COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE
1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
http://www.mass.gov/doi

In the Matter of the Proposed Acquisition of Control of Commonwealth Annuity and Life Insurance Company and First Allmerica Financial Life Insurance Company by Magnolia Parent LLC, KKR Magnolia Holdings LLC, KKR Group Assets Holdings L.P., KKR Group Assets GP LLC, KKR Group Partnership L.P., KKR Group Holdings Corp., KKR & Co. Inc., KKR Management LLP, Henry R. Kravis and George R. Roberts

Docket No. F2020-03

DECISION AND ORDER

I. Introduction

Magnolia Parent LLC, KKR Magnolia Holdings LLC, KKR Group Assets Holdings L.P., KKR Group Assets GP LLC, KKR Group Partnership L.P., KKR Group Holdings Corp., KKR & Co. Inc., KKR Management LLP, Henry R. Kravis and George R. Roberts (collectively "KKR" or the "Applicants") seek approval by the Massachusetts Commissioner of Insurance ("Commissioner") of a proposed acquisition of control ("Acquisition" or "Proposed Transaction") of two Massachusetts domiciled life insurance companies, Commonwealth Annuity and Life Insurance Company ("Commonwealth") and First Allmerica Financial Life Insurance Company ("First Allmerica") (collectively "CALFAF" or "insurers") pursuant to Massachusetts General Laws Chapter 175, §206B ("§206B").

The Acquisition to be approved results from a series of mergers that will change the control of Global Atlantic Financial Group, Limited ("GAFGL" or "Global Atlantic"), the entity that now holds the ultimate controlling interest in CALFAF. In brief, Commonwealth directly owns all the issued and outstanding shares of First Allmerica common stock. The issued and outstanding shares of Commonwealth's common stock are all owned by a holding company, Global Atlantic (Fin) Company ("GAFinCo"), which is directly owned by Global Atlantic Financial Limited ("GAFL"). GAFL, in turn, is directly owned by Global Atlantic Financial Life Limited ("GAFLL") which is directly owned by GAFGL. In July, 2020, Magnolia Parent LLC ("Magnolia Parent") and a subsidiary, Magnolia Merger Sub Limited, a Bermuda exempted company and direct, wholly-owned subsidiary of Magnolia Parent ("Magnolia Sub"), executed a merger agreement with GAFGL and its subsidiary, GAFL.

Under the series of mergers that are the subject of that merger agreement, Magnolia Sub and GAFGL will merge, with the latter the surviving entity. Following a sale of GAFL shares held by the entity that, with GAFGL, owns all issued and outstanding GAFL shares, GAFLL will merge into GAFGL, which will again be the surviving company. At the closing of this sequence of transactions, Magnolia Parent will be the sole shareholder of GAFGL, which will indirectly own all the issued and outstanding voting securities of GAFinCo. GAFinCo will continue to own all the issued and outstanding shares of common stock of Commonwealth and Commonwealth will still own all the issued and outstanding shares of common stock of First Allmerica. Henceforth in this Decision, unless clarity requires a specific reference to a particular entity in the KKR or the Global Atlantic group, the parties to the Proposed Transaction to change control of CALFAF will be referred to as KKR and Global Atlantic.

The Applicants' burden in this proceeding is to present persuasive evidence demonstrating that the change in control of CALFAF satisfies the statutory standards for approval of such transactions set out in § 206B(d)(1). KKR initially submitted its "Form A Statement Regarding Acquisition of Control" of CALFAF ("Form A") to the Massachusetts Division of Insurance ("Division") on or about July 28, 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 CALFAF's policyholders and the insuring public.

Pursuant to §206B(d)(1), the Commissioner must hold a public hearing on the proposed Acquisition at which, pursuant to §206B(d)(2), 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 . . .”. 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 15, 2020, the Working Group deemed KKR’s Form A complete and on December 16, 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 18, 2020 and in the Wall Street Journal in its on December 19-20, 2020, issue. The Notice set January 6, 2021 as the date for the public hearing to be held virtually using TEAMS, a digital meeting program. It advised that public documents filed electronically in connection with the proposed Acquisition of control were available for inspection upon request to the Division at doidocket.mailbox@mass.gov. KKR advised Global Atlantic of the hearing date on December 17, 2020. By a statement dated December 18, 2020, KKR 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 28, 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 must be concluded no later than January 3, 2021. No person or entity filed a Notice of Intent to Participate in this proceeding.

The public hearing took place on January 6, 2021. Richard Mancino, Esq., Willkie, Farr & Gallagher, LLP represented the Applicants, David Grosgold, Debevoise & Plimpton, LLC represented Global Atlantic, and Cara Toomey, Esq. represented the Division. Three witnesses testified: Craig A. Lee and Philip Sherrill, on behalf of the parties to the Proposed Transaction, and Mark Noller, a participant in the Working Group, on behalf of the Division.

II. Summary of Testimony

A. Craig A. Lee

Mr. Lee, the Managing Director and the Head of Insurance and Strategic Finance at Kohlberg Kravis Roberts & Co. L.P. ("KKR & Co., LP"), a subsidiary of KKR & Co. Inc., a named applicant in this proceeding, testified on behalf of KKR. He stated that, in that position, he became intimately familiar with KKR's business activities, and was deeply involved throughout the process of developing the Form A transaction, including due diligence, negotiating the terms of the merger agreement with Global Atlantic, developing the business plan for CALFAF going forward, and the preparation of the Form A statement. Following the close of the Proposed Transaction, he will be a director of the Global Atlantic Financial Group LLC.[1] Supplementing information in the Form A, Mr. Lee reported two recent events relating to the Proposed Transaction. First, KKR's Form 8-K, filed on December 11, 2020, stated that a current director of KKR & Co., Inc., resigned from its board effective December 31, 2020 and will not be a director of that company at the closing of the Proposed Transaction. Second, on December 17, 2020, Commonwealth, in a transaction approved by the Division, entered into an agreement with certain insurance companies that are members of the UNUM Group to assume some closed block individual disability insurance business from them.

Mr. Lee described KKR as a leading global investment firm, founded in 1976, that as of September 30, 2020 had $234 billion of assets under management, including approximately $32 billion of assets managed on behalf of insurance companies. He stated that its well qualified investment teams have deep knowledge of the investment industry and are supported by a substantial and diversified capital base, an integrated global investment platform, the expertise of operating professionals, senior advisors and other advisors, and a worldwide network of business relationships. In his opinion, KKR's success has grown out of industry leading risk management practices, including a comprehensive investment process, a robust committee oversight structure, and support from experienced professionals and advisors that seek to manage risk. Mr. Lee

[1] Following the close of the Proposed Transaction, Magnolia Parent will be renamed Global Atlantic Financial Group LLC.

stated that KKR's focus on understanding, accommodating, and managing risk has led to its steady growth and prominent position in the industry.

Mr. Lee summarized the essential events that result in the proposed change in control of the two Massachusetts domestic insurers, Commonwealth and First Allmerica. Under a Merger Agreement dated July 7, 2020, Magnolia Parent will acquire 100% of the voting securities of GAFGL. As the sole GAFGL shareholder, it will indirectly own all of the issued and outstanding voting securities of GAFinCo which will continue to own all of the issued and outstanding shares of common stock of Commonwealth which will, in turn, continue to own all of the issued and outstanding shares of common stock of First Allmerica. He stated that the terms and conditions of the merger agreement and the transaction proposed in the Form A are the product of arm's-length negotiations between KKR and Global Atlantic, with the assistance of their respective advisers and under the direction of their respective boards of directors.

The merger agreement states that the total consideration for the transaction equals 100 percent of GAFGL's book value, a term further defined in that agreement, on the date of the closing. Mr. Lee stated that the Applicants intend to use cash on hand, with proceeds from any co-investors, to fund the final purchase price, which will be adjusted if some current shareholders of GAFGL and GAFLL, defined in the merger agreement as Rollover Shareholders, choose to receive equity rather than cash as consideration for the transaction. However, obtaining financing, co-investors, or rollover options is not a closing condition in the merger agreement. Mr. Lee, after reviewing 2020 financial transactions supporting KKR's cash position, noted that it will not need to borrow funds or incur acquisition debt to close the transaction. He further stated that the Applicants do not intend to cause any extraordinary dividend from CALFAF to be declared in connection with the Proposed Transaction, and that KKR needs no distribution of dividends from CALFAF to service prior financial borrowings

Mr. Lee described the Proposed Transaction as a strategic acquisition for KKR rather than an investment of its private equity funds, stating that KKR will hold its entire stake in Global Atlantic on KKR's balance sheet and not through one of its private equity funds. In KKR's opinion, Global Atlantic has historically had impressive performance, and KKR's investment expertise and strategies will build upon that already-strong track record. KKR expects Global Atlantic to become a key subsidiary that will expand its business lines, a strategy built on its belief that economic forces are creating a large and growing opportunity for investment in the insurance industry and that shifts in demographic trends, such as the near doubling of the retirement population over the next 40 years, and desires for lower-risk alternative products, are driving demand for savings and protection products. Mr. Lee testified that KKR was particularly attracted by Global Atlantic's corporate profile and prominent role in that market, describing it as a leading United States insurance platform with an experienced management team, diversified business with a U.S. focus, an established individual and institutional footprint, industry-leading investment and risk management, a strong financial foundation, and a flexible operating model.

Mr. Lee expressed KKR's opinion that the Proposed Transaction will materially benefit the business of Global Atlantic and CALFAF, commenting that Global Atlantic's business operations will complement KKR's own strengths and, in turn, those should help Global Atlantic and CALFAF grow. He pointed out that KKR has been investing for third parties since 1976 and, in his opinion, is well positioned to help improve Global Atlantic's net investment yield and overall risk frameworks. In particular, he identified KKR's position as an industry leading investment manager with strong asset sourcing and direct origination capabilities, dedicated risk and portfolio construction teams, global macro and asset allocation teams, and a robust portfolio monitoring function. Mr. Lee also noted that KKR's fundraising capabilities and access to third party capital could help Global Atlantic with growth opportunities. He observed that KKR can also provide other avenues for Global Atlantic's growth, including expansion of bank and broker-dealer distribution relationships and new product development opportunities. Mr. Lee concluded that KKR's asset management capabilities should enhance the risk-adjusted returns that Global Atlantic is able to offer policyholders and further augment Global Atlantic's already strong position on behalf of all stakeholders.

Mr. Lee stated that KKR's strategic plan for CALFAF includes maintaining their strong business in Massachusetts, supporting their current and future owners and beneficiaries of annuities and life insurance policies by acting as responsible stewards of their savings and investments, and continuing to operate a prudent, risk-adjusted investment strategy to support the long-term profile of the CALFAF annuity and life insurance products. Further reviewing the Applicants' plans for CALFAF, Mr. Lee stated that they have no plans to make any material changes to their investment policy, business operations, corporate structure, or management. They do not plan to make meaningful changes to the CALFAF general investment strategies, general asset classes or the overall investment grade fixed income orientation of their investments, or significantly to increase their exposure to non-traded assets.

The Applicants expect Commonwealth and First Allmerica each to enter into an investment management agreement with KKR & Co., LP. In connection with the Proposed Transaction, each insurer submitted a separate confidential Form D filing under M.G.L. c. 175, §206C(n) that included a copy of their respective proposed Investment Management Agreement ("IMA"). KKR plans that KKR & Co., LP will enter into an IMA with each insurer at closing, although entry into those agreements is not a closing condition. Under the IMAs, KKR & Co., LP would manage the assets of each insurer's account (excluding any Forethought Variable Annuity Trust assets). Pursuant to the IMAs, assets in those accounts may be invested across a broad spectrum of asset classes, which are expected to include direct investments in debt, equity, and other structured investments as well as investments in funds, including funds managed by affiliates of the Applicants.

In addition, following the completion of the Proposed Transaction, Commonwealth and First Allmerica may enter into certain investment transactions on arm's-length terms with affiliates of the Applicants, including investing in affiliated funds of the Applicants. These investments would be submitted to the Commissioner for prior approval or written non-disapproval under M.G.L. c. 175, §206C(n), as necessary, and would comply with the investment laws of Massachusetts.

Further addressing the Applicants' plans for CALFAF, Mr. Lee stated that they plan no material changes to their current affiliate or third-party reinsurance arrangements following the completion of the Proposed Transaction. In the future, they may enter into additional affiliate reinsurance transactions with Global Atlantic Assurance Limited, a new Bermuda subsidiary formed in 2018. In addition, from time to time, Global Atlantic may consider other affiliate reinsurance transactions between its insurance company subsidiaries. Any potential reinsurance transactions with affiliates would be submitted to the Commissioner for prior approval or prior written non-disapproval to the extent required by Massachusetts law.

Mr. Lee addressed the effect of the Proposed Transaction on the management and employees of CALFAF, reporting that the Applicants have no current plans to change the current management following the closing or to appoint any new individuals as directors or executive officers of either insurer. The expectation is that Global Atlantic's insurance business, including CALFAF, will continue to operate as a separate business with its existing brands and management team, and managed separately from KKR's private equity and other asset management businesses. Because, at the closing of the Proposed Transaction, Global Atlantic will become a majority-owned subsidiary of KKR, CALFAF's business, operations, and compliance would be subject to the oversight of the KKR board of directors, in addition to the oversight of their own boards of directors and the board of GAFGL's new holding company, Magnolia Parent. That board will consist of five independent directors who all currently serve on GAFGL's board, four KKR representatives and the current CEO of Global Atlantic.

The Applicants have provided the Division with NAIC Biographical Affidavits for the directors and executive officers of the Applicants and the proposed directors and executive officers of Magnolia Parent to the extent such biographical affidavits were not already on file with the Division. Those individuals were the subjects of background checks performed by a third-party background check service provider. In connection with the Proposed Transaction, the Applicants have no plans to terminate, transfer or relocate Global Atlantic's Massachusetts employees, currently about 191 people, and plan to continue the Global Atlantic business consistent with how it has been conducted in the past.

Mr. Lee then testified about each of the statutory standards set out in §206B(d)(1) that must be satisfied for the Commissioner to approve any merger or acquisition of control initiated under §206B. With respect to the first standard, in his opinion, after the Proposed Transaction closes, CALFAF will be able to satisfy the requirements for the issuance of licenses to write the line or lines of insurance for which they are presently licensed. Mr. Lee reiterated that the Applicants have no plans to make any material changes to the insurers' business operations and for that reason believes that they will still satisfy the requirements for licenses to write those lines of insurance.

Considering the second standard, Mr. Lee opined that the Proposed Transaction will neither substantially lessen competition in the Massachusetts insurance market nor tend to create a monopoly in the Commonwealth. Because it will not consolidate existing competitors in the insurance market, Mr. Lee stated that the Proposed Transaction will not reduce the choices available to Massachusetts consumers seeking to purchase insurance or otherwise have a negative effect on competition in the Commonwealth. Mr. Lee pointed out, as well, that the Applicants do not currently control any insurer that writes any insurance business in Massachusetts or any other United States jurisdiction.

Testifying about the third standard, Mr. Lee stated that the financial condition of the Applicants is such that the Proposed Transaction would not jeopardize the financial stability of CALFAF or prejudice the interest of their policyholders. He stated that the Applicants maintain a strong financial position and that, in his opinion, following the closing of the Proposed Transaction, CALFAF will be well managed and financially stable. In support of that opinion, he noted that the financial statements prepared on a consolidated basis and attached to the Form A indicate the Applicants strong financial position and investment grade credit rating. He pointed out that the Applicants have access to capital markets that permit them to raise capital for their business plans when needed. Further, KKR has an internal capital markets business that is able to raise both debt and equity financings for KKR and third parties, enhancing the ability of its subsidiaries including, post closing, CALFAF, to access additional sources of capital.

Further, Mr. Lee pointed out that KKR has a diversified, superior quality investment portfolio that is managed by experienced investment professionals, with $234 billion of assets under management as of September 30, 2020, of which about $32.3 billion were managed on behalf of insurance companies. In addition, he indicated that KKR has, and will maintain after the Proposed Transaction, its strong risk management framework that includes a stringent investment management process, due diligence practice, and oversight from multiple committees, as demonstrated previously. KKR and Global Atlantic expect their respective risk management teams, post closing, to coordinate their oversight of risk management.

Addressing the fourth standard, Mr. Lee testified that the terms of the Proposed Transaction are not unfair or unreasonable to the CALFAF policyholders. He reiterated that the Applicants have no plans or proposals to make any material changes to either insurer's business, corporate structure, or management that would be unfair or unreasonable to their policyholders.

The fifth standard requires review of an Applicant's plans or proposals 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, to ensure that any such plans are not unfair or unreasonable to their policyholders and not in the public interest. Mr. Lee stated that, as described in the Form A statement, the Applicants have no plans or proposals to liquidate either Commonwealth or First Allmerica, to sell their assets, or to consolidate or merge either company with any person, or to make any material changes to their business operations, corporate structure, or management that would be unfair or unreasonable to their policyholders or contrary to the public interest. He again noted that each insurer is expected to enter into an IMA with an investment manager that is affiliated with the Applicants, arrangements that are expected to improve their net investment returns and more than offset incremental management fees associated with the arrangements. There are no plans to make any meaningful changes to the insurers' general investment strategy, general asset classes or overall investment grade fixed income orientation or significantly to increase their exposure to non-traded assets. The IMA includes guidelines providing that the management of each insurer's assets will at all times remain under the oversight of its board of directors. Each insurer's management will oversee the ongoing day-to-day activities of the investment manager and each insurer will continue to have the right to review and direct as needed its specific investment activity.

Mr. Lee opined that these investment management provisions will improve CALFAF's financial strength and, by taking a prudent approach to generating risk adjusted returns over time, benefit their policyholders and support current and future insurance policy obligations. He further noted that after closing the Proposed Transaction the current CALFAF seasoned management teams will remain in place and their robust operational processes will continue. Mr. Lee also stated that both insurers will continue to operate in a manner consistent with laws, regulations, and the reporting requirements of all applicable regulatory agencies.

Addressing the sixth standard, Mr. Lee stated his belief that the competence, experience and integrity of those persons who would control the operations of the domestic insurers are such that it would be in the interest of CALFAF policyholders and of the public to permit the Proposed Transaction. In support of that conclusion, he stated that the directors and executive officers of the Applicants, who oversee and direct the operations of KKR & Co., Inc., the ultimate parent of CALFAF after the Proposed Transaction closes, have the requisite competence, experience and integrity. The Applicants provided the Division with biographical affidavits of their directors and executive officers, who were also the subject of background investigations performed by an independent firm. Neither the biographical affidavits nor, to Mr. Lee's knowledge, the results of the background investigations suggest that any of such persons lack the competence, experience or integrity necessary to serve in these roles. Mr. Lee further observed that the executive officers and directors of both the Applicants and CALFAF are qualified and experienced in managing companies in regulated industries, including insurance companies. He pointed out that the proposed executive officers of GAFGL's new holding company, Magnolia Parent, who, following the close of the Proposed Transaction, will oversee CALFAF, already hold executive positions in Global Atlantic.

With respect to the seventh standard, Mr. Lee stated that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public, supporting that conclusion with a summary of factors addressed throughout his presentation. He noted the Applicants' belief that the Proposed Transaction will not lessen competition in the Commonwealth of Massachusetts and that the evidence, in the form of financial statements submitted with the Form A, demonstrates that they are financially sound and that the transaction will not jeopardize the financial position of CALFAF or prejudice their policyholders' interests.

Mr. Lee reiterated that, except for requiring Commonwealth and First Allmerica to enter into IMAs with an investment manager affiliated with the Applicants, there are no plans to materially change either insurer's business operations, corporate structure, or management, and no plans that are unfair or unreasonable to their policyholders or contrary to the public interest. Their business operations will be managed by individuals with significant experience in the insurance industry. The Applicants believe that the Proposed Transaction, by pairing the insurers' insurance capabilities with KKR's investment management expertise, should benefit CALFAF policyholders by strengthening the insurers' risk-adjusted returns over time, boosting the insurers' financial strength and supporting their current and future insurance policy obligations.

B. Philip Sherrill

Mr. Sherrill, Head of Corporate Development for Global Atlantic and a Managing Director of both Commonwealth and First Allmerica, testified in favor of the Acquisition described in the Form A. He stated that he was involved in this transaction from the beginning, including negotiating its terms, planning for integrating the businesses, and the post-acquisition business plan for CALFAF, and is expressing the support of Global Atlantic and CALFAF for the proposed Acquisition of control described in the Form A submitted to the Division on July 28, 2020.

In Mr. Sherrill's opinion, the Proposed Transaction is in the interests of Global Atlantic, CALFAF, and their policyholders. Global Atlantic understands that KKR proposes, post-transaction, to maintain and support CALFAF's existing business plan, product lines, distribution channels and conservative risk-oriented culture, and expects no material changes in their management team or business operations. Global Atlantic currently has approximately 191 employees in Massachusetts, who are expected to continue to work in the state after the Acquisition. Global Atlantic understands that KKR proposes to support and maintain the CALFAF existing business plans, product lines, distribution channels and conservative, risk-oriented culture. Aside from the proposed investment management agreements, Global Atlantic does not expect material changes in the current business operations of, or the management teams overseeing CALFAF. It does not expect any of Global Atlantic's approximately 191 employees in Massachusetts to be terminated, transferred or relocated out of Massachusetts after the transaction closes.

Mr. Sherrill testified that, through the proposed investment management agreements, Global Atlantic expects to benefit from KKR's investment acumen and investment strategies, building on the already-strong track record of the Global Atlantic investment and risk management teams. Global Atlantic understands, as well, that KKR does not plan to make meaningful changes to the asset allocation or overall investment grade fixed income orientation of Global Atlantic's investments. The CALFAF boards of directors, which are comprised of Global Atlantic employees, and their Chief Investment Officer, who is also a Global Atlantic employee, will retain ultimate oversight of investment management at each company, and are expected to retain their focus on cash flow asset liability matching to ensure appropriate liquidity while earning risk-adjusted returns. Global Atlantic believes that access to KKR's investment strength, will enable CALFAF to continue to grow and serve additional policyholders as well as continue to meet their obligations to current policyholders.

Finally, Mr. Sherrill expressed Global Atlantic's opinion that it expects the Acquisition to enable it and CALFAF to continue to help the insurers' policyholders address today's financial challenges, and their institutional channel clients achieve their strategic risk and capital management goals. In addition, having access to KKR's capital markets capabilities, balance sheet and scale will support or produce additional opportunities for the growth of Global Atlantic and CALFAF over time.

C. Mark Noller

Mark Noller, CPA, a principal in the consulting firm Rudmose & Noller Advisors, LLC ("RNA"), testified on behalf of the Working Group. RNA provides financial analysis and consulting services to state regulators and to the National Association of Insurance Commissioners. In that capacity, he has thirty-five years of experience performing audits, statutory financial examinations, and financial analyses of insurance companies, including insurance company corporate restructurings, mergers and acquisitions, and has testified on behalf of state insurance regulators, including the Division, in support of proposed acquisitions of control of insurers. As a consultant engaged by the Division he participated, together with representatives of the Division's Financial Surveillance and Legal Units, in a Working Group to review the proposed Acquisition of control of Commonwealth and its subsidiary, First Allmerica, by KKR. Both Massachusetts insurance companies are governed by M.G.L. c. 175, and the content of the Form A application is prescribed in §206B of that statute and 211 CMR §§ 7.05 and 7.11.

On July 7, 2020, KKR entered into an Agreement and Plan of Merger ("Merger Agreement") with the insurers' ultimate parent, GAFGL, and Goldman Sachs & Co. LLC, which currently controls the insurers.[2] As part of its review of the Proposed Transaction, the Working Group reviewed the Form A statement and exhibits, financial projections, financial statements, and other documents that were requested, to evaluate the seven standards in §206B(d)(1), which note that the Commissioner must approve the transaction unless he determines that it would not satisfy any of those standards. Mr. Noller addressed each of those standards.

With respect to the first standard, he noted that both insurers are domiciled in Massachusetts and based on the Applicants' business plans and financial projections, post-transaction, both will continue to remain qualified to be licensed in Massachusetts. To meet the second statutory standard, it must be determined that the Proposed Transaction will not substantially lessen competition in the Massachusetts insurance market or tend to create a monopoly in the Massachusetts insurance market. Mr. Noller stated that the two insurers now have very low Massachusetts market shares of the individual and group life, individual and group annuity, and individual accident and health lines of business. Because KKR currently controls no insurance companies, the Acquisition will not increase any existing holdings. For those reasons, the Proposed Transaction will have no known anti-competitive effects in Massachusetts.

To determine compliance with the third statutory standard, the Working Group completed a review of KKR's financial position and results and rating agencies' views of KKR. Based on that review, it concluded that the financial condition of KKR does not, and is not expected to, jeopardize the financial stability of the insurers or prejudice the interest of their policyholders.

To address the fourth statutory standard, the Working Group evaluated the Proposed Transaction and noted that the shareholders of Global Atlantic will be entitled to receive consideration equal to the book value of Global Atlantic on the date of the closing, excluding

[2] As described in the Form A, in connection with the Proposed Transaction Goldman Sachs & Co., LLC is acting solely in its capacity as the equity representative.

certain adjustments. The estimated consideration is approximately $4.4 billion, a purchase price the Mr. Noller describes as the result of an arm's-length negotiation between two unrelated and sophisticated parties. He noted as well the Applicants' statement that no extraordinary dividends from the insurers will be required to service any borrowings to fund the purchase of Global Atlantic. Based on this information, the Working Group concluded that the terms of the offer are not unfair and unreasonable to the insurers' policyholders.

For the fifth statutory standard, the Working Group concluded that the Form A includes no plans or proposals by KKR to liquidate the insurers, declare any extraordinary dividend, or sell its assets or any seat on its board of directors. Mr. Noller observed that KKR will not appoint any new individuals as directors or officers of the insurers and will make no changes to the operations of the insurers other than to provide investment management services.

The Working Group completed an analysis of the proposed investment management agreements, which state that the KKR investment management fees in no case will exceed 30 basis points annually and also noted that in each of the next three years the investment management fees charged to the insurers are expected to be significantly below that.[3] The Working Group requested from the Applicants projected statutory financial statements and assumptions for the insurers and, after evaluating them, concluded that they were reasonable, and were not unfair and unreasonable to the insurers' policyholders nor not in the public interest.

In determining whether the Proposed Transaction satisfies the sixth statutory standard, the Working Group, based on the Form A and the biographical affidavits provided for the proposed directors and management that are expected to control the insurers' operations, determined that it has no concerns about the competence, experience, and integrity of those persons. Mr. Noller noted that, other than investment management, the Applicants currently have no plans to make any material changes to the insurers' management.

[3]To complete the review of the Proposed Transaction, Mr. Noller also reported that the Division has issued a non-disapproval relative to two Form D submissions filed pursuant to M.G. L. c.175, §206C(n). He also stated that the Commissioner has approved a request by First Allmerica for approval of an extraordinary dividend made pursuant to M.G.L. c.175, §206C(r). Mr. Noller described both as outside the scope of the issues to be considered in this proceeding.

With respect to the seventh statutory standard, Mr. Noller stated that the Working Group did not identify any matters indicating that the Acquisition would likely be hazardous or prejudicial to the insurance buying public. He concluded that, after an extensive review of the Proposed Transaction and all related materials, the Working Group has not identified any matters that would lead to an adverse determination on any of the standards set forth in §206B(d)(1) that relate to KKR's proposed Acquisition of the insurers.[4]

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.

Both Mr. Lee and Mr. Noller affirmatively stated that, after the Acquisition closes, Commonwealth and First Allmerica will still qualify to be licensed in Massachusetts to sell the lines of insurance for which they are now licensed. Based on the record, I find that §206B(d)(1)(i) 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 in Massachusetts or tend to create a monopoly therein.

[4]Mr. Noller pointed out, as well, that in addition to seeking approval in this proceeding for insurers domiciled in Massachusetts, KKR has sought and received approval from insurance regulators in Indiana and Iowa of proposals to acquire insurers domiciled in those states.

Mr. Lee and Mr. Noller both opined that the Acquisition would neither substantially lessen competition nor tend to create a monopoly in the Massachusetts insurance market. Mr. Lee stated that it will not consolidate existing competitors, thereby reducing competition in that market, further observing that the Applicants do not currently control any insurer that writes insurance business in Massachusetts. Mr. Noller pointed out, in addition, that CALFAF now has very low Massachusetts market share of the individual and group life, individual and group annuity, and individual accident and health lines of business. For the reasons set forth in 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 Applicants is such that the Acquisition will not jeopardize the financial stability of the insurer or prejudice its policyholders' interests.

Mr. Lee testified that the Applicants' financial condition, documented in the financial statements attached to the Form A, demonstrate the strength of that condition, as does its investment grade credit rating. He pointed out that the Applicants have access to capital markets as well as an internal capital markets business that is able to raise both debt and equity financing for KKR and third parties. In Mr. Lee's opinion, CALFAF will be well managed and stable after the transaction closes and will also benefit from access to additional sources of capital. Mr. Noller stated that the Working Group reviewed both KKR's financial statements and rating agencies' reviews of the Applicants and concluded that the Acquisition will not, and is not expected to, jeopardize CALFAF's financial stability or prejudice their policyholders' interests. For these reasons, the record fully supports a finding 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 Form A must not be unfair or unreasonable to the insurer's policyholders.

Mr. Lee testified that the terms of the Proposed Transaction are not unfair or unreasonable to the CALFAF policyholders, pointing out that the Applicants have no plans or proposals to make any material changes to either insurer's business, corporate structure or management. Mr. Noller testified that the Working Group evaluated the amount of consideration identified in the Proposed Transaction and pointed out that the purchase price was the result of an arm's-length transaction between two unrelated and sophisticated parties and that the insurers did not have to declare extraordinary dividends to fund the purchase. Based on the 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.

Mr. Lee stated that, as described in the Form A, the Applicants have no plans or proposals to liquidate either Commonwealth or First Allmerica, to sell their assets, consolidate or merge either with any person, or make any material changes to their business operations, corporate structure or management that would be unfair or unreasonable to their policyholders nor not in the public interest. He further commented that the provisions of the IMA that each insurer is expected to enter into will improve its financial strength, benefit its policyholders, and support current and future insurance policy obligations. Mr. Noller testified that the Working Group concluded that KKR had no plans or proposals to take actions that would raise a question of satisfying §206B(d)(1)(v). It also analyzed the IMAs and projected statutory financial statements and assumptions for the insurers and concluded that they were reasonable. Based on the 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 persons who would, as a result of the transaction, control the operation of the insurer must not be such that it would not be in the interest of the insurers' policyholders and the public to permit the merger or other acquisition of control.

Mr. Lee testified to his belief that the competence, experience and integrity of those who will control the operations of CALFAF after the Proposed Transaction closes are such that it is in the interest of their policyholders and the public to approve the Acquisition. He stated that the biographical affidavits and other documentation do not suggest than any of these individuals lack the qualifications for serving in these roles. Mr. Lee further noted that the very experienced and competent CALFAF management teams, and their executive officers and directors, are experienced in managing companies in regulated industries. He pointed out as well that the proposed executive officers of Global Atlantic's post-transaction holding company already hold executive positions in Global Atlantic. Mr. Noller stated that the Working Group, based on the Form A and the biographical information, had no concerns about the competency, experience or integrity of these individuals. Accordingly, based on the record, I find that §206B(d)(1)(vi) does not present an obstacle to approval of the Acquisition.

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

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

Mr. Lee, relying on his earlier direct testimony in this proceeding, testified that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public. He reiterated the belief that the Proposed Transaction will not lessen competition in Massachusetts, that the financial documents submitted with the Form A demonstrate that the Applicants are financially sound, and that the Acquisition will not jeopardize CALFAF's financial position or prejudice the interests of their policyholders. With respect to the seventh standard, Mr. Noller testified that the Working Group did not identify any factors that indicated that the Acquisition would likely be hazardous or prejudicial to the insurance buying public. In summary, he stated that the Working Group, after an extensive review of the Proposed Transaction and all related materials, did not identify any matter that would lead to an adverse determination with respect to any of the statutory standards. Accordingly, 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, for all of the reasons set forth above, the Proposed Transaction by which the Applicants, KKR, will acquire control of Commonwealth Annuity Life Insurance Company and First Allmerica Financial Life Insurance Company, as memorialized in the Form A and the exhibits thereto that were filed and deemed complete by the Division on December 17, 2020, satisfies the standards required by M.G.L. c. 175, §206B. The Acquisition is hereby approved.

SO ORDERED this 28th day of January, 2021.

Jean F. Farrington
Presiding Officer

Approved this 28th day of January, 2021

Gary D. Anderson
Commissioner of Insurance