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**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

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**DECISION AND ORDER**

**IN THE MATTER OF THE ACQUISITION OF CONTROL OF THE COMMERCE  
INSURANCE COMPANY AND CITATION INSURANCE COMPANY BY MAPFRE  
S.A. AND ITS ULTIMATE CONTROLLING PERSON, FUNDACIÓN MAPFRE  
DOCKET NO. F2008-01**

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**I. Introduction**

Mapfre S.A. (“Mapfre”) and its ultimate controlling person, Fundación Mapfre (the “Foundation”), seek approval of their proposed acquisition of control of The Commerce Insurance Company and Citation Insurance Company pursuant to § 206B of Chapter 175 of the Massachusetts General Laws (“§ 206B”). The Foundation is a non-profit charitable foundation organized under the laws of Spain. It owns a majority of the common stock of Mapfre through its wholly-owned subsidiary, Cartera Mapfre S.L. Sociedad Unipersonal (“Cartera Mapfre”). Mapfre is a Spanish holding company headquartered in Madrid, Spain, which conducts insurance, reinsurance, financial, real estate and service activities primarily in Spain, Europe and Latin America, with smaller operations in the United States and Asia. Mapfre also has a strategic alliance with Corporación Financiera Caja de Madrid, S.A. (“Caja Madrid”), the second largest savings bank in Spain, through which Mapfre and Caja Madrid distribute insurance and banking products.

The Commerce Group, Inc. (“Commerce”) was incorporated in Massachusetts in 1976 and is a holding company primarily for five property and casualty insurance subsidiaries. It has been the largest writer of personal property and casualty insurance in Massachusetts in terms of direct premiums written since 1990. Commerce writes insurance through its principal subsidiary, The Commerce Insurance Company (“Commerce Insurance”), which was incorporated in 1971 and began writing business in Massachusetts in 1972 and in New Hampshire in 2001. Commerce Insurance has been wholly-owned by Commerce Holdings, Inc. (“Commerce Holdings”), a Massachusetts corporation that is wholly-owned by Commerce, the ultimate parent, since September 1993. Commerce Insurance is licensed to sell property and casualty insurance in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Commerce also writes insurance through four other subsidiaries, including The Citation Insurance Company (“Citation”), which was incorporated in Massachusetts in 1981 and sells property and casualty insurance only in Massachusetts. Citation has been wholly owned by Commerce Holdings, which is wholly owned by Commerce, the ultimate parent since September 1993.

On October 30, 2007, Mapfre, Commerce and Magellan Acquisition Corp. (“Magellan”), the Massachusetts corporation and indirect wholly-owned subsidiary of Mapfre, entered into an Agreement and Plan of Merger (“Merger Agreement”) to effect the acquisition of Commerce. Magellan will merge with and into Commerce, and Commerce will become an indirect wholly-owned subsidiary of Mapfre if the proposed acquisition (the “Merger”) is approved.

On February 14, 2008, the stockholders of Commerce formally approved the Merger by means of a shareholder vote. Ninety-seven percent of the total number of shares voted, with 88 percent of such voters approving the Merger.

Pursuant to § 206B(d)(1), I must hold a public hearing on the Merger at which the companies, any person to whom notice was sent, and “any other person whose interest may be affected . . . have the right to present evidence, examine and cross-examine witnesses, offer oral and written arguments therewith, and . . . conduct discovery proceedings . . .”. § 206B(d)(2). I

must approve the Merger unless certain conditions exist that would preclude such approval under § 206B.

## **II. Procedural History**

Mapfre initially submitted its partial “Form A Statement Regarding Acquisition of Control of the Commerce Insurance Company and Citation Insurance Company” (collectively, the “Domestic Insurers”) (“Form A”), and accompanying exhibits to the Massachusetts Division of Insurance (“Division”) on December 14, 2007. I directed the formation of a working group of Division staff members (the “Working Group”), headed by Robert G. Dynan, the Division’s Deputy Commissioner of Financial Analysis, to review the Merger on behalf of policyholders and the insuring public. The Division is authorized to retain consultants to advise it on issues raised in connection with the transaction review process pursuant to § 206B. The Division engaged Rudmose & Noller Advisors, LLC (“RNA”) to assist the Working Group in its review of the Merger. RNA analyzed certain historical and prospective financial and other information relating to the Form A and issued a report on April 11, 2008 (the “RNA Report”), which was filed and made available for public inspection. The Division also retained outside legal experts, Bingham McCutchen LLC (“Bingham”), to provide independent legal advice and assistance in evaluating the Merger’s compliance with § 206B.

I appointed Elisabeth Ditomassi, Esq., Deputy Commissioner and General Counsel of the Division, to serve along with me as the Presiding Officer for the public hearing on the Merger. Neither of us participated in the Working Group’s analysis of the Merger.

On April 11, 2008, the Working Group deemed Mapfre’s Application complete and I issued a Notice of Hearing (“Notice”) regarding the Merger, which was posted on the Division’s website. The Notice was published in The Wall Street Journal, The Boston Globe and The Worcester Telegram & Gazette on April 16, 2008. It provided that a public hearing would be held on May 1, 2008 and stated that information about the Merger was available for public inspection at the Division. It also offered an opportunity for any person whose statutory interests may be affected by the Form A proceedings, or to whom the Notice was sent, to submit to the Division by April 28, 2008, a written Notice of Intent to Participate. The Notice also fixed the close of discovery proceedings as of the date three days prior to commencement of the hearing,

or April 28, 2008. No persons or entities filed a Notice of Intent to Participate at the hearing or sought discovery in the Merger.

We conducted the Public Hearing on May 1, 2008. Mapfre appeared at the hearing and provided testimony. Commerce Insurance also was present but did not offer any testimony. Paul Myers of Clifford Chance US LLP, appeared on behalf of Mapfre. Mapfre waived the twenty days' notice of the hearing to which it was entitled under Massachusetts law. Mr. Jose Manuel González Porro, Director and General Secretary of Mapfre and Trustee and General Secretary of the Foundation, testified as to Mapfre's corporate structure, its operations in Spain, Latin America and the United States and provided a brief overview of the nature and expected benefits of the Merger. Mr. Porro also testified as to the expected financing for the transaction and provided testimony on Mapfre's plans for the integration of Commerce after the completion of the Merger. Robert Dynan testified on behalf of the Working Group regarding its review of the Merger. He addressed each of the seven standards in § 206B and testified as to whether the Merger met these requirements. It was the Working Group's opinion that the Merger satisfied all of these requirements. We directed questions to the witnesses relating to the requirements of § 206B following the testimony of Mapfre and the Working Group.

### **III. Analysis of the Proposed Transaction**

I must approve the Merger unless I find that such approval would result in any of the conditions set forth in subsections (i) through (vii) of § 206B(d)(1). Those conditions are discussed in turn, as follows:

**(i) after the change of control, the domestic insurer . . . would not 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**

Section 206B(d)(1)(i) requires the domestic insurer, post-merger, to be able to satisfy the same licensing requirements as required for the writing of the lines of insurance currently written by the insurer. The Domestic Insurers currently satisfy the requirements for licenses to write insurance business in Massachusetts. Mr. Porro testified that he expects "the Merger will not in any manner adversely impact Commerce's ability to satisfy the requirements for the issuance of

a license to write the lines of business for which it is presently licensed.” Mr. Dynan confirmed that “with the proposed change in control, there are no plans to change or alter Commerce’s licenses.” We find their testimony to be persuasive.

For these reasons, we find that subsection (i) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

**(ii) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this commonwealth or tend to create a monopoly therein**

Section 206B(d)(1)(ii) requires that the Merger not have the effect of lessening competition or creating a monopoly in the Massachusetts insurance market. Mr. Porro testified that neither Mapfre, nor any of its subsidiaries, issue insurance policies in Massachusetts, let alone compete with Commerce. Mr. Dynan additionally confirmed that “Mapfre does not have affiliates writing business in Massachusetts, nor [was] the Working Group aware of any plans for any existing Mapfre affiliates to sell insurance in Massachusetts.”<sup>1</sup> There is no evidence that rebuts this presumption or suggests that the acquisition of Commerce would substantially lessen competition in insurance in Massachusetts, or create a monopoly in Massachusetts.

For these reasons, we find that subsection (ii) of § 206B(d)(1) does not present an obstacle to approval of the Merger.<sup>2</sup>

**(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders**

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<sup>1</sup> Section 206B speaks only to competition in insurance in Massachusetts. Mr. Porro, however, additionally testified that competition would not be lessened in any other market in which Commerce transacts business. He testified that none of Mapfre’s subsidiaries issue insurance policies in the five states contiguous to Massachusetts -- Connecticut, New Hampshire, New York, Rhode Island or Vermont. Although both Mapfre and Commerce have operations in Florida, as Mr. Dynan testified, “the combined market share is less than .06 percent of the property and casualty market.” The National Association of Insurance Commissioners Insurance Holding Company System Regulatory Act provides that if the combined market share does not exceed 5 percent of the total market, a presumption arises of no adverse competitive impact.

<sup>2</sup>The docket of this proceeding also contains a letter from the Federal Trade Commission, dated December 11, 2007, approving early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Subsection (iii) of § 206B(d)(1) requires that the acquiring company be in sufficiently sound financial condition such that the acquisition not jeopardize the financial stability of the domestic insurers or prejudice the interests of the policyholders. Mr. Porro testified that as of December 31, 2007, Mapfre had recorded total revenues of \$22.4 billion, total consolidated assets of \$55.3 billion and a consolidated pre-tax net income of \$1.9 billion from its insurance business and \$84.3 million from its other activities. Also, as of December 31, 2006, the Foundation reported €2,657.7 million in total assets and total equity of €2,651.4 million.<sup>3</sup>

Mapfre will purchase 100 percent of the outstanding common stock of Commerce for approximately \$2.2 billion. Mapfre entered into a €500 million facility (approximately \$735 million) provided by a syndicated group of lenders led by Société Générale, and a €1 billion (approximately \$1.471 billion) facility provided by a syndicated group of lenders led by Citibank International, PLC (the “Bridge Loan”). Mr. Porro confirmed that “Mapfre expects to generate cash flow that is more than sufficient to pay interest under these debt facilities.” Mr. Porro also testified that Mapfre may decide in the future to issue debt to refinance the €1 billion Citibank debt facility, although the aggregate level of outstanding debt would not change as the result of such refinancing.

As of December 31, 2007, Mapfre owned a 51 percent stake in Mapfre Caja Madrid Holdings, Inc., a company that operates four Spanish subsidiaries in connection with its strategic alliance with Mapfre. Mr. Porro testified that “on December 17, 2007, Mapfre announced that it had reached an agreement in principle with Caja Madrid for a reorganization of Mapfre (the “Reorganization”), involving an exchange of certain shares of common stock held by Caja Madrid in subsidiaries of Mapfre for 15 percent of the shares of common stock of Mapfre and 12.5 percent of the shares of the common stock of Mapfre Internacional, which will be the immediate parent of Commerce after the Merger.” Mapfre provided additional information and documentation regarding the Reorganization in a supplement to the Form A, which supports Mr. Porro’s testimony that the Reorganization should not affect the financing or the terms or conditions of the Merger. Mr. Porro testified that the Reorganization will financially benefit

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<sup>3</sup> The financial statements of the Foundation have been audited by Ernst & Young for the period ended December 31, 2006. The 2007 audit of Mapfre is not expected to be available until after its shareholders’ meeting to be held in June 2008.

Mapfre and its subsidiaries by (i) increasing the net worth of Mapfre through elimination of Caja Madrid's minority interests in downstream subsidiaries; (ii) increasing the profit of Mapfre following the Reorganization by eliminating Caja Madrid's minority interest in downstream income; and (iii) simplifying and enhancing the structure of the Mapfre group. Mr. Porro also testified that the Reorganization was awaiting the approval of the Spanish regulatory authorities, but that Mapfre had a "fair level of certainty" that it would receive authorization.<sup>4</sup>

Mr. Porro also testified that several ratings agencies have given Mapfre favorable ratings, including Standard & Poors ("S&P") (A+) and A.M. Best Company ("A.M. Best") (A). He stated that following the announcement of the Merger, the ratings agencies re-confirmed Mapfre's ratings. S&P affirmed its ratings on October 31, 2007 after the proposed acquisition of Commerce was announced. Similarly, while A.M. Best downgraded Mapfre's Issuer Credit Rating and ratings on Mapfre's senior unsecured debt due 2011 to "a" from "aa-" and downgraded its Financial Strength Rating of Mapfre's Spanish-domiciled insurers to A ("Excellent") from A+ ("Superior"), after the announcement of the Form A on November 1, 2007, A.M. Best affirmed its Mapfre ratings.<sup>5</sup>

Finally, Mr. Dynan testified that Mapfre is a well-capitalized and profitable insurance holding company with an investment portfolio that is generally comprised of investment-grade fixed income securities. He further stated that "the [Working Group] found no evidence the current financial condition of Mapfre will jeopardize the financial stability of Commerce or prejudice the interest of its policyholders after the transaction is consummated."

For these reasons, we find that subsection (iii) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

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<sup>4</sup> We find the Reorganization to be relevant to this element solely for the limited purpose that it will affect the financial condition of Mapfre.

<sup>5</sup> The downgrade in Mapfre's ratings "reflect A.M. Best's re-evaluation of its notching between the operating companies and the holding company of the Mapfre group. Other factors include Mapfre's strong, albeit reducing consolidated risk-adjusted capitalization, excellent operating performance and leading business position in Spain and Latin America."

**(iv) the terms of the offer, request, invitation, agreement of acquisition referred to in said subsection (a) are unfair, and unreasonable to the policyholders of the insurer**

Subsection (iv) of § 206B(d)(1) requires that the terms of the offer or agreement of acquisition not be unfair or unreasonable to policyholders of the domestic insurers. The terms of the proposed Merger affect policyholders only incidentally, according to Mr. Porro. Additionally, such terms were negotiated in good faith.<sup>6</sup> Policyholders' concerns focus on whether the Domestic Insurers can survive as financially sound organizations such that they can continue to meet their contractual liabilities to policyholders in a timely and fair manner and conduct their business using fair and reasonable business practices.

Mr. Dynan testified that Mapfre is a well-capitalized and profitable insurance holding company. He also stated that the “[Working Group] evaluated market conduct practices at Mapfre and its insurance subsidiaries and ha[s] no significant concerns about such market conduct practices.” Notwithstanding the current global credit crisis, Mr. Dynan further testified that the financing for this transaction is “reasonable” and that the terms of the acquisition are not unfair or unreasonable to Commerce’s policyholders.

For these reasons, we find that the proposed terms of the acquisition by Mapfre are not unfair or unreasonable to policyholders, and that subsection (iv) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

**(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest**

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<sup>6</sup> Mr. Porro testified that “on October 30, 2007, Bear Stearns, Commerce’s financial advisor, provided to the Commerce Board of Directors an oral opinion which was subsequently confirmed in writing, to the effect that the cash consideration to be received in the Merger by the Commerce shareholders was financially fair to such shareholders.” The fairness of the purchase price provided to the shareholders, however, is not relevant to the policyholders except to the extent it could affect adversely the solvency of the Domestic Insurers.



Subsection (v) of § 206B(d)(1) requires that the acquiring party not be contemplating any material changes in the business of the domestic insurer that would be unfair and unreasonable to policyholders, or otherwise would not be in the public interest. Mr. Dynan testified that “Mapfre has informed the Working Group that it does not have any plans or proposals to change operations at Commerce or to liquidate Commerce, sell its assets, merge it, or change its corporate structure or management that would be unfair and unreasonable to Commerce policyholders and not in the public interest.” Mr. Porro confirmed that Mapfre intends to retain Commerce’s officers and management. Mr. Dynan additionally testified that the existing Commerce management will remain in place through at least September 2010.

Mr. Porro also testified that following the closing of the Merger “Mapfre intends to maintain Commerce’s headquarters in Webster, Massachusetts [and] . . . the Merger is not intended to adversely affect Webster, Massachusetts.” Mapfre also committed, through the testimony of Mr. Porro, that the Merger is not expected to adversely affect the business policies or financial condition of Commerce, nor are any of the officers of Commerce expected to change as a result of the Merger. Mr. Porro further testified that Mapfre, in a signed commitment letter to the Division on March 13, 2008, confirmed that “the Merger should not create any significant redundancies in either job functions or offices or facilities [and] . . . Mapfre intends to retain Commerce’s management and employees.” Moreover, Mr. Porro testified that through 2010 Mapfre intends to maintain at least the level of charitable giving and social contributions of Commerce over calendar years 2005, 2006 and 2007.

We inquired of Mapfre and the Working Group regarding Mapfre’s interim financing and its lack of a permanent financing structure for the Merger. We raised this issue to address whether any long-term financing issues could result in material changes to Mapfre’s business or result in any unfair or unreasonable ramifications for Commerce’s policyholders. Mr. Porro testified that “Mapfre has not yet finalized the permanent structure of financing, as the plan shall be influenced by market conditions, timing and the attractiveness of options available at that time.” He also testified that €300 million of the Bridge Loan will be refinanced with longer-term hybrid debt to be issued during 2009, with the remaining €200 million to be paid using generated cash flow. Mr. Porro stated that Mapfre expects to generate sufficient cash flow to pay down €300 million of the €500 million commercial credit facility in 2010.

Both Mr. Porro and Mr. Dynan testified that given Mapfre's positive debt ratings, Mapfre should have little trouble obtaining financing in the future. Mr. Porro testified that "[Mapfre] ha[s] a strong rating, and [Mapfre] ha[s] information that permits [it] to assume that [it is] not going to have any difficulty obtain[ing] the final debt or capitalization to [refinance] the funds." Mr. Dynan testified that given the current volatility in the credit markets, Mapfre's decision to obtain only short-term financing at this time is "reasonable." Moreover, Mr. Dynan provided the Commissioner further assurances by testifying that the Commissioner has approval authority over dividends, allowing for ongoing supervision should the Division have any concerns following the Merger.

For these reasons, we find that subsection (v) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

**(vi) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control**

Subsection (vi) requires that the competence, experience and integrity of those who will control the operations of the domestic insurers post-merger be of a sufficient level so as not to be prejudicial or contrary to the interests of the policyholders and the insuring public. Mr. Porro testified that at least 50 percent of the boards will be comprised of individuals from Mapfre, with four or five internal directors from Mapfre and Commerce and two or three independent outside directors which have yet to be selected. Biographical affidavits and background investigation reports for each of the four internal directors that Mapfre selected were submitted into the record along with the Form A filing. Mr. Dynan testified that the Working Group's review of the results of the background checks and the biographical information "did not raise any concerns about the competence, experience and integrity of those persons who would control the operation of Commerce once the transaction is consummated." Commerce management has been in place for many years and has substantial experience managing the Domestic Insurers and, as Mr. Porro testified, Mapfre plans to retain Commerce management for the immediate future.

Mr. Porro also testified that Mapfre's management is highly experienced in the business of insurance. It has experience acquiring insurance companies in different parts of the world and integrating these operations in Mapfre's operations smoothly. Specifically, Mapfre successfully has acquired and integrated into its operations insurance companies in Turkey, Portugal and the Philippines, according to Mr. Fernandez-CID Planiol, the Director and General Manager of Mapfre Internacional.

Subsection (vi) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

**(vii) the acquisition is likely to be hazardous or prejudicial to the insurance buying public**

Finally, subsection (vii) of § 206B(d)(1) requires that the acquisition not be hazardous or prejudicial to the insurance buying public. We inquired into the structural and cultural integration of the board and management as well as the strategic ability to use the Commerce model to enter other markets. We focused on S&P's concerns regarding "the limited [immediate] strategic fit of Commerce within Mapfre and the group's ability to replicate the success of the acquired business model ... outside [of its home state] of Massachusetts and to new customer groups."

Mr. Plañiol testified that Mapfre seeks to study Commerce's business methods and operations so that Mapfre and Commerce can work together to expand that success in other states. The planned expansion will involve the combination of new ideas and new computer systems, possible expansion into Spanish-speaking markets and the extension of Commerce's existing affinity relationship with the American Automobile Association ("AAA").<sup>7</sup> Mr. Plañiol testified as to Mapfre's success in its recent acquisitions, which he credited to the five pillars of Mapfre's integration strategy: (i) developed accounting and consolidation processes; (ii) an integrated computer system in place throughout all of Mapfre's operations; (iii) autonomous internal auditing procedures and systems to ensure that group culture and group ethics are observed in any part of the world; (iv) centralization of Mapfre's insurance function through a

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<sup>7</sup> The relationship between Commerce and AAA is unrelated to this Merger and, therefore, we have not reviewed it.

reinsurance company that evaluates the needs of adequate retention and the adequate limit of reinsurance that Mapfre's subsidiaries need; and (iv) successful underwriting practices which are the essence of Mapfre's business. Mr. Dynan also testified as to Mapfre's success in its other international acquisitions and noted that Mapfre's acquisition of Commerce only increases Mapfre's total written premiums by approximately ten percent, evidence that although it is a large transaction, it represents only a small portion of Mapfre's overall global business.

Accordingly, we find that subsection (vii) of § 206B(d)(1) does not present an obstacle to approval of the Merger.

#### **IV. Mapfre's Request for Relief from any Obligation to Supplement its Existing Form A Submission**

Mapfre seeks to be relieved of any requirement to supplement its Form A Application which might arise from the recent consummation of the Reorganization, which occurred on May 8, 2008<sup>8</sup> (after Mapfre had submitted its Form A and after the hearing in this matter, but before issuance of this decision). Caja Madrid, under the terms of the Reorganization, now holds the power to vote ten percent or more of both Mapfre and Mapfre Internacional's voting stock, which gives rise to a presumption of control, as that term is defined in M.G.L. c. 175, § 206 (definition of "control") ("§ 206"). We agree that, under these facts, Mapfre ordinarily would be required to supplement its existing Form A application with the Division.

On April 9, 2008, however, Mapfre made a supplemental filing ("Supplemental Filing") with the Division. Mapfre's Supplemental Filing was intended to exempt it from the Form A requirements as they apply to Caja Madrid. Using the means prescribed under § 206 (namely, making "a showing...in the manner provided by subsection (k) of Section 206C that control does not exist in fact"), Mapfre sought to rebut the statutory presumption of control arising from Caja Madrid's post-Reorganization holdings in Mapfre. While Mapfre has presented its request in the form of an "exemption," and has cited to the exemption power I possess under § 206B(e)(2), we believe Mapfre's arguments are better addressed under § 206.

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<sup>8</sup> On May 9, 2008, the Division received Mr. Porro's affidavit, dated May 8, 2008, attesting that the Reorganization had closed on May 8, 2008 (the "Affidavit"). Mr. Porro averred that the Reorganization was consummated in accordance with the terms and conditions described in Mapfre's prior submissions and testimony. This issue is now ripe for our review.

Mr. Porro, to rebut the statutory presumption of control, testified at the hearing that Caja Madrid would not control Mapfre following the Reorganization because: (i) the Foundation will retain an absolute majority of 62 percent of the common stock and voting power of Mapfre; (ii) the Foundation will retain the right unilaterally to elect 22 of the 24 directors of Mapfre; (iii) the Foundation will retain the right to elect 15 of the 17 directors and control 87.5 percent of the common stock of Mapfre Internacional; (iv) under neither the definitive agreement governing the Reorganization nor the corporate governance documents of Mapfre, will Caja Madrid have any management rights, consent rights or veto powers as a stockholder with respect to either Mapfre or Mapfre Internacional; (v) common stock in Mapfre Internacional acquired by Caja Madrid will not become voting stock; (vi) under applicable Spanish corporate law, Caja Madrid will not have any veto powers with respect to any actions to be taken by Mapfre or Mapfre Internacional; (vii) Caja Madrid will not have the right to appoint the two directors of Mapfre Internacional unless regulatory requirements relating thereto are or can be satisfied following the Reorganization; and (viii) Caja Madrid will not have any right to appoint any director either at Commerce Insurance or Citation.

We conclude that Mapfre has rebutted the statutory presumption of control as defined under § 206 based on Mapfre's Supplemental Filing, Mr. Porro's testimony and the support of the Working Group. The Reorganization, therefore, which involves only a non-controlling entity, does not give rise to any obligation to supplement Mapfre's existing Form A filing.<sup>9</sup>

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<sup>9</sup> At various times in the proceedings the procedural route to the relief sought by Mapfre was described in various ways. Both the Working Group and Mapfre cited to the exemption provisions in § 206B(e)(2), and the Working Group cited to the "disclaimer of affiliation" provisions of M.G.L. c. 175, § 206C(k). We decline to reach these issues because, having disposed of the issue under § 206, these further questions are moot.

**V. Conclusion**

We find and conclude, for all of the reasons set forth above, that the Proposed Acquisition of Control of the Commerce Insurance Company and Citation Insurance Company by Mapfre S.A. and Fundación Mapfre complies with the requirements of § 206B of Chapter 175 of the Massachusetts General Laws, and is not prejudicial to the policyholders or to the insuring public. The Merger is APPROVED.

**SO ORDERED.**

Dated: May 22, 2008

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Nonnie S. Burnes  
Commissioner of Insurance

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Elisabeth A. Ditomassi  
Presiding Officer