

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

**In the Matter of the Proposed Exemption**        )  
**of HDC Investors, L.P.,**                                )  
**Morgan Stanley Capital Partners III, L.P.,**        )  
**and MSCP III 892 Investors, L.P.**                 )  
**collectively referred to as “MSCP Funds”**        )

**Docket No. 3847-EX**

**ORDER**

Now comes on for disposition the request of HDC Investors, L.P., Morgan Stanley Capital Partners III, L.P., and MSCP III 892 Investors, L.P., collectively referred to as “MSCP Funds”, dated February 7, 2008, for an Order, pursuant to K.S.A. 40-3304(e)(1), exempting MSCP Funds from the filing and approval requirements of K.S.A. 40-3304(a), as said statute may be construed to apply to the acquisition of Homesite Indemnity Company due to MSCP Funds’ ownership of, and ability to vote, the voting securities of Homesite Group Incorporated (“Homesite Group”). Such acquisition is to be accomplished through the expiration of Homesite Group’s Shareholders Agreement, dated October 31, 1997, which was amended and restated on March 9, 2004 (the “2004 Shareholders Agreement”). The 2004 Shareholders Agreement was set to expire on October 31, 2007, but was amended and extended to expire on the earlier of (i) June 2, 2008, or (ii) the date on which a new shareholders agreement (“the Proposed 2008 Shareholders Agreement”) is executed.

This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made pursuant to K.S.A. 77-542.

**FINDINGS OF FACT**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 40-3301, *et seq.*
2. Homesite Group Incorporated (“Homesite Group”), an insurance holding company incorporated in the State of Delaware, is the holding company for Homesite Indemnity Company, a Kansas domiciled property and casualty insurance company. Homesite Group was originally incorporated in April 1997 under the name Homeowners Direct Corporation.

3. Currently, Homesite Group owns and will continue to own one hundred percent (100%) of the common stock of Homesite Indemnity Company. The common stock of Homesite Group is and will continue to be held by the following shareholders:

Alleghany Insurance Holdings LLC	32.90%
Morgan Stanley Capital Partners III, L.P.	26.00%
HDC Investors, L.P.	17.61%
MSCP III 892 Investors, L.P.	2.66%
The Plymouth Rock Company Incorporated	9.82%
James M. Stone	2.52%
Morgan Stanley Capital Investors, L.P. (not Managed by Metalmark Subadvisor LLC)	0.73%
Other Investors	7.77%

4. By contract, HDC Investors, L.P., Morgan Stanley Capital Partners III, L.P., and MSCP III 892 Investors, L.P., collectively referred to as “MSCP Funds”, have each delegated the power to manage their shares in Homesite Group to Metalmark Subadvisor LLC.

5. MSCP Funds have requested an exemption from the acquisition and approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements stated in K.S.A. 40-3304(a).

6. On or about January 17, 2005, Morgan Stanley Capital Partners III, L.P., HDC Investors, L.P., and The Plymouth Rock Company Incorporated filed formal Disclaimers of Affiliation or Control in regard to Homesite Group with the Kansas Insurance Department for review and approval. Following a request by the Kansas Insurance Department for additional information regarding the Disclaimers, the parties submitted revised Disclaimers of Affiliation or Control on or about May 24, 2005. The revised Disclaimers were approved by the Kansas Insurance Department on June 21, 2005.

7. Homesite Group, Alleghany Insurance Holdings LLC (“Alleghany”), and for the purpose of joining Section 6.2 only of the Stock Purchase Agreement, dated December 5, 2006, but not otherwise, James M. Stone, The Plymouth Rock Company Incorporated, Morgan Stanley Capital Partners III, L.P., MSCP III 892 Investors, L.P., Morgan Stanley Capital Investors, L.P., and HDC Investors, L.P. entered

into this Stock Purchase Agreement, in which Homesite Group issued and sold to Alleghany an aggregate of 85,714 shares, par value of \$0.01 per share, for an aggregate purchase price equal to \$119,999,600 of common stock of Homesite Group, which upon completion of the transaction represented 32.9% of the issued and outstanding shares of common stock of Homesite Group.

8. Under the terms of the Stock Purchase Agreement, Alleghany did not have any right to become a party to the 2004 Shareholders Agreement, nor did Alleghany have any of the rights and benefits, including the right to representation on the board of directors, provided by the 2004 Shareholders Agreement which was set to expire on October 31, 2007.

9. On or about December 7, 2006, Alleghany requested an order exempting it from the filing and approval requirements of K.S.A. 40-3304(a). On December 28, 2006, the Kansas Insurance Department issued an order, Docket No. 3609-EX, approving the exemption.

10. On or about December 29, 2006, Homesite Group and Alleghany completed the purchase of the shares and as a result, Alleghany owns approximately 32.9% of the outstanding 260,538.74 shares of common stock of Homesite Group.

11. On or about October 19, 2007, Homesite Group's Shareholders Agreement, dated October 31, 1997, which was amended and restated on March 9, 2004, was extended to December 14, 2007.

12. On or about November 9, 2007, Alleghany filed a certified copy of a Form A Statement with exhibits Regarding the Proposed Acquisition of Control to become a controlling party of Homesite Group upon the expiration of the 2004 Shareholders Agreement.

13. On or about November 21, 2007, the 2004 Shareholders Agreement was further extended to June 2, 2008 or the date on which any required applications for change of control have been approved by the relevant regulatory jurisdictions.

14. On February 28, 2008, the Kansas Insurance Department issued an order, Docket No. 3786-ACQ, approving Alleghany's Form A request and designated Alleghany as the ultimate controlling person of Homesite Group.

15. On or before June 2, 2008, the Proposed 2008 Shareholders Agreement will be executed and thereby replace the 2004 Shareholders Agreement.

16. The Proposed 2008 Shareholders Agreement provides that the Homesite Board of Directors will consist of eight members. Alleghany shall be entitled to designate two members of the Board and the MSCP Funds shall be entitled to designate one member of the Board. In addition to these three designated directors, Alleghany and the MSCP Funds, acting unanimously, shall be entitled to designate four additional Independent Directors (defined in the Proposed 2008 Shareholders Agreement). The Chief Executive Officer of Homesite Group shall be the eighth member of the Homesite Board of Directors.

17. The MSCP Funds' exemption request provided that they will not control Homesite Group or Homesite Indemnity Company for the following reasons:

a.) K.S.A. 40-3302(c) defines "control" as "the possession ... of the power to direct or cause the direction of the management and policies of a person". Such power may be through the ownership of voting securities, by contract or by other means. The policies of Homesite Group will be directed by its Board and the composition of the Board is governed by the Proposed 2008 Shareholders Agreement.

b.) Under the Proposed 2008 Shareholders Agreement, Independent Directors will have 50% of the Homesite Group Board voting power, Alleghany will have 25% of the Board voting power, and the MSCP Funds will only have 12.5% of the Board voting power. Under the 2004 Shareholders Agreement, the MSCP Funds were entitled to designate two members of the six-person Board, representing 33.33% of the Board voting power.

c.) Under the Proposed 2008 Shareholders Agreement, the MSCP Funds will hold 46.27% of the Homesite Group voting securities, which is substantially less than the 75.3% that the MSCP Funds held at the time of the 2004 Shareholders Agreement. The MSCP Funds are also going to file a Form of Commitment in which the MSCP Funds

will agree to vote no more than 9.9% of the outstanding shares of common stock and other voting stock of Homesite Group, thus reducing their voting shareholdings to a position that is below the 10% presumed control threshold set forth in K.S.A. 40-3302(c).

### CONCLUSIONS OF LAW

18. K.S.A. 40-3304(a) provides, in part, as follows:

(a) No person other than the issuer shall . . . enter into any agreement to exchange securities, or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer unless, at the time . . . any such agreement is entered into . . . such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such . . . agreement . . . has been approved by the commissioner of insurance in the manner hereinafter prescribed.

19. K.S.A. 40-3304(e) provides

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt there from as: (1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, . . .

20. Based upon the information enumerated in the Findings of Fact contained in paragraphs two through seventeen above, and the representations made on behalf of MSCP Funds, the execution of a new Homesite Group Shareholders Agreement (i.e., the Proposed 2008 Shareholders Agreement) is not being made for the purpose of and will not have the effect of changing or influencing the control of Homesite Indemnity Company, a Kansas domestic insurer.

### **IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:**

1. The MSCP Funds shall be exempt from the application of the formal filing and approval requirements of K.S.A 40-3304(a) as it may be deemed to apply to the execution of a new Shareholders Agreement for Homesite Group, the holding company for Homesite Indemnity Company, provided the execution of the new Shareholders Agreement is effected on or before June 2, 2008.

2. The MSCP Funds shall comply with all the provisions and requirements of K.S.A. 40-3301, *et seq.*, in the future, and shall notify the Kansas Insurance Department of any changes of control as defined in K.S.A. 40-3301, *et seq.*

3. The ultimate controlling person is Alleghany Insurance Holdings LLC.

4. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

#### **Notice of Rights**

The MSCP Funds are entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If the MSCP Funds desire a hearing, they must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If MSCP Funds requests a hearing, the Kansas Insurance Department will notify them of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event the MSCP Funds file a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

IT IS SO ORDERED THIS   9th   DAY OF APRIL 2008 IN THE CITY OF TOPEKA,  
COUNTY OF SHAWNEE, STATE OF KANSAS.



  /s/ Sandy Praeger    
Sandy Praeger  
Commissioner of Insurance

By:   /s/ John W. Campbell    
John W. Campbell  
General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the   9th   day of April, 2008 to:

John Dembeck  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

  /s/ Deletria L. Nash    
Deletria L. Nash  
Assistant General Counsel