

August 29, 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
125 South Webster Street
Madison, WI 53703-3474

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

Dear Commissioner Houdek and Ms. Van Buren:

ESM Management LLC and Align Private Capital are advisors to certain managed funds which hold approximately 27% of the outstanding 5.1% surplus notes (“Surplus Notes”) issued by Ambac Assurance Corporation (“AAC”), a wholly owned insurance subsidiary of Ambac Financial Group, Inc. (“AFG,” together with AAC, the “Company”), we wish to comment on the proposed acquisition of AAC by American Acorn Corporation (“Acorn”), an affiliate of Oaktree Capital Management, L.P. (“Oaktree” and, together with Acorn, the “Hedge Fund Acquirer”).

We are deeply concerned about the potential impact of this transaction on holders of AAC Surplus Notes. Surplus notes serve as a pivotal tool for insurance companies to bolster their capital structure, absorb financial shocks, and safeguard the interests of all stakeholders during periods of volatility. Their statutory capital treatment and subordinate nature embody the crucial balance between policyholder protection and insurer solvency—an area in which the regulatory oversight of OCI is both vital and, in this instance, subject to serious question.

Recent official actions have amplified our concerns. The secondary market price of the Surplus Notes has dropped from 77.5% of total claim in late 2022 to approximately 59% today—a decline primarily attributable to OCI’s ongoing refusal to approve any principal or

interest payments, even in the wake of significant improvements in AAC's financial condition. On September 30, 2022, just prior to the \$1.84 billion settlement of representation and warranty ("R&W") breach litigation against Bank of America in October 2022, OCI pre-approved spending by AAC totaling \$389,900,000 to repurchase Surplus Notes contingent upon on a settlement exceeding \$1.8 billion. Subsequently, AAC spent \$378,761,632 to repurchase Surplus Notes at 77.5% of claim, rather than making payments to all noteholders, as would have been appropriate given that Surplus Notes were long past their final maturity in 2020 and had not received any payments since February 2018.

These decisions, documented in regulatory filings and recent public court records (*CQS et al v. Ambac Assurance Corporation and Ambac Financial Group, Inc.*, Index No. 651400/2025), have directly shaped market outcomes and raised substantial questions about fairness to all stakeholders.

Moreover, repeated requests by AAC for approval to make Surplus Note payments have been systematically denied by OCI, even as AAC's statutory policyholder surplus has improved materially—from \$598 million at the end of 2022, to \$878 million at the end of Q1 2024. For example, on May 10, 2024, AAC requested approval to make partial payments on the Surplus Notes, no matter how small, but OCI withheld approval, presumably based on the Q1 2024 financials.

AAC's statutory policyholder surplus reached \$893 million at the end of Q2 2024, just before AAC made an OCI-approved \$62 million investment in a joint venture with AFG to acquire a 60% interest in Beat Capital Partners. In part due to this investment (then deemed a non-admitted asset due to its illiquidity and pricing uncertainty), and to the partial commutation of certain student loan policies, AAC's statutory policyholder surplus declined to \$789 million as of Q3 2024. However, surplus has since recovered to \$813 million as of Q2 2025.

This growth in surplus has occurred alongside substantial cost-saving developments, including the extinguishment of all debt senior to the Surplus Notes in late 2022 and early 2023 (yielding annual interest expense savings between \$80 million and \$120 million) and the reduction in legal expenses after resolution of all of AAC's R&W breach litigation. The

overall insured exposure has also declined due to managed commutations and runoff, with claims-paying ratios moving from 12:1 at the end of 2022 to 10:1 by the close of 2023, further bolstering AAC's financial strength.

We expect that the claims-paying ratio has continued to improve since 2023 (the last time it was reported) as the insured portfolio has run off, although we do not know for sure because AFG stopped reporting a claims-paying ratio for AAC at that time. Indeed, contrary to AFG's reporting obligations pursuant to Section 3.10 and Schedule C of the Surplus Note Settlement Agreement, dated June 7, 2010, AFG has not disclosed insured portfolio policy level detail for AAC since 2022.

In addition, AAC's wholly owned UK subsidiary, Ambac UK ("AUK"), with a book value of \$736 million as of Q2 2025 (up from \$551 million at the end of 2022), maintains a substantial solvency surplus in excess of regulatory requirements according to reports filed with the UK regulator—£253.5 million as of the end of 2024. Despite these improvements, AUK remains a non-admitted asset for statutory surplus calculations, limiting its direct impact on AAC's claims-paying metrics despite representing a significant reservoir of financial strength.

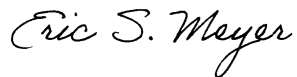
Given these facts, it is troubling that OCI has continued to deny AAC's requests for even partial payment on the Surplus Notes, particularly as AAC approaches a significant change in control that unlocks value for AAC's shareholder AFG in a manner that apparently AFG once thought was not possible.¹ The circumstances for Surplus Note payments have never been more favorable relative to the stated policyholder protection objectives. While we expect that the undisclosed business plan of the Hedge Fund Acquirer for AAC may be informative regarding the potential timing for Surplus Note payments, the absence of transparency regarding the intentions of the Hedge Fund Acquirer undermines confidence that future distributions, including the proceeds from AFG's promised buyout of AAC's investment in Beat Capital Partners (assuming the acquisition of AAC proceeds), or potential dividends from AUK, will be properly directed toward fulfilling obligations to Surplus Noteholders and other claimants.

¹ See Ambac Financial Group, Inc., Annual Report 2013 (Form 10-K) (Mar. 3, 2014) at 92 (providing "These surplus notes and junior surplus notes, as well as preferred stock issued by Ambac Assurance, are obligations of Ambac Assurance that *must be satisfied prior to Ambac realizing residual value from Ambac Assurance.*" (emphasis added)).

In this context, we respectfully urge OCI to require, as a condition of this acquisition, a binding commitment from the Hedge Fund Acquirer to honor all contractual and regulatory duties to Surplus Noteholders. Specifically, this should include (i) proactive requests for payment approvals as surplus becomes available, (ii) engagement with the UK regulator to permit a dividend from AUK to AAC, if and when appropriate, and (iii) a resumption of the disclosure of claims paying ratio and insured portfolio policy level detail. Such steps would safeguard the interests of both AAC policyholders and the broader public, in line with the core mission of state insurance regulation.

Thank you for your attention to these critical issues, and for your ongoing commitment to policyholder protection and regulatory integrity.

Respectfully submitted,

A handwritten signature in black ink that reads "Eric S. Meyer". The signature is written in a cursive, flowing style.

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