by the Proposed Intervenor, the record in this matter will lack input from, among others, Proposed Intervenor ESM, which is likely the largest holder of Surplus Notes. This input will assist the Commissioner in evaluating whether the proposed transaction satisfies the public interest standard and financial integrity safeguards required under Wis. Stat. § 611.72.

19. The Proposed Intervenor is a long term holder of the Surplus Notes, having held the notes through the course of multiple other transactions, and therefore have a unique and important perspective on this latest transaction. In addition, in contrast to other entities that have sought to intervene in this matter, the Proposed Intervenor's primary holding is a publicly-traded mutual fund, with many ordinary, mom-and-pop investors, whose interests deserve to be heard.

WHEREFORE, ESM Management LLC and Align Private Capital request an order under Wis. Stat. § 227.44(2m) admitting them as parties to this contested case proceeding.

Dated: August 4, 2025

STAFFORD ROSENBAUM LLP

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