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

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**In the Matter of the Proposed Acquisition of Control of  
Coface North America Insurance Company by Arch Capital Group Ltd.,  
Arch Reinsurance Ltd., Arch Financial Holdings Europe II Limited, and  
Arch Financial Holdings Europe IV Limited**

**DOCKET NO. F2020-02**

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**DECISION AND ORDER**

**I. Introduction**

Arch Capital Group Ltd., Arch Reinsurance Ltd., Arch Financial Holdings Europe II Limited and Arch Financial Holdings Europe IV Limited, (collectively, the “Arch Group” or the “Applicant”) seeks approval by the Massachusetts Commissioner of Insurance (“Commissioner”) of its proposed acquisition of control (“Acquisition”) of Coface North America Insurance Company (“Coface NA” or “Domestic Insurer”) pursuant to Massachusetts General Laws Chapter 175, §206B (“§206B”). Arch Capital Group Ltd., a limited liability company organized under the laws of Bermuda, is the ultimately controlling member of the Arch Group.<sup>1</sup> Coface NA is a Massachusetts domiciled property and casualty insurance company and an indirect, wholly-owned subsidiary of Coface SA, a *société anonyme* incorporated under French law (“Coface”).

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<sup>1</sup> Arch Reinsurance Ltd., organized under Bermuda law, is a direct, wholly-owned subsidiary of Arch Capital Group, Ltd. Arch Financial Holdings Europe II Limited, a holding company organized under the laws of Ireland, is a direct, wholly-owned subsidiary of Arch Reinsurance Ltd., and Arch Financial Holdings Europe IV Limited, also a holding company organized under the laws of Ireland, is a direct, wholly-owned subsidiary of Arch Financial Holdings Europe II Limited.

The Applicant initially submitted its “Form A Statement Regarding Acquisition of Control” of Coface NA (“Form A”) to the Massachusetts Division of Insurance (“Division”) on or about October 12, 2020. The Commissioner directed the formation of a working group of Division staff members (the “Working Group”) that included representatives of the Financial Surveillance and Legal Units to review the proposed Acquisition on behalf of policyholders and the insuring public. On December 15, 2020, the Working Group deemed the Arch Group’s Form A complete.

Pursuant to §206B(d)(1), the Commissioner must hold a public hearing on the proposed Acquisition. The Commissioner appointed Jean F. Farrington, Esq., who did not participate in the Working Group’s analysis of the proposed Acquisition, to serve as Presiding Officer for the public hearing. On December 18, 2020, the Commissioner issued a Notice of Hearing (“Notice”) regarding the Acquisition. The Notice was posted on the Division’s website and published in the Boston Globe on December 26, 2020 and in the Wall Street Journal on December 28, 2020. The Notice set January 8, 2021 as the date for the public hearing and advised that public documents filed electronically in connection with the proposed Acquisition were available for inspection upon request to the Division at [doidocket.mailbox@mass.gov](mailto:doidocket.mailbox@mass.gov). On December 28, 2020, the Arch Group waived the twenty days’ notice of the hearing to which it was entitled under §206B(d)(2).

The Notice also stated that the purpose of the hearing was to afford persons identified in §206B(d)(2) an opportunity to participate in the hearing as prescribed by that section. It required any person seeking to participate to submit a Notice of Intent to Participate on or before December 29, 2020, setting forth the statutory ground for the requested participation, the basis for the person’s interest in the proposed Acquisition and the scope of the requested participation. The Notice also advised that all discovery proceedings must be concluded no later than January 4, 2021. No person or entity filed a Notice of Intent to Participate in this proceeding.

The public hearing took place on January 8, 2021. Richard Marino, Esq., Willkie, Farr and Gallagher, represented the Applicant, Friedrich von Krusenstiern, Esq., represented Coface NA and Cara Toomey, Esq. represented the Division. Three witnesses testified. Because of an unexpected delay in receiving a report from a third party confirming certain confidential biographical information that the Applicant had provided and the Working Group had reviewed,

the record was left open to receive confirmation from the Working Group that it had received and reviewed the third party reports and had not revised its position recommending approval.

The Acquisition for which the Arch Group seeks approval is the consequence of a share purchase agreement negotiated in 2020 between Arch Capital Group, Ltd. and Natixis SA (“Natixis”) (“Share Purchase Agreement”), the current owner of approximately 42.2% of the shares of Coface that represent about 42.2% of its voting rights (“Proposed Transaction”).<sup>2</sup> Under the Proposed Transaction Arch Capital Group, Ltd. will substitute its wholly-owned subsidiary, Arch Financial Holdings Europe IV Limited, as the purchaser from Natixis of shares representing 29.50% (rounded to the nearest hundredth) of the share capital and voting rights of Coface. Immediately following the closing of the share purchase transaction, the Natixis representatives on the Coface board of directors (“Board”) will resign, and the Board will appoint nominees who will represent the Arch Group. Following the closing of the transaction, Arch Financial Holdings Europe IV Limited will own shares representing 29.50% of the share capital and voting rights of Coface and indirectly own all issued and outstanding shares of common stock of Coface NA.<sup>3</sup>

## **II. Testimony**

### **A. Janice Englesbe**

Ms. Englesbe, a Senior Vice President and the Chief Risk Officer of Arch Capital Group Ltd., testified for the Applicant in support of its proposed acquisition of control of Coface NA. She has served as Arch Capital Group Ltd.’s Chief Risk Officer for nearly two years, is familiar with its business activities and, as its Chief Risk Officer, has been involved in the entire process of acquiring control of Coface NA by means of the transaction described in the Form A. Ms. Englesbe stated that her participation included the due diligence process, negotiating the terms of the Share Purchase Agreement and preparing and filing the Form A. Following the closing of the Proposed Transaction, she will be a director of Coface.

Ms. Englesbe described Arch Capital Group Ltd. as a Bermuda-based company that provides insurance, reinsurance, and mortgage insurance on a worldwide basis through its subsidiaries. Arch Group’s unique underwriting platform, experienced management team, and

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<sup>2</sup> Natixis SA, a *société anonyme* incorporated under the laws of France is currently the most significant shareholder of Coface.

<sup>3</sup> Natixis will continue to own approximately 12.7% of the share capital and voting rights of Coface.

strong capital base has enabled it to establish a prominent presence in the global insurance, reinsurance, and mortgage insurance markets. The Applicant has insurance company subsidiaries domiciled in five other United States jurisdictions, including Delaware, North Carolina, Missouri, Wisconsin and Kansas.

The Applicant in this matter submitted its initial Form A Statement on the proposed Acquisition of control of Coface NA to the Division on October 12, 2020, subsequently supplementing it. Ms. Englesbe testified that, to the best of her knowledge, the information in the initial Form A Statement, as supplemented, remains true and accurate. She stated, as well, that the Proposed Transaction has been approved by the appropriate French insurance regulatory agency, which is the group wide supervisor of Coface and its subsidiaries.

The framework for the Acquisition described in the Form A Statement is the Share Purchase Agreement, dated February 25, 2020 and amended on August 31, 2020, between the Applicant and Natixis under which the Applicant will acquire approximately 29.50% of the share capital and voting rights of Coface. Arch Financial Holdings Europe IV Limited, an indirect, wholly owned subsidiary of Arch Capital Group, Ltd. will become the owner of 29.50% of the share capital and voting rights of Coface, which will continue to own all of the issued and outstanding shares of common stock of Coface NA. Following the closing, the Applicant will become a minority shareholder of Coface NA, indirectly owning 29.50% of its outstanding shares of common stock. Natixis, the public shareholders and certain employees of Coface will continue to own the remaining share capital and voting rights of Coface, and indirectly of Coface NA. Natixis itself will own approximately 12.7% of the share capital and voting rights of Coface.

Ms. Englesbe testified that the terms and conditions of the Share Purchase Agreement and the Proposed Transaction are the product of arm's-length negotiations between Natixis and the Applicant, with the assistance of their respective advisers and under the direction of their respective boards of directors. The total consideration for the Proposed Transaction, as set forth in the Share Purchase Agreement, is based on the price of the ordinary shares of Coface.<sup>4</sup> The

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<sup>4</sup> Ms. Englesbe estimated that the consideration will equal approximately US\$11.88 (based on the exchange rate as of August 31, 2020) per ordinary share of Coface, multiplied by the number of ordinary shares of Coface purchased by Arch Group from Natixis. The Applicant anticipates that the aggregate

Applicants plan to finance the Proposed Transaction entirely from funds within the Arch Group that will be transferred to Arch Financial Holdings Europe IV Limited via an intercompany loan and equity investment.

Addressing the impact of the Proposed Transaction on Coface NA's business and employees in Massachusetts, Ms. Englesbe testified that, as a minority investor in Coface, the Applicant does not intend to take an active role in the management of Coface NA's business. It intends to support the current management of Coface, including the current management of Coface NA, and does not intend to change the overall business or current management of Coface or Coface NA. Moreover, the Applicant has no plans to terminate, transfer, or relocate out of Massachusetts any Coface employees in Massachusetts in connection with the Proposed Transaction.

Ms. Englesbe described the Applicant's primary purpose in entering into the Proposed Transaction is to enable it to participate in Coface's operations as a minority investor. It represents a long-term strategic investment, fitting with its efforts to develop uncorrelated sources of underwriting income and a belief that credit insurance represents a unique line of insurance business that is crucial in making global trade safe and efficient.

Addressing the Applicant's plans for Coface NA, Ms. Englesbe testified that it has no current plans to make any changes to the business operations, corporate structure, board composition, or management of Coface NA. As set forth in the commitment letter from the Applicant to the Division dated December 7, 2020 ("Commitment Letter"), the Applicant, following the closing of the Proposed Transaction, will provide prior notification to the Division before implementing any changes that would result in material changes to Coface NA's business plan or to the Applicant's role in the management of Coface's business.

Further, she stated, there are no current plans to have Coface NA enter into any agreements with the Applicant in connection with the Proposed Transaction. In addition, the Applicant has no current plans to change the management of Coface NA following the closing of the Proposed Transaction or to appoint any new individuals as its directors or executive officers.

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purchase price payable by Arch Group to Natixis as consideration for the Proposed Transaction will be approximately US\$532.8 million, based on the share capital and exchange rate as of August 31, 2020.

Its expectation is that the same management team that runs Coface NA today will continue to do so following the Proposed Transaction.

After closing the Proposed Transaction, the Applicant plans to make certain changes to the board of directors of Coface, the indirect parent of Coface NA. Currently, that Board is comprised of 12 members, 7 Natixis representatives and 5 independent directors. After closing, it is expected that the Board will be comprised of 10 members, including five independent directors who are currently on that Board, four Arch Group directors, including Ms. Englesbe, and a sixth independent director, who has not yet been identified, to be appointed shortly after closing. It is expected that the Coface Board will designate the sixth independent director as the chairman of that Board.

A list of the individuals who are current directors and executive officers of the Applicant, as well as individuals proposed to initially be designated by the Applicant to be the Arch Group representatives on the Coface Board, is attached to the Form A Statement as Exhibit D. The Applicants have provided the Division with NAIC Biographical Affidavits for these individuals. The biographical affidavits of these individuals have been submitted to a third-party background check service provider to perform background checks.<sup>5</sup>

Ms. Englesbe addressed each of the seven Massachusetts statutory standards that the Proposed Transaction must satisfy in order to be approved.

With respect to the first standard, in her opinion, after the Proposed Transaction closes, Coface NA will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is now licensed. She stated that the Applicant does not have any plans to make any material changes to Coface NA's business operations and, as a result, believe that after the Proposed Transaction closes Coface NA will still satisfy the requirements for the issuance of such licenses.

Considering the second standard, Ms. Englesbe opined that the Proposed Transaction would not have the effect of substantially lessening competition in insurance in the Commonwealth of Massachusetts or tend to create a monopoly therein. Her opinion is based on the fact that Coface NA is active in only one line of business, credit insurance, and neither it nor the Applicant has a significant market share in this particular line of business.

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<sup>5</sup> As noted above, this Decision reflects that, as of the date on which it is issued, the provider had not submitted complete information on a number of those individuals.

Further, according to 2019 premium data obtained from S&P Global Market Intelligence (formerly SNL Financial), as of December 30, 2020, the Applicant's share of the credit insurance market in Massachusetts is approximately 3.02% (8th overall), while Coface NA's market share is approximately 6.25% (5th overall). Based on those values, the Applicant estimates that post-closing, the combined market share of the Applicant and Coface NA will be approximately 9.27%, making it the 4th largest competitor in this line of business.<sup>6</sup> The very limited overlap between the Applicant and Coface NA, as well as the presence of several strong competitors in the line of business where there is overlap, supports a conclusion that the Proposed Transaction would not substantially lessen competition in Massachusetts.

Viewing the third standard, Ms. Englesbe testified that the Applicant's financial condition is such that the Proposed Transaction will not jeopardize the financial stability of Coface NA or prejudice the interest of its policyholders. The Applicant maintains a strong financial position, as exhibited by the financial statements attached to the Form A Statement as Exhibits B-1 through B-7. Arch Capital Group Ltd. has a "A-" rating from Fitch and S&P. Ms. Englesbe again noted that the Applicant, as a minority investor in Coface, plans to support the current management of Coface and Coface NA. The Applicant believes that Coface NA will be a well-managed and financially stable insurance company following the closing of the Proposed Transaction.

Addressing the fourth standard, Ms. Englesbe stated her opinion that the terms of the Proposed Transaction are not unfair or unreasonable to the Coface NA policyholders. The Applicant has no plans or proposals to make any material changes to Coface NA's business, corporate structure, or management that would be unfair or unreasonable to its policyholders.

With regard to the fifth standard, Ms. Englesbe stated that, as set forth previously and as described in the Form A Statement, the Applicant has no plans or proposals to liquidate Coface NA, sell its assets or consolidate or merge it with any person, or to make any other material changes in its business or corporate structure or management that would be unfair and unreasonable to its policyholders or contrary to the public interest. Coface NA will continue to operate in a manner consistent with laws, regulations, and the reporting requirements of all applicable regulatory agencies.

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<sup>6</sup> Ms. Englesbe acknowledged in her testimony that the Division will be testifying based on the 2019 premium data that has been reported to the Division, which may result in slight variations in these market share approximations.

Addressing the sixth standard, Ms. Englesbe stated her opinion that the competence, experience and integrity of those persons who would control the operations of the Domestic Insurer are not such that the Proposed Transaction would not be in the interest of Coface NA policyholders or the public. She stated that the directors and executive officers of the Applicant, who oversee and direct the operations of Arch Capital Group Ltd., which will be an indirect minority shareholder of Coface NA after the transaction closes, have the requisite competence, experience and integrity. Moreover, as previously stated, the Applicant has no plans to make any material changes to the board composition or management of Coface NA; the management team that runs the Coface NA will continue to do so following the closing of the Proposed Transaction.

As previously stated, Ms. Englesbe noted that, following the closing, the Applicant plans to nominate four individuals, including her, to serve on the Coface Board as representatives of Arch Group. However, the four Arch Group Directors will be a minority of the 10 member Coface Board, and the majority of its members, including the Chairman, will be independent directors.

The Applicant has provided the Division with biographical affidavits of its directors and executive officers, as well as those individuals proposed to serve as its representatives on the Coface Board. The biographical affidavits of such persons have been submitted to an independent firm to perform background investigations. To Ms. Englesbe's knowledge, nothing suggests that any of those persons lack the competence, experience or integrity necessary to serve in these roles. Consequently, Ms. Englesbe concluded, there should be no concerns as to her competence, experience and integrity or that of the management of the Applicant and those who will control Coface NA following the closing.

With respect to the seventh standard, Ms. Englesbe expressed the opinion that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public. She reached that conclusion based on reasons that were previously explained and detailed in the Form A Statement. The Applicant believes that the Proposed Transaction will not lessen competition in the Commonwealth of Massachusetts and that, as demonstrated in the financial statements submitted with the Form A, it is in a financially sound position so that the Proposed Transaction will not jeopardize Coface NA's financial position or prejudice the interests of its policyholders. Ms. Englesbe again stated that the Applicant has no plans to make any material



changes to the business operations, corporate structure, or management of Coface NA, no plans for it that are unfair or unreasonable to its policyholders or contrary to the public interest, and that the Coface NA's business operations will be managed by the same individuals who manage it today and who possess significant experience in the insurance industry.

Ms. Englesbe provided additional information about the Applicant's plans for closing the Proposed Transaction, if approved by the Commissioner. She stated that it anticipated closing as soon as possible after receiving all the required regulatory approvals. As of December 30, 2020, the Applicant had received approvals from the respective regulatory and prudential authorities in all but two relevant jurisdictions, Massachusetts and Chile, and expected to receive approval from Chile shortly. The Applicant also submitted Form E (or equivalent) filings to ten U.S. jurisdictions and has received approval of or non-objection to the Proposed Transaction from the relevant regulators.

#### **B. Friedrich von Krusenstiern**

Mr. von Krusenstiern is the General Counsel and Secretary of Coface NA, a position he has held since 2003. In connection with the Proposed Transaction, he was part of the team involved in advising the Applicant about Coface NA and evaluating the impact of that transaction on Coface NA. On behalf of Coface NA and Coface, Mr. von Krusenstiern expressed their support for the Acquisition described in the Form A that the Applicant submitted to the Division on October 12, 2020.

Mr. von Krusenstiern stated that Coface understands that the Applicant, as a minority shareholder of Coface, does not intend to take an active role in managing the business of Coface NA. For that reason, Coface does not expect any material changes to Coface NA's business structure, board composition, or management, nor does it expect any Massachusetts employees of Coface or of Coface NA to be terminated, transferred, or relocated out of Massachusetts. Accordingly, the Proposed Transaction is not expected to cause any changes in the current operations of Coface NA. In Mr. von Krusenstiern's opinion, Coface NA and its policyholders, following the Proposed Transaction, will be largely in the same position that they are in today.

#### **C. Daniel Provost**

Mr. Provost is the Director of Financial Surveillance and Company Licensing at the Division and, in that capacity, participated in the Working Group formed to review the Applicant's proposed Acquisition of Coface NA.

The Working Group was composed of representatives of the Division's Financial Surveillance and Legal Units. Its members reviewed the Form A Statement and exhibits, along with other documents that it requested from the Applicant, to evaluate the transaction's compliance with the requirements set out in §206B(d)(1), the regulation that governs the contents of such filings, 211 CMR 7.00, subsections 7.05 and 7.11, and the standards for approval in §206B(d)(2). On December 15, 2020, the Working Group deemed the Form A Statement to be complete.

Mr. Provost summarized the transaction as presented to the Working Group. On February 25, 2020, the Applicant entered into the Share Purchase Agreement with Natixis the most significant shareholder of the ultimate parent of Coface NA, Coface . Under that agreement, as later amended on August 31, 2020, the Applicant will purchase 29.50% of the share capital and voting rights of Coface. Natixis will continue to own 12.7% of the share capital and voting rights of Coface. Additionally, the 7 Natixis representatives on the board of directors of Coface will resign and be replaced by the Applicant's nominees. The purchase price payable by the Applicant to Natixis will be approximately \$532.8 million.

Mr. Provost then addressed the Working Group's conclusions on each of the seven factors in §206B(d)(1) that a transaction must satisfy in order to be approved by the Commissioner.

Addressing the first standard, the ability of Coface NA, after the transaction closes, to satisfy the requirements for a license to write the lines of insurance for which it is now licensed in Massachusetts, Mr. Provost stated that the Applicant has expressed no intention of making any changes to Coface NA's business operations, corporate structure, board composition or management. Coface NA is expected to continue to remain qualified as a Massachusetts licensed insurer.

Addressing the second standard, whether the acquisition of control might substantially lessen competition in the Massachusetts insurance market or tend to create a monopoly, Mr. Provost stated that Coface NA is active only in the business of credit insurance and was one of 22 insurers active in the Massachusetts credit insurance market in 2019. Based on 2019 reported premiums to the Division, in that year Coface NA wrote 6.68% of the direct premium for that line written in Massachusetts, and was ranked 6<sup>th</sup> overall. The Applicant now has two affiliated insurers that are ranked 9<sup>th</sup> and 19<sup>th</sup> overall in the credit insurance market in

Massachusetts and have a combined 3.22% market share. Post-transaction, the three companies will have a combined market share of approximately 9.9% making them the 4<sup>th</sup> largest competitor in the Massachusetts domestic credit insurance market.<sup>7</sup>

Addressing the third standard, whether the financial condition of the Applicant might jeopardize the financial stability of Coface NA, or prejudice the interests of its policyholders, Mr. Provost reported that, after completing a review of the Applicant's financial position, the Working Group concluded that its financial condition does not, and is not expected to, jeopardize the Domestic Insurer's financial stability or prejudice the interests of its policyholders.

The fourth statutory standard requires that the terms of the agreement governing the acquisition must not be unfair or unreasonable to the Coface NA policyholders. Mr. Provost stated that the Working Group evaluated the Proposed Transaction, noting that the purchase price of \$532.8 million was the result of an arm's-length negotiation. It concluded that the terms of the offer are not unfair nor unreasonable to the Domestic Insurer's policyholders.

The fifth statutory standard asks if the Applicant plans to liquidate the Domestic Insurer, sell its assets or consolidate or merge it or to make any other material changes to its business or corporate structure or management that are unfair and unreasonable to its policyholders and not in the public interest. Mr. Provost reported that the Form A supports a conclusion that the Applicant has no plans or proposals to liquidate Coface NA, declare extraordinary dividends, or sell its assets or any seats on its board of directors. The Applicant submitted a Commitment Letter to the Division, marked as an exhibit at the hearing, which states that it agrees to provide prior notification to the Division before making any material changes to the Domestic Insurer's business plan.

The sixth standard asks whether the competence, experience and integrity of the Applicant is such that the change of control would not be in the interest of Coface NA policyholders or the public interest. Mr. Provost stated that, based on the Form A and the biographical affidavits provided for directors and management that are expected to control the

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<sup>7</sup>Mr. Provost also observed that data submitted to the Division may differ slightly from data that the Applicants obtained from S&P Global Market Intelligence.

Domestic Insurer, the Working Group had no concerns about the competence, experience, and integrity of those persons.

The seventh statutory standard asks if the acquisition is likely to be hazardous or prejudicial to the insurance buying public. Mr. Provost stated that the Working Group did not identify any matters that would indicate that the Acquisition would likely be hazardous or prejudicial to the insurance buying public.

Mr. Provost concluded that, after reviewing the Form A Statement and all related materials, the Working Group did not note any matters that would support an adverse determination on any of the standards set forth in §206B (d)(1). He noted, also, that the Working Group's recommendation is based upon commitments made by the Applicant in the above-referenced Commitment Letter and recommends that the final order specifically refer to that letter.

### **III. Analysis**

The Commissioner must approve the Acquisition unless he finds that such approval would result in any of the conditions set forth in subsections (i) through (vii) of §206B(d)(1). Each of those conditions will be addressed in turn.

#### **A. The Acquisition Must Satisfy the Requirements of §206B(d)(1)(i)**

Section 206B(d)(1)(i) requires the insurer, after the change of control, to be able to satisfy the requirements for a license to write the line or lines of insurance that it now holds.

Ms. Englesbe expressed the opinion that, after the Proposed Transaction closes, the Applicant does not plan to make any material changes to Coface NA's business operations. For that reason, Coface NA will still be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is now licensed. Mr. Provost confirmed that the Applicant does not intend to make any changes to Coface NA's business operations, corporate structure, board composition or management and that it is expected to continue to remain qualified as a Massachusetts licensed insurer.

On this record, I find that §206B(d)(1) does not present an obstacle to approval of the Acquisition.

#### **B. The Acquisition Satisfies the Requirements of §206B(d)(1)(ii)**

Section 206B(d)(1)(ii) requires that the Acquisition not have the effect of substantially lessening insurance competition or tend to create a monopoly in the Massachusetts insurance market.

Ms. Englesbe testified that the Proposed Transaction would not have such an effect, based on the facts that Coface NA is active in only one line of business, credit insurance, and that neither it nor the Applicant has a significant market share in this particular line of business. Mr. Provost confirmed that Coface NA writes only credit insurance and was one of 22 insurers active in the Massachusetts credit insurance market in 2019. Each witness further quantified the matter of market share with references to data on Coface NA's 2019 market share; each relied on data compiled by a different source, one a commercial reporting company and the other annual reports filed with the Division. Although the sources do not generate identical values, the testimony showed that, following the Acquisition, Coface NA and the credit insurers now owned by the Applicant would have a collective market share of 9.27 or 9.92 percent, and that either value would rank them in fourth place among their competitors. The record supports a conclusion that the Acquisition will not substantially lessen competition or tend to create a monopoly in Massachusetts.

On this record, I find that §206B(d)(1)(ii) does not present an obstacle to approval of the Acquisition.

**C. The Acquisition Satisfies the Requirements of §206B(d)(1)(iii)**

Subsection (iii) of §206B(d)(1) requires that the financial condition of the acquirer be such that the Acquisition will not jeopardize the financial stability of the insurer or prejudice its policyholders' interests.

Ms. Englesbe testified that the Applicant maintains a strong financial position, as shown by the financial statements attached to the Form A Statement, further commenting that Arch Capital Group Ltd. has a "A-" rating from Fitch and S&P. She again noted that the Applicant plans to support the current management of Coface and Coface NA and believes that Coface NA will be a well-managed and financially stable insurance company following the closing of the Proposed Transaction. Mr. Provost reported that, after completing a review of the Applicant's financial position, the Working Group concluded that its financial condition does not, and is not expected to, jeopardize the financial stability of the Domestic Insurer or prejudice the interest of its policyholders.

On this record, I find that §206B(d)(1)(iii) does not present an obstacle to approval of the Acquisition.

**D. The Acquisition Satisfies the Requirements of §206B(d)(1)(iv)**

Subsection (iv) of §206B(d)(1) requires that the terms of the offer and agreement referred to in the filing must not be unfair or unreasonable to the insurer's policyholders.

Ms. Englesbe opined that the terms of the Proposed Transaction are not unfair or unreasonable to the Coface NA policyholders. The Applicant has no plans or proposals to make any material changes to the insurer's business, corporate structure, or management that would be unfair or unreasonable to its policyholders. Mr. Provost stated that the Working Group evaluated the Proposed Transaction, noted that the purchase price of \$532.8 million was the result of an arm's-length negotiation, and concluded that the terms of the offer are not unfair nor unreasonable to the insurer's policyholders.

On this record, I find that §206B(d)(1)(iv) does not present an obstacle to approval of the Acquisition.

**E. The Acquisition Satisfies the Requirements of §206B(d)(1)(v)**

Subsection (v) of §206B(d)(1) requires that any plans or proposals of the acquirer to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its structure or management must not be unfair and unreasonable to the insurer's policyholders and not in the public interest.

Ms. Englesbe stated that, as described in the Form A Statement, the Applicant has no plans or proposals to liquidate Coface NA, sell its assets or consolidate or merge it with any person, or to make any other material changes in its business or corporate structure or management that would be unfair and unreasonable to its policyholders or contrary to the public interest. She affirmed that Coface NA will continue to operate in a manner consistent with laws, regulations, and the reporting requirements of all applicable regulatory agencies. Mr. Provost reported, as well, that the Form A supports a conclusion that the Applicant has no plans or proposals to liquidate Coface NA, declare extraordinary dividends, or sell its assets or any seats on its board of directors. He stated that the Applicant submitted a Commitment Letter to the Division, marked as Exhibit 3 in this proceeding, agreeing to provide prior notification to the Division before making any material changes to the Domestic Insurer's business plan.

On this record, I find that §206B(d)(1)(v) does not present an obstacle to approval of the Acquisition.

**F. The Acquisition Satisfies the Requirements of §206B(d)(1)(vi)**

Subsection (vi) of §206B(d)(1) requires that the competence, experience, and integrity of those who will control the operations of the insurer post-acquisition are sufficient to support a conclusion that permitting the Acquisition will be in the interest of the policyholders of the insurer and of the public. .

Ms. Englesbe expressed her opinion that that the competence, experience and integrity of those persons who would control the operations of the Domestic Insurer are not such that the Proposed Transaction would not be in the interest of Coface NA policyholders or the public. She stated that the directors and executive officers of the Applicant, who oversee and direct the operations of Arch Capital Group Ltd. which will, post-transaction, be an indirect minority shareholder of Coface NA, have the requisite competence, experience and integrity. The Applicant has no plans to make any material changes to Coface NA's board or management team; the latter will continue to run Coface NA following the closing of the Proposed Transaction. She again noted the anticipated changes to the Coface Board following the closing, and reiterated that the Applicant provided the Division with biographical affidavits of its directors and executive officers, as well as those individuals it proposes to have serve as its representatives on the Coface Board and that those affidavits were submitted to an independent firm to perform background checks. To Ms. Englesbe's knowledge, nothing suggests that any of those individuals lack the competence, experience or integrity necessary to serve in these positions, concluding that there should be no concerns as to her own competence, experience and integrity, or to that of the management of the Applicant or those who will control Coface NA following the closing. Mr. Provost stated that, based on the Form A and the biographical affidavits provided for directors and management that are expected to control the Domestic Insurer, the Working Group had no concerns about the competence, experience, and integrity of those persons.

During the hearing on this matter, however, Ms. Toomey pointed out that the biographical information in the Form A was incomplete because the independent firm charged with performing background checks had not completed its work. As a result, she requested that the record be left open to receive confirmation from the Working Group that it had received and

reviewed complete reports from the third party and had not revised its position recommending approval. As of today's date, however, the Working Group has received some, but not all of the information to complete the third-party reports. For that reason, although the information that has been provided did not raise concerns for the Working Group, absent completed documentation, a final decision on compliance with §206B(d)(1)(vi) is not possible at this time.

**G. The Acquisition Satisfies the Requirements of §206B(d)(1)(vii)**

Subsection (vii) of §206B(d)(1) requires a finding that the Acquisition will not be likely to be hazardous or prejudicial to the insurance buying public.

Ms. Englesbe expressed the opinion that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public, basing her conclusion on factors that were explained in detail in the Form A Statement. She specifically noted that the Proposed Transaction is not expected to lessen competition in Massachusetts, the Applicant is financially sound, and the Proposed Transaction will not jeopardize Coface NA's financial position or prejudice its policyholders' interests. Ms. Englesbe again stated that the Applicant has no plans to make any material changes to the business operations, corporate structure, or management of Coface NA, and that it will continue to be managed by the same experienced individuals who manage it today. Mr. Provost stated that the Working Group did not identify any matters that would indicate that the acquisition would likely be hazardous or prejudicial to the insurance buying public and pointed out the Applicant's written commitment to notify the Division before implementing any plans that would make material changes to Coface NA's business plan or to their role in the management of the business of Coface.

On this record, I find that §206B(d)(1)(vii) does not present an obstacle to approval of the Proposed Transaction.

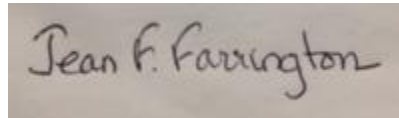
**IV. Conclusion**

I find that, with the exception of sufficient evidence to support a finding of full compliance with §206B(d)(1)(vi), as set forth above, the proposed Acquisition by which the Arch Group will acquire control of Coface, memorialized in the Form A, as supplemented, and the exhibits thereto, that was filed with the Division and deemed complete on December 15, 2020, the Commitment Letter dated December 7, 2020, and the Working Group's report on post-hearing submissions relating to the biographical information required under §206B(d)(1)(vi), is APPROVED, subject to the following conditions.



1. For 14 of 23 individuals for whom a third party was checking biographical information, the Working Group has received complete information and has expressed no concerns. Those individuals may participate fully as anticipated in the Proposed Transaction after it closes.
2. For the remaining 9 individuals, the Applicant shall continue to submit the outstanding biographical check information to the Working Group as it is received. The Working Group shall promptly review the information and, if it has no concerns, confirm that conclusion in writing to the Applicant and file a notice in the docket stating the number of individuals whose information is complete. Each individual so confirmed thereafter may participate fully as anticipated in the Proposed Transaction. Prior to confirmation, no individual in this group should participate in any matter involving the management of Coface NA.
3. Upon confirmation from the Working Group that the Applicant has submitted all information required in the second paragraph, an order will issue affirming that the record in this proceeding is now complete and is closed.

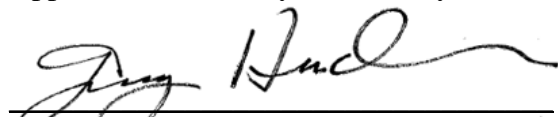
**SO ORDERED this 5th day of February, 2021.**



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Jean F. Farrington  
Presiding Officer

Approved this 5th day of February, 2021



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Gary D. Anderson  
Commissioner of Insurance