

**FINAL ORDER**  
**Effective: 4-4-11**

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

In the Matter of the Proposed Exemption            )  
of **Benchmark Holding Company**                    )       Docket No. 4283-EX

**ORDER**

Now comes on this   21st   day of March, 2011 before the Commissioner of Insurance for disposition the request of Benchmark Holding Company (“Applicant”), dated August 11, 2010, for an Order, pursuant to K.S.A. 40-3304(e)(1), exempting Applicant from the filing and approval requirements of K.S.A. 40-3304(a), as said statute may be construed to apply to the restructuring of the insurance holding company system of Benchmark Insurance Company, a Kansas domestic insurer. Such restructuring is to be accomplished through a transfer in the ownership of Benchmark Insurance Company from TREAN Corporation to Benchmark Holding Company.

This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) days 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. Benchmark Insurance Company, a Kansas domestic insurer, is currently a wholly owned subsidiary of TREAN Corporation.
3. TREAN Corporation is a holding company and a corporation organized under the laws of Minnesota.

4. TREAN Corporation is currently owned by Andrew M. O'Brien (59.9%), Richard C. Bray (20%), Steven B. Lee (20%), and Deborah K. O'Brien (0.1%).

5. Benchmark Holding Company is a newly formed holding company and a corporation organized under the laws of Minnesota.

6. The proposed restructuring will be accomplished through a transfer in the ownership of Benchmark Insurance Company from TREAN Corporation to Benchmark Holding Company.

7. Benchmark Holding Company has requested an Order, pursuant to K.S.A. 40-3304(e)(1), exempting them from the acquisition and approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements stated in K.S.A. 40-3304(a).

8. After the transfer of ownership, Benchmark Insurance Company will be a wholly owned subsidiary of Benchmark Holding Company, to be effective March 10, 2011.

9. Both before and after the transfer of ownership, TREAN Corporation and Benchmark Insurance Company are and will continue to be affiliates, ultimately owned by Andrew M. O'Brien (59.9%), Richard C. Bray (20%), Steven B. Lee (20%), and Deborah K. O'Brien (0.1%).

10. Both before and after the transfer of ownership, Andrew M. O'Brien is and will continue to be the ultimate controlling person of Benchmark Insurance Company.

#### **CONCLUSIONS OF LAW**

11. 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 if, ... 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.

12. 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 therefrom 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;...

13. Based upon the information enumerated in the Findings of Fact contained in paragraphs one through ten above, and the representations made on behalf of Benchmark Holding Company, its stock ownership of Benchmark Insurance Company is not made for the purpose of and will not have the effect of changing or influencing the control of Benchmark Insurance Company, a Kansas domestic insurer.

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

1. Benchmark Holding Company 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 change of the ownership of Benchmark Insurance Company, which will result in Benchmark Holding Company owning 100% of the common stock of Benchmark Insurance Company, provided the reorganization is effected within sixty (60) days of the date of this Order.

2. Benchmark Holding Company shall comply with all of the provisions and requirements of K.S.A. 40-3301, *et seq.*, in the future.

3. 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**

Benchmark Holding Company is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Benchmark Holding Company desires a hearing, it must file a written request for a hearing with:

Zachary J.C. Anshutz, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If Benchmark Holding Company 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 Benchmark Holding Company files 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:

Zachary J.C. Anshutz, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612.

IT IS SO ORDERED THIS \_\_21st\_\_ DAY OF MARCH 2011, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



\_/s/ Sandy Praeger\_\_\_\_\_

Sandy Praeger

Commissioner of Insurance

BY

\_/s/ Zachary J.C. Anshutz\_\_\_\_\_

Zachary J.C. Anshutz

General Counsel

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above order was transmitted by U.S. Mail, first class postage prepaid, on this \_\_21st\_\_ day of March, 2011 to:

Andrew M. O'Brien  
Benchmark Holding Company  
775 Prairie Center Dr. Ste 420  
Eden Prairie, MN 55344

\_/s/ John Dowell\_\_\_\_\_

John Dowell  
Staff Attorney