COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF INSURANCE

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In the Matter of the Proposed Acquisition of Control of Hospitality Mutual Insurance Company by Mutual Capital Group, Inc. and Mutual Capital Investment Fund, LP
<u>Docket No. F2024-04</u>

Decision and Order

I. Introduction

Mutual Capital Group, Inc. and Mutual Capital Investment Fund, LP (“MCG” and “MCIF,” collectively, (the “Applicant”) seek approval by the Massachusetts Commissioner of Insurance (“Commissioner”) of a proposed acquisition of control of a Massachusetts domestic insurance company, Hospitality Mutual Insurance Company (“HMIC”), pursuant to M.G.L. c. 175, §206B) (“§206B). The proposed acquisition is set forth in a Form A application that the Applicant filed with the Division of Insurance (“Division”) on November 29, 2024.

The proposed acquisition follows transactions implemented under a Plan of Reorganization that HMIC submitted to the Commissioner on August 13, 2024, and that he approved on December 6, 2024. Under that Plan, HMIC was reorganized as a stock insurance company; it then formed and became a subsidiary of a mutual insurance holding company, Hospitality Group Mutual Insurance Holding Company (“HGMIHC”). HGMIHC now owns, indirectly through HMIC’s stock intermediate holding company subsidiary, Hospitality Holdings, Inc. (“HH, Inc.”) all of HMIC’s stock. Under the proposed acquisition the Applicant will purchase 45,000 shares of HMIC preferred stock for approximately $5 million; HMIC will utilize those proceeds to expand its business operations.

The Applicant's burden in this proceeding is to present persuasive evidence demonstrating that the change in control of HMIC satisfies the statutory standards for approval of such transactions set out in §206B(d)(1). The Applicant contacted the Division on or about June 1, 2024 about the proposed acquisition. The Commissioner directed the formation of a Working Group of Division staff from its Financial Surveillance, Financial Analysis and Legal Units, together with an outside vendor, to review the proposed acquisition on behalf of HMIC policyholders and the insuring public. On November 29, 2024 the Applicant filed the Form A that is the subject of this proceeding,

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. and Matthew A. Taylor, Esq. who did not participate in the Working Group's analysis of the proposed acquisition, to serve as Presiding Officers for the public hearing.

The Working Group deemed the Form A complete on November 29, 2024 and on December 2, 2024, the Commissioner issued a Notice of Hearing regarding the Acquisition. The Notice was posted on the Division's website and published in the Boston Globe on December 5, 2024. It set December 16, 2024, as the date for a 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.

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 also required any person identified in §206B(d)(2) who wished to participate in the hearing to submit a Notice of Intent to Participate stating their statutory basis for participation on or before December 12, 2024. No person filed a written notice to make an oral statement at this hearing or commented by filing a written statement. The Division received no notices of intent to participate in this hearing from any person other than representatives of the Applicant, HMIC and the Division. The hearing took place as scheduled on December 16, 2024. Stephen Dyer, Esq. represented the Applicant, Peter Rice, Esq. DLA Piper represented HMIC and Geoffrey Wood, Esq., the Division's Deputy General Counsel, represented it. Four witnesses testified: Reiner Mauer and Jason Wolfe for the Applicant, Richard Welch for HMIC Investment Advisors, and Dana Rudmose, a member of the Working Group, for the Division.

II. Summary of Testimony A.

Reiner Mauer.

Mr. Mauer has been the President and CEO of MCG since January 2024, and will remain in that position after approval of the proposed acquisition. He has some twenty years of significant experience as a senior executive or president of insurance companies. Testifying about MCG's organizational structure he stated that the principal business of MCIF is to provide capital to mutual property and casualty insurance companies in the United States. MCG is also the majority owner of Mutual Capital Investment Advisors LLC ("MCIA"), the entity that oversees the management of MCIF and controls decisions relating to its activities. Mr. Mauer testified to his familiarity with the contents of the Applicants' Form A application. He stated that the facts in the Form A application are true, to the best of his knowledge and belief, affirming further that the Form A contains no misleading statements and that there are no material facts to add to it at this time.

B. Jason Wolfe

Mr. Wolfe is the President and CEO of MCIA the entity that oversees the day-to-day management of MCIF and controls all decision-making related to it. He began assisting Mutual Capital Group with MCIF in the summer of 2021 and became the President and CEO of MCIA on January 1, 2022. In the course of some two decades of positions at merchant banking firms he acquired extensive experience in advising and providing growth capital to middle-market businesses in various industries, including financial institutions, insurance, real estate, and diversified industrials. He stated that he is now the Chairman of the Board of Frederick Mutual Insurance Company, the lead independent Director of the Forge Group, Inc. since its organization in January 2021, and has been a director of Forge Insurance Company since October 2011.

Mr. Wolfe's testimony focused on a description of the proposed acquisition; he noted that he listened to Mr. Mauer's testimony and completely agreed with its accuracy. The proposed acquisition transaction was anticipated as part of HMIC's recent Plan of Reorganization that the Commissioner approved on December 6, 2024. Under that Plan, HMIC was converted to a stock insurance company and is part of HGMIHC; HMIC's stock will be held by HH, Inc, a member of HGMIHC. Under the proposed acquisition MCIF will acquire a 45% interest in HMIC through a purchase from HH, Inc. of 45,000 shares of HMIC Preferred Stock. MCIF, as a holder of the Preferred Stock will be entitled to elect one (1) member of the Board of Directors of HH, Inc. for as long as MCIF holds those shares. HH, Inc. will use the proceeds from the sale of the Preferred Stock for the organic and inorganic growth of the business of HMIC.

Mr. Wolfe affirmed that after the Acquisition HMIC is expected to continue writing the lines of coverage it currently writes. As a result, the Acquisition will have little or no competitive impact in the Commonwealth of Massachusetts insurance market. Mr. Wolfe further testified that there are no expected changes in the financing for the transaction as represented in the Form A application and that the historical financial statements filed with the Applicant's Form A Statement clearly demonstrate that their financial condition will not jeopardize the financial stability of HMIC or prejudice the interests of its policyholders. He observed as well, as indicated in the Form A Statement, that the Applicant has no present plans or proposals to liquidate HMIC, sell its assets, merge it with any person or, other than as described in the Form A Statement, make any other material change in its business operations, corporate structures or management.

Mr. Wolfe further testified that, to the best of his knowledge, the statements in the Form A remain true today, that no material facts were omitted from that Form A and that it contained no misleading statements. In addition, Mr. Wolfe confirmed that he is not aware of any material changes to the facts, statements or representations in the Form A and that there have been no material transactions, material lawsuits, material claims, material contracts entered or any material events of any kind involving the Applicant or, to his knowledge, the domestic insurer that have not been disclosed to the Commissioner.

Mr. Wolfe then described the Applicant's plans to satisfy the requirements for the postAcquisition issuance of an insurance license to HMIC to write the lines of business for which it is now licensed. He testified that HMIC will continue to satisfy those requirements for a license to write, as it now does, property casualty insurance. That license demonstrates that HMIC satisfies the minimum Massachusetts insurance law requirements for a property casualty insurance company, including minimum capital and surplus requirements. After approval of the proposed acquisition, the Applicant has no intention of causing HMIC to take any action that would inhibit its ability to satisfy those licensing requirements.

Mr. Wolfe testified that, as indicated in the Form A statement, the Applicant has no present plans or proposals to liquidate HMIC, sell its assets, merge it with any person or, other than as described in the Form A Statement, make any other material change in its business operations, corporate structures or management. He confirmed as well that the competence and integrity of those persons who will control the operation of HMIC after the Closing will in no way be adverse to its policyholders or the interest of the public. In addition, Mr. Wolfe expressed the opinion that the proposed acquisition would not likely be hazardous or prejudicial to those buying insurance because it will supply additional capital to the insurance enterprise. C. Richard Welch.

Mr. Welch is the President and CEO of HMIC, a position he has held since January 1, 2018. He testified that he has led all aspects of HMIC's consideration and analysis of the proposed acquisition and that the purpose of his testimony is to describe, from HMIC's perspective, the background for entering into the transaction and its anticipated benefits to the company. Mr. Welch stated that he had heard Mr. Wolfe's testimony and agreed completely with its accuracy.

HMIC elected to enter into the proposed acquisition after concerted efforts by its Board of Directors and senior management to address the company's capital needs and strategic business plans. The decision to partner with MCIF was taken after lengthy discussions and careful consideration of the relationship. HMIC gave great weight to MCIF's commitment to supporting the mutual insurance company structure and its record of success with other mutual companies. The transaction was contemplated in HMIC's Plan of Reorganization that has now been approved by both the Commissioner of Insurance and HMIC's policyholders, and enables it to raise additional capital. The proposed acquisition, if approved, will increase HMIC's capital and surplus by some $5.1 million, after expenses, under terms and conditions that HMIC's directors determined to be fair and reasonable to the company and its policyholders. Mr. Welch testified that the additional capital will enable HMIC to increase insurance sales and premiums, a prospect that management expects to produce efficiencies, including reducing the company's projected expense ratio and allowing it to invest more in its business. It may also be able to offer more competitive insurance products that will better serve its policyholders in an evolving insurance market. The proposed acquisition may also improve financial flexibility that would allow HMIC to optimize its reinsurance program. Mr. Welch pointed out that the proposed acquisition will not affect HMIC's current management structure and its planning. It will add an MCIF representative to the Boards of Directors of HMIC and its affiliates, an addition that will not affect the authority of current management to operate the insurer's business.

Addressing factors that must be present if the Commissioner is to approve the proposed acquisition, Mr. Welch testified that: 1) following the completion of the proposed acquisition HMIC will continue to satisfy the requirements for a license to write the business for which it is now licensed; 2) the proposed acquisition will neither substantially reduce competition in the Massachusetts insurance market nor tend to create a monopoly in that market; 3) the financial condition of the acquiring entities is such that it will not jeopardize HMIC's financial stability or prejudice the interests of its policyholders; 4) the terms of the proposed acquisition are fair and reasonable to HMIC's policyholders; 5) no party to the proposed acquisition has any plan or proposal to liquidate HMIC, sell its assets, consolidate or merge it with any person or make any other material change to its business or corporate structure or management; 6) the competence, experience and integrity of the persons who will control HMIC's operations after the proposed acquisition closes will not be adverse to HMIC policyholders or to the public interest; and 7) the proposed acquisition is not likely to be hazardous or prejudicial to the insurance buying public.

D. Dana Rudmose

Mr. Rudmose is a principal in Rudmose and Noller Advisers, LLC, a consulting firm that provides financial and consulting services to state regulators in the United States and to the National Association of Insurance Commissioners. As an advisor to the Division, Mr. Rudmose participated in the Working Group to review HMIC's Plan of Reorganization and the proposed acquisition of control of HMIC filed by Mutual Capital Group, the Mutual Capital Investment Fund and affiliates. The Plan of Reorganization included references to an anticipated financial transaction with the Mutual Capital Group which, on November 29, 2024, filed a Form A for the proposed acquisition of control pursuant to §206B. Under the proposal, HMIC's parent will sell 45,000 preferred shares to MCG which will thereby receive a 45% ownership interest in HMIC's parent. If the proposed acquisition is approved the Applicant will become a controlling party as defined under M.G.L. c, 175, §206B but not the ultimate controlling party of HMIC; that entity will be the Hospitality Group Mutual Insurance Holding Company. Mr. Rudmose testified that the Working Group extensively reviewed both the HMIC Plan of Reorganization and the proposed acquisition and met with the Applicant's senior management and outside counsel. It proposed a number of modifications to the Plan and recommended other conditions agreed to by both HMIC and the Applicant.

Mr. Rudmose then reviewed the proposed acquisition of control under the standards set out in §206B(d)(1) that require the Commissioner to approve the transaction, unless it would not satisfy seven specified conditions.

First, HMIC would not be able to satisfy the requirements for a license to write the line or lines of insurance for which it is now licensed. The Working Group concluded that, based on its filed financial projections and business plans, in accordance with the Plan and after approval of the acquisition, HMIC will continue to meet the licensing requirements for a Massachusetts domiciled property and casualty insurer.

Second, the acquisition of control must not substantially lessen competition or tend to create a monopoly in the Commonwealth in insurance. The Working Group determined that, because HMIC has extremely low market shares of commercial lines business in Massachusetts, the proposed acquisition will have no anti-competitive effects in Massachusetts. Third, the financial condition of any acquiring party must not be such that it might jeopardize the financial stability of the insurers or prejudice the interests of their policyholders. Mr. Rudmose observed that the Applicant owns and controls insurance and provides capital to United States property and casualty mutual insurers. The Working Group reviewed the financial condition of the Applicant's affiliates and identified no concerns. Based on those facts and other information that it reviewed, the Working Group concluded that the Applicant's financial condition does not jeopardize HMIC's financial stability or prejudice the interests of its policyholders.

Fourth, the terms of the offer, request, invitation or agreement of acquisition must not be unfair and unreasonable to the insurer's policyholders. Mr. Rudmose testified that under the proposed acquisition the Applicant will purchase preferred shares and receive a 45% ownership interest in HMIC's parent. HMIC expects that the financing will be provided for a 2-to-8-year period. The HMIC Board determined that the financing terms are fair to its policyholders both because they were determined after arm's length negotiations between the parties and HMIC's recent financial history demonstrates that an infusion of capital is necessary for HMIC's ability to achieve its growth objectives and return to profitability. The Working Group concluded that the terms of the acquisition are not unfair or unreasonable to HMIC policyholders.

Fifth, plans or proposals that the acquiring party has to liquidate, merge or consolidate the insurer, sell their assets or make any other material change to their business or corporate structure or management must not be unfair and unreasonable to the insurer's policyholders or not in the public interest. Mr. Rudmose testified that the proposed acquisition is not expected to result in any material changes to HMIC's insurance operations or policyholder services, other than that they will be conducted through a mutual holding company-owned stock insurance company. The Working Group assessed HMIC's current financial position and operating results and reviewed financial projections for the next three years to assess the impact of implementing the Plan of Reorganization and the proposed acquisition of control. Based on that review, the Working Group concluded that the Applicant has no plans or proposals to liquidate HMIC, sell its assets, consolidate or merge it or make any other material change to its business or corporate structure or management. It identified no factors that might be considered unfair or unreasonable to Hospitality policyholders and not in the public interest.

Sixth, the competence, experience and integrity of persons who will control the Insurer's operations are such that permitting the acquisition of control would not be in the interest of those policyholders and the public. The Working Group requested from the Applicant biographical affidavits and background checks of its directors and management. Upon review, it identified no concerns about the competence, experience and integrity of these individuals who would control HMIC's operations.

Seventh, the acquisition must not be likely to be hazardous or prejudicial to the insurance buying public. Based on extensive review of the proposed transaction and all related materials the Working Group found no evidence that the proposed acquisition would be likely to be hazardous or prejudicial to the insurance buying public.

In summary, the Working Group identified no issues or concerns that would support an adverse determination on any of the standards set out in §206B(d)(1) as they relate to the proposed acquisition and therefore recommend that it be approved.

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 condition 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. Wolfe and Mr. Welch affirmatively stated that, after the Acquisition closes, HMIC will still qualify to be licensed in Massachusetts to sell the lines of insurance for which they are now licensed. Additionally, Mr. Rudmose stated that the working group found no evidence that the proposed transaction would fail to satisfy the requirements of §206B(d)(1)(i). Based on the record, we 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 or tend to create a monopoly in Massachusetts insurance. Mr. Wolfe and Mr. Welch both opined that the acquisition would neither substantially lessen competition nor tend to create a monopoly in the Massachusetts insurance market. Mr. Wolfe stated that the reorganized HMIC would continue to write the lines of business it currently writes, and, given its small share of the market, would not affect competition in the Commonwealth. Additionally, Mr. Rudmose stated that the working group found no evidence that the proposed transaction would fail to satisfy the requirements of §206B(d)(1)(ii). Based on the record, we 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)

Section 206B(d)(1)(iii) requires that the financial condition of the Applicant is such that the acquisition will not jeopardize the financial stability of the insurer or prejudice its policyholders' interests. Mr. Wolfe testified that there were no expected changes in the Applicant's financial condition, documented in the financial statements attached to Form A. As the mutuality of ownership will be preserved, the proposed transaction would not prejudice the policyholder's interests. Mr. Rudmose stated that The Working Group reviewed the financial condition of Mutual Capital's affiliates and identified no concerns. Based on those facts and other information that it reviewed, the Working Group concluded that the Applicant's financial condition does not jeopardize HMIC's financial stability or prejudice the interests of its policyholders. For these reasons, we find that the record fully supports the 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)

Section 206B(d)(1)(iv) 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. Mr. Welch testified that the terms of the proposed transaction are not unfair or unreasonable to the HMIC policyholders, pointing out that the Applicant has no plans or proposals to make any material changes to either insurer's business, corporate structure or management. Mr. Rudmose testified that under the proposed acquisition the Applicant will purchase Preferred Shares and receive a 45% ownership interest in HMIC's parent. HMIC expects that the financing will be provided for a 2-to-8-year period. Hospitality's Board determined that the terms of the financing are fair to its policyholders first, because they were determined after arm's length negotiations between the parties and second, because of HMIC's recent financial history, the infusion of capital is necessary so that HMIC can achieve its growth objectives and return to profitability. The Working Group concluded that the terms of the acquisition are not unfair or unreasonable to HMIC policyholders. Based on the record, we 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)

Section 206B(d)(1)(v) 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. Wolfe stated that, as described in the Form A, the Applicant has no plans or proposals to liquidate HMIC, to sell its assets, consolidate or merge it with any person, or make any material changes to its business operations, corporate structure or management that would be unfair or unreasonable to its policyholders or not in the public interest. Mr. Rudmose testified that the proposed acquisition is not expected to result in any material changes to HMIC's insurance operations or policyholder services, other than that they will be conducted through a mutual holding company-owned stock insurance company. The Working Group assessed HMIC's current financial position and operating results and reviewed financial projections for the next three years to assess the impact of implementing the Plan of Reorganization and the acquisition of control. Based on the record, we 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)

Section 206B(d)(1)(vi) requires that the competence, experience and integrity of those persons who would, as a result of the transaction, control the operation of the insurer are 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. Welch testified that the competence, experience and integrity of the persons who will control HMIC's operations after the proposed acquisition closes will not be adverse to HMIC policyholders or to the public interest. Mr. Rudmose testified that the Working Group reviewed biographical affidavits and background checks of the Applicant's directors and management. Upon review, it identified no concerns about the competence, experience and integrity of these individuals who would control HMIC's operations. Accordingly, based on the record, we 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, §206B(d)(1)(vii) requires a finding that the transaction will not be likely to be hazardous or prejudicial to the insurance buying public. Mr. Wolfe and Mr. Welch testified that the proposed transaction is not likely to be hazardous or prejudicial to the insurance buying public. They 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 Applicant is financially sound, and that the transaction will not jeopardize HMIC's financial position or prejudice the interests of its policyholders. With respect to the seventh standard, Mr. Rudmose testified that the Working Group did not identify any factors indicating 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, we find that §206B(d)(1)(vii) does not present an obstacle to approval of the proposed transaction.

IV. Conclusion

We find that, for all of the reasons set forth above, the proposed transaction for the reorganization and change of control of HMIC, memorialized in the Form A and the exhibits thereto that were deemed complete and filed with the Division on November 29, 2024, satisfies the standards required by M.G.L. c. 175, §206B. The acquisition is hereby approved.

SO ORDERED this 9th day of January 2025.

Jean F. Farrington

Matthew Taylor

Jean Farrington, Esq.
Presiding Officer

Matthew Taylor, Esq.
Presiding Officer

Affirmed this 9th day of January, 2025,

Michael T. Caljouw
Commissioner of Insurance