

Mancusi-Ungaro, Michael - OCI

From: Toman, William J. <William.Toman@quarles.com>
Sent: Wednesday, March 28, 2018 9:11 AM
To: Wicka, Richard B - OCI
Cc: Bemis, Zach - OCI; Malm, Amy J - OCI; Mancusi-Ungaro, Michael - OCI; Hinkel, Richard - OCI; Vaughn Vance (vvance@weatrust.com); Kevin G. Fitzgerald (kfitzgerald@foley.com)
Subject: WEA-HTHP - pre-acquisition notification exemption [QBLLP-ACTIVE.FID39484212]

Richard:

At our recent meeting, you asked whether WEA Insurance Corporation (the "Corporation") would be filing a pre-acquisition notice (Form E) with your Office in connection with its proposed acquisition of Health Tradition Health Plan ("HTHP"). As you know, the Form E requires detailed information on markets and competition relevant to a proposed transaction. Wis. Admin. Code § Ins 40.025(4). However, there are simpler tests - presumably designed to allow a quick determination without substantial fact finding and analysis - for whether a transaction is exempt from the Form E requirement. § Ins 40.025(2)(d).

As described further below, we have concluded that the Corporation need not file a Form E based on the exemptions in § Ins 40.025(2)(d)2. and 3. for an acquisition that would not result in (a) an increase in any market share; and (b) a combined market share that does not exceed 12% of the total market and the market share would not increase by more than 2% of the total market.

Under § Ins 40.025(2)(d), no Form E is required if, as an immediate result of the acquisition, any of the following apply:

1. In no market would the combined market share of the involved insurers exceed 5% of the total market, or
2. There would be no increase in any market share, or
3. In no market would the combined market share of the involved insurers exceed 12% of the total market and the market share would not increase by more than 2% of the total market.

In this context, "a market means direct written insurance premium in this state for a line of business as contained in the annual statement." § Ins 40.025(2)(d)3. Using the Analysis of Operations by Lines of Business from the 2017 annual statements shows that we have four lines of business at issue: HTHP's lines of business are Comprehensive (Hospital & Medical), Medicare Supplement, and Medicaid, and the Corporation's only line of business is Group Accident & Health. (Note that HTHP's Comprehensive (Hospital & Medical) line included both group and individual business before HTHP withdrew from the latter market at the end of 2017.)

Because only HTHP wrote individual Comprehensive (Hospital and Medical), Medicare Supplement, and Medicaid business, no Form E would be required for them because the acquisition would not result in any increase in market share. § Ins 40.025(2)(d)2. Presumably, the other exceptions would apply to these lines of business as well, but we do not have the data to show that. (Recall that HTHP withdrew from the Medicaid, individual health, and small group health markets at the end of 2017.)

Moreover, it is clear that the remaining lines of business - the Corporation's Group Accident & Health line and HTHP's group Comprehensive (Hospital & Medical) line - are subject to the exception under § Ins 40.025(2)(d)3., because the combined market share of the Corporation and HTHP would neither exceed 12% of the total market, nor would the market share increase by more than 2% of the total market.

According to the most recent data available to us, in your Office's *Wisconsin Insurance Report (2016)*, the Corporation's share of the group accident and health market was 5.1%. See Table E, p. 113. Additionally, HTHP's market share must be less than 1.2%, because HTHP's share is too small to be shown in the chart, and the company with the lowest market share to make it into the chart has a 1.2% share. Therefore, the combined group accident and health market share of the Corporation and HTHP could not exceed 6.3% of the total market.

In sum, the group accident and health market share chart shows that both parts of the exception in § Ins 40.025(2)(d)3. are met: First, "the combined market share of the involved insurers" does not exceed 12% (because the combined group accident and health market share of the Corporation and HTHP could not exceed 6.3%), and, second, the Corporation's market share would not increase by more than 2% as an immediate result of the acquisition (because HTHP's market share is less than 1.2%).

The exception in § Ins 40.025(2)(d)1., which allows the involved insurers to bypass the Form E filing requirement if their combined market share would not exceed 5%, may also apply using figures for 2017 (especially taking into account that HTHP exited certain markets). However, it is not necessary to confirm those figures given that the exception in § Ins 40.025(2)(d)3. applies.

In light of the above, the Corporation does not intend to file a Form E. Please let me know if you would like to discuss this conclusion.

Regards,

Bill