



DATE: June 30, 2022

TO: Amy J. Malm  
Mark McNabb

FROM: Christopher Martin

SUBJECT: Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (Case No. 22-C44513 and 22-C44514).

**Form A Filing Contact(s)**

**Primary Contact:**

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Chief Compliance Officer, Vice President & Senior Counsel  
Berkshire Hathaway group of insurance companies  
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**Form A Exhibit(s)**

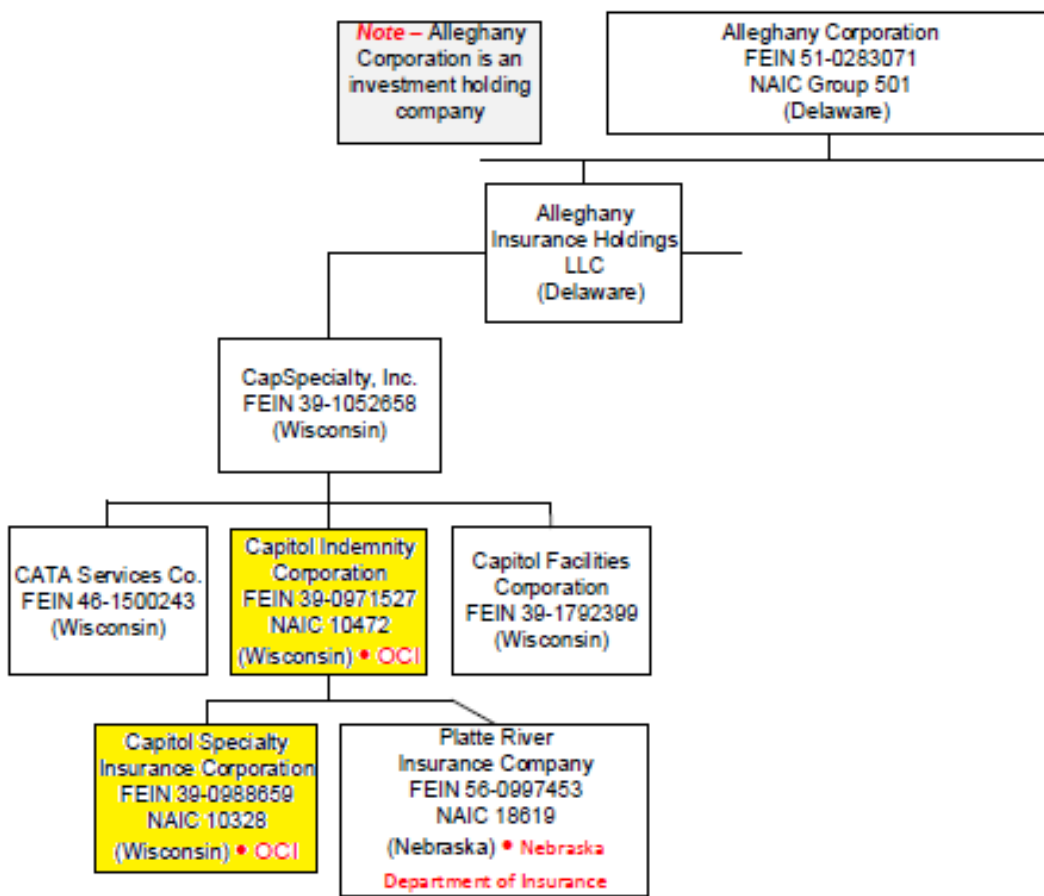
<b><u>Exhibit:</u></b>	<b><u>Description:</u></b>
Ex 1	Agreement and Plan of Merger by and among Berkshire Hathaway Inc., O&M Acquisition Corp. and Alleghany Corporation dated as of March 20, 2022
Ex 2	Organizational Chart for the Year Ended December 31, 2021 for Berkshire Hathaway
Ex 3	Berkshire Hathaway Inc. Forms 10-K for 2017-2021, each as filed is he U.S. Securities and Exchange Commission
Ex 4	Berkshire Hathaway Inc. Annual Reports for 2021 and 2020
Ex 5	Competitive Impact Statement
Ex 6	Biographical Affidavits of Directors and Executive Officers of the Applicants
Ex 7	Biographical Affidavits of Proposed Directors and Executive Officers of the Domestic Insurers
Ex 8	Plan of Operations
Ex 9	Three-Year Financial Projections for the Domestic Insurers

**Executive Summary**

On April 22, 2022, Berkshire Hathaway, Inc., O&M Acquisition Corp., and Warren E. Buffett ("Berkshire Hathaway", "O&M" or "Merger Sub", respectively, and together with Mr. Buffett, the "Applicants"), submitted a Form A filing with the OCI regarding the acquisition of Capitol Indemnity

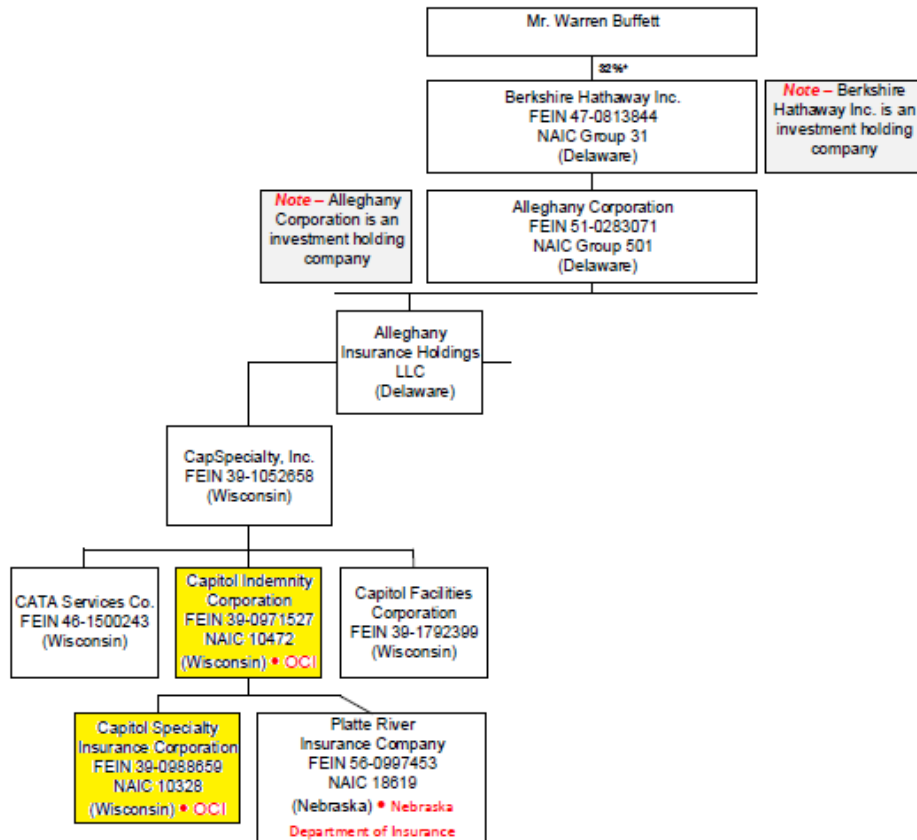
Corporation and Capitol Specialty Insurance Corporation (“CIC” and “CSIC” respectively, and together the “Domestic Insurers”). The acquisition will occur as outlined in the Acquisition Agreement, dated March 20, 2022, between Berkshire Hathaway, O&M, and Alleghany Corporation (“Alleghany”), a New York Stock Exchange publicly traded company, who owns a number of insurance companies, including CIC and CSIC. Pursuant to the Acquisition Agreement, Berkshire Hathaway will acquire Alleghany, and therefore CIC and CSIC, via the Merger Sub, with Alleghany continuing as a wholly owned subsidiary of Berkshire Hathaway. The Holders of shares of common stock in Alleghany will be paid a purchase price of \$848.02 per share in cash. The aggregate purchase price is approximately \$11.6 billion and will be paid in cash by Berkshire Hathaway from its existing assets.

**Organizational Chart of the Applicants Before Proposed Transaction:**



Note: OCI has removed affiliated entities to provide key information in the Case Recommendation Memo. Please see the complete Pre-Merger Organizational Chart on the OCI website.

**Organizational Chart After Proposed Transaction:**



Note: OCI has removed affiliated entities to provide key information in the Case Recommendation Memo. Please see the complete Post-Merger Organizational Chart on the OCI website.

**Identity and Background of the Domestic Insurers**

**Identity of the Domestic Insurers:**

**Capitol Indemnity Corporation**

1600 Aspen Commons  
Middleton, WI 53562-4718

**Capitol Specialty Insurance Corporation**

1600 Aspen Commons  
Middleton, WI 53562-4718

**Background of the Domestic Insurers:**

CIC and CSIC are Wisconsin domestic insurers, wholly owned by Alleghany. NAIC Number 10472 and FEIN 39-0971527, and NAIC 10328 and FEIN 39-0988659, respectively.

## **Identity and Background of the Applicants**

### **Identity of the Applicants:**

#### **Warren E. Buffett**

3555 Farnam Street, Suite 1440  
Omaha, NE 68131

#### **Berkshire Hathaway, Inc.**

3555 Farnam Street, Suite 1440  
Omaha, NE 68131

#### **O&M Acquisition Corp.**

3555 Farnam Street, Suite 1440  
Omaha, NE 68131

### **Background of the Applicant:**

#### **Warren E. Buffett**

Mr. Buffett has been a director of Berkshire Hathaway since 1965 and has been its Chairman and Chief Executive Officer since 1970. As of December 31, 2021, Mr. Buffett owns shares equivalent to approximately 32% of the voting power of the outstanding shares of Berkshire Hathaway.

#### **Berkshire Hathaway, Inc.**

Berkshire Hathaway is a Delaware corporation, with stock publicly traded on the New York Stock Exchange. The company's executive offices are located in Nebraska. The only person owning more than ten percent (10%) or more of the voting power of the outstanding shares of Berkshire Hathaway is Mr. Buffett.

Berkshire Hathaway is a holding company owning subsidiaries that engage in a number of different industries. The company's insurance operations include Geico, General Re, and Berkshire Hathaway Reinsurance Group, in addition to a number of other subsidiaries. Collectively Berkshire Hathaway's insurance subsidiaries held approximately \$301 billion in policyholders surplus, as of December 31, 2021.

#### **O&M Acquisition Corp.**

O&M or Merger Sub was incorporated in the State of Delaware on March 18, 2022. It is a wholly owned subsidiary of Berkshire Hathaway. O&M was incorporated to facilitate the merger with Alleghany and has not conducted any business operations.

### **Current and Proposed Executive Officers and Directors of the Domestic Insurers**

#### **Name**

#### **Title**

John L. Sennott, Jr.\*  
Ryan J. Byrnes\*

Director, Chief Executive Officer, and President  
Director, Senior Vice President, Chief Financial Officer,  
and Treasurer

Kerry J. Jacobs\*  
John F. Shannon\*  
Todd S. Burick\*

Director  
Director  
Senior Vice President and Chief Underwriting Officer  
Senior Vice President, General Counsel, and Secretary  
Senior Vice President and Head of Specialty Insurance  
Controller

Andrew Bernard Diaz-Matos\*  
Adam L. Sills\*  
Richard Glenn Soule\*

**Executive Officers and Directors of Alleghany Corporation**

<b><u>Name</u></b>	<b><u>Title</u></b>
Karen Brenner	Director
Joseph P. Brandon*	Director, Chief Executive Officer
Chris H. Cheesman	Director
Ian H. Chippendale	Director
John G. Foos	Director
Jefferson W. Kirby	Director
Phillip M. Martineau	Director
Lauren M. Tyler	Director
Raymond L.M. Wong	Director
Kerry J. Jacobs*	Chief Financial Officer
Reeva Bakhshi*	Treasurer
Christopher K. Dalrymple*	Secretary
Natalya Anbinder*	Controller
Marc D. Hamburg*	Director (proposed post transaction)
Daniel J. Jaksich*	Director (proposed post transaction)

**Executive Officers and Directors of O&M Acquisition Corp.**

<b><u>Name</u></b>	<b><u>Title</u></b>
Marc D. Hamburg*	Director, President, and Secretary
Daniel J. Jaksich*	Vice President and Treasurer

**Executive Officers and Directors of Berkshire Hathaway, Inc.**

<b><u>Name</u></b>	<b><u>Title</u></b>
Gregory E. Abel*	Director, Vice Chairman – Non Insurance Operations
Warren E. Buffett*	Director, Chairman, and Chief Executive Officer
Howard G. Buffett*	Director
Susan A. Buffett*	Director
Stephen B. Burke*	Director
Kenneth I. Chenault*	Director
Christopher C. Davis*	Director
Susan L. Decker*	Director
David S. Gottesman*	Director
Charlotte Guyman*	Director
Ajit Jain*	Director, Vice Chairman – Insurance Operations
Charles T. Munger*	Director, Vice Chairman
Ronald L. Olson*	Director
Wallace R. Weitz*	Director
Meryl B. Witmer*	Director
Marc D. Hamburg*	Senior Vice President and Chief Financial Officer

Note: \* following an individual's name indicates that the biographical affidavit was provided for the individual and there are no outstanding significant concerns after OCI review.

Alleghany's current directors will no longer serve after the transaction. Therefore, biographical affidavits were not requested for those individuals. OCI did receive biographical affidavits for the proposed new directors.

#### **Nature, Source, and Consideration**

As noted in the executive summary above, and as further described in the Agreement and Plan of Merger, the proposed transaction will involve the holders of shares of common stock in Alleghany being paid a purchase price of \$848.02 per share in cash, representing \$850.00 per share less financial advisory fees payable to an advisor retained by Alleghany in connection with the proposed transaction. The aggregate purchase price is approximately \$11.6 billion and will be paid in cash by Berkshire Hathaway from its existing assets. No debt will be incurred in connection with the proposed transaction. O&M will be used to facilitate the transaction but will not become a parent of Alleghany or the Domestic Insurers, as shown in the post-transaction organizational chart above.

The Applicants stated in the Form A that there has not been any recent purchased of any voting securities in Alleghany or the Domestic Insurers in the past 12 months and there have been no other recommendations to purchase voting shares in the past 12 months. They also stated that the amount of consideration was determined by an arm's length negotiation between Berkshire Hathaway and Alleghany's management and Board of Directors.

#### **Applicants Future Plans**

As stated in the Form A, following the closing of the proposed transaction, the domestic insurers will continue to be managed by the existing directors and officers, in substantially the same manner as pre-merger operations. Review of the confidential business plan provided by the Applicants further shows the expectation that the Domestic Insurers' will continue to operate in a substantially similar manner post transaction. The Applicants have no plans to declare an extraordinary dividend, liquidate the Domestic Insurers, sell the Domestic Insurers assets, or merge it with any person or to make any other material changes in the Domestic Insurers' business operations, corporate structure, or management.

After the closing of the proposed transaction, the Applicants intend to have the Domestic Insurers enter into various related party agreements. These agreements include an investment management agreement and tax sharing agreement with Berkshire Hathaway, as well as reinsurance agreements with other related parties. Form D filings for the reinsurance agreements have been non-disapproved by OCI as part of the Form A review.

#### **Financial Highlights**

##### **Highlighted Financial Data of Berkshire Hathaway, Inc.:**

<b>Financial Highlights (in millions)</b>	<b>Consolidated Financial Statements</b>				
	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>
Total Assets	958,784	873,729	817,729	707,794	702,095
Total Liabilities	443,854	422,393	389,166	355,294	350,141
Total Equity	514,930	451,336	428,563	352,500	351,954
Total Revenue	276,094	245,510	254,616	247,837	239,933
Net Income	90,807	43,253	81,792	4,322	45,353
Net Cash Provided by Operating Activities	39,421	39,773	38,687	37,400	45,728

**Highlighted Financial Data of O&M Acquisition Corp.:**

OCI did not review financial statements for O&M as the entity was created in 2022, is only being used to facilitate the transaction, and will not be a parent of the Domestic Insurers after the transaction.

**Financial Projections of the Domestic Insurers:**

**Capitol Indemnity Company**

The financial projections of the Domestic Insurers are confidential. OCI reviews these projections as part of the Form A review process.

**Capitol Specialty Insurance Company**

The financial projections of the Domestic Insurers are confidential. OCI reviews these projections as part of the Form A review process.

**611.72 (3) Standard**

Wisconsin Statute s. 611.72(3)(am) creates a five-part test for the Commissioner to use when evaluating the merger or acquisition of a domestic stock insurance company. It reads, in relevant part:

**(am)** The commissioner shall approve the plan if the commissioner finds...that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that:

1. After the change of control, the domestic stock insurance corporation or any domestic stock insurance corporation controlled by the insurance holding corporation 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;
2. The effect of the merger or other acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state;
3. The 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;
4. The 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; and
5. The competence and integrity of those persons who would control the operation of the domestic stock insurance corporation or its parent insurance holding corporation are such that it would be in the interest of the policyholders of the corporation and of the public to permit the merger or acquisition of control.

These five requirements are analyzed below.

**s. 611.72(3)(am)1:** After reviewing the documents provided by the Applicant in their Form A filing, OCI Staff believes that the Applicant is able to satisfy s. 611.72(3)(am)1. In reaching this decision, OCI staff has relied heavily on the proposed business plan and financial projections.

**s. 611.72(3)(am)2:** OCI's determined that a Form E analysis was not necessary. OCI's examination of the potential competitive effects concluded that approving the acquisition would not violate the competitive standards set forth in s. Ins 40.025(4), Wis. Adm. Code.

**s. 611.72(3)(am)3:** Paragraph three requires that the financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic insurance corporation or its parent insurance corporation, or prejudice the interest of its Wisconsin policyholders. After reviewing the documents provided by the Applicants, the concern that affiliated non-insurance operations would jeopardize the financial condition is deemed minimal. OCI, however, will monitor compliance with s. 611.72(3)(am)3, Wis. Stat., going forward.

**s. 611.72(3)(am)4:** Paragraph four requires that the post-transaction plans to change the business structure be "fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest." The Form A filing notes that the Applicants have no current plans or proposals to declare any extraordinary dividend, to liquidate the Domestic Insurer, or to sell the assets of the Domestic Insurer. Additional review of the filing by OCI staff do not indicate any significant changes to the operation of the Domestic Insurer. Compliance with s. 611.72(3)(am)4, Wis. Stat., is expected.

**s. 611.72(3)(am)5:** Paragraph 5 requires that OCI review the Biographical Affidavits of the proposed officers and directors of the Applicants. This review did not raise significant concerns.

<b>Recommendation</b>
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The Acquisition of Control in the above-referenced Form A filing will not violate the law or be contrary to the interests of the insureds, and it does not meet any of the disqualifying criteria outlined in s. 611.72 (3), Wis. Adm. Code. Therefore, the transaction should be approved.