

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

<b>In the Matter of the Proposed</b>	)	
<b>Acquisition of Control of</b>	)	
	)	
<b>FINANCIAL AMERICAN LIFE INSURANCE</b>	)	
<b>COMPANY</b>	)	
	)	<b>Docket No. 80691</b>
<b>NAIC No. 71455</b>	)	
	)	
	)	
<b>by:</b>	)	
	)	
<b>ARCH CAPITAL GROUP, LTD AND</b>	)	
<b>ARCH CAPITAL GROUP (U.S.) INC.</b>	)	
	)	
	)	
	)	

**ORDER**

Now on this 14<sup>th</sup> day of October, 2019, the above matter comes before the Commissioner of Insurance of the State of Kansas (the "Commissioner") upon the filing of a pre-acquisition notice pursuant to K.S.A. 40-3304 and the Kansas Insurance Department's Policy and Procedure Providing Insurance Holding Company System Reporting Forms and Instructions, dated December 10, 2014, as adopted by K.A.R. 40-1-28 ("K.A.R. 40-1-28") in the form of a "Form A" Statement Regarding the Acquisition of Control of a Domestic Insurer dated September 30, 2019, ("Form A Statement") by Arch Capital Group, Ltd. ("ACGL") and Arch Capital Group (U.S.) Inc. ("ACGUSI") (collectively, the "Applicants"). The Form A Statement relates to the proposed acquisition of control of Financial American Life Insurance Company ("FAMLI"), a Kansas domestic insurance company, by the Applicants ("Proposed Transaction").

Pursuant to the authority granted to the Commissioner by K.S.A. 40-3301 and 40-3304(d)(1) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, *et seq.*, the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law, and orders the following:

### **DECLARATION OF PUBLIC INTEREST AND POLICY**

The following statements of fact and conclusions of law are made with the intent to promote the policies and objectives enumerated in K.S.A. 40-3301.

### **FINDINGS OF FACT**

The findings of fact and conclusions stated herein are based upon the statements made by the Applicants in the Form A Statement and accompanying documents made under oath and filed with the Kansas Insurance Department (the "Department") by the Applicants pursuant to K.S.A. 40-3304(b) and K.A.R. 40-1-28.

#### **1. Background Information**

- a. The purpose of the filing of the Form A Statement is to seek authority from the Commissioner for the proposed acquisition of control of FAMLI by the Applicants. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed by the Applicants with the Commissioner pursuant to the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.*
- b. Representatives of the Financial Surveillance and Legal Divisions of the Department reviewed significant documents, and the Commissioner has had the benefit of her staff's technical expertise and advice. Additionally, the Commissioner retained experts not otherwise a part of the staff of the Department as she found reasonably necessary to assist in reviewing the proposed transaction,

pursuant to K.S.A. 40-3304(d)(5). The Department maintained close oversight of any experts retained.

- c. In the Form A Statement, which the Applicants filed with the Department and the Department received electronically on September 30, 2019, the Applicants request approval of the acquisition of control of FAMLI.
- d. The Applicants submitted various exhibits to the Form A Statement, including, without limitation, the Stock Purchase Agreement dated March 15, 2019, Form 10-Ks, organizational charts, and NAIC biographical affidavits.
- e. FAMLI is domiciled in Kansas, with its statutory home office address in Overland Park, Kansas. FAMLI is a wholly-owned subsidiary of Financial American Holdings Corporation (“FAHC”), a Delaware corporation and an indirect wholly-owned subsidiary of the GGC Opportunity Fund Management GP, Ltd., a limited company domiciled in the Cayman Islands. David C. Dominik is the current ultimate controlling person of FAMLI.
- f. The Applicants are ACGUSI and ACGL. ACGUSI is a Delaware corporation indirectly owned and controlled by ACGL through the following wholly-owned subsidiaries: Arch Reinsurance Ltd., Arch Financial Holdings Europe I Ltd., Arch Financial Holdings Europe II Ltd., and Arch Reinsurance Europe Underwriting Designated Activity Company. ACGL is a public limited liability company on the NASDAQ organized under the laws of Bermuda, and it serves as a holding company for various subsidiaries. The subsidiaries focus on writing specialty lines of insurance and reinsurance.

## **2. Structure of the Proposed Transaction**

- a. According to the Form A Statement and exhibits, the Applicants propose to acquire control of FAMLI via a Stock Purchase Agreement (“Agreement”) dated March 15, 2019, entered into by FAHC and ACGUSI. Under the Agreement, ACGUSI will purchase 100% of the outstanding shares of common stock of FAMLI from FAHC. Currently, the outstanding common stock of FAMLI consists of 2,530,000 shares with a par value of \$0.40 per share, all of which are owned by FAHC (“Shares”).
- b. After the proposed acquisition is complete, ACGL will be the ultimate controlling person of FAMLI.

### **3. Consideration for the Agreement**

- a. Under the terms of the Agreement, the purchase price for the Shares is comprised of the following, subject to a maximum purchase price of \$5,000,000:
  - i. An amount equal to FAMLI’s capital and surplus, as determined on a statutory basis as of the last day of the calendar month immediately preceding the date of the closing;
  - ii. \$80,000 for each Certificate of Authority (“COA”) that is not subject to suspension or other restriction as of the date of closing (“License Impediment”); and
  - iii. \$60,000 for each COA that is subject to a License Impediment that is removed within the 12 month period following the closing.
- b. To ensure that cash is set aside to pay the portion of the purchase price, if any, for a COA that is subject to a License Impediment that subsequently is removed, ACGUSI will deposit into escrow funds equal to \$60,000 times the number of

COAs that are subject to a License Impediment. Escrowed funds will be paid based on whether the License Impediments are cured within the 12-month period following the closing.

- c. Finally, the Agreement provides that FAHC will indemnify ACGSUI and FAML I for specified items and breaches of specific obligations described in the Agreement. To ensure that cash is set aside to fund FAHC's indemnification obligations, FAHC will deposit into escrow funds 25% of the purchase price for 24 months to secure payment by FAHC of any claimed indemnified losses it owes under the Agreement.

4. **Source of the Proposed Transaction Consideration:** ACGUSI anticipates that the purchase price will be paid from readily available cash and is not represented by borrowed funds.

5. **Future Plans of Applicants**

- a. In the Form A filing, the Applicants indicated that they do not have any plans or proposals to cause FAML I to declare an extraordinary dividend, liquidate FAML I, sell FAML I's assets, merge FAML I with any other entity, or make any other material change to FAML I's business operations, corporate structure, or management.
- b. FAML I ceased underwriting new insurance policies in 2013 and its existing business consists of in force credit life and disability policies for auto loans. The Applicants plan to continue the orderly runoff of FAML I's outstanding credit life and disability insurance policies consistent with its current runoff operations.

- c. Additionally, the Applicants expect to cause FAML I to seek to eliminate current restrictions on FAML I's certificates of authority and file expansion applications for certificates of authority in states where FAML I is not currently licensed so that FAML I will be able to write new life, health, and disability insurance business throughout the United States.
6. The Applicants identified the anticipated board of director members and executive officers for FAML I following completion of the proposed transaction and provided the necessary biographical affidavits and background investigation reports for each individual.

#### **APPLICABLE LAW**

7. K.S.A. 40-3304(a)(1) provides:

“No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or 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, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, 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 offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.”

#### **CONCLUSIONS OF LAW**

8. Representatives of the Financial Surveillance and Legal Divisions of the Department inspected and reviewed the contents of the Form A Statement and exhibits and

determined those filings comply with the provisions of the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.* and K.A.R. 40-1-28. Additionally, the Department determined that the Applicants provided the information required under Kansas law to enable the Commissioner to render a decision.

9. The evidence shows that after the change of control, FAML I would be able to satisfy all the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.
10. The evidence shows that the financial condition of the Applicants does not jeopardize the financial stability of FAML I or prejudice the interest of its policyholders.
11. The evidence shows that the Applicants have no current plans or proposals to liquidate FAML I, sell its assets or consolidate or merge it with any person, or make any material change in FAML I's current active business operations, corporate structure, or management.
12. The evidence shows that the competence, experience and integrity of those persons who would control the operation of FAML I are such that it would not be harmful to the interest of policyholders of FAML I and of the public to permit the acquisition of control by the Applicants.
13. The evidence shows that the acquisition of control of FAML I by the Applicants is not likely to be hazardous or prejudicial to the insurance-buying public.

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

1. The application by the Applicants to acquire control of FAML I in the manner set forth in the Form A Statement and exhibits is hereby approved pursuant to K.S.A. 40-3304, provided that the acquisition is effected no later than 90 days after this Order.

2. The Commissioner retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.



**NOTICE OF RIGHTS**

This Final Order is effective upon service. Pursuant to K.S.A. 77-529, the Applicants may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, *et seq.* Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within thirty (30) days following the service of this Final Order, unless the Applicants petition the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within thirty (30) days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event the Applicants file a petition for judicial review, the agency officer to be served on behalf of the Department is:

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

IT IS SO ORDERED THIS 4<sup>th</sup> DAY OF OCTOBER, 2019, IN THE CITY OF TOPEKA,  
COUNTY OF SHAWNEE, STATE OF KANSAS.



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Vicki Schmidt  
Commissioner of Insurance

By:



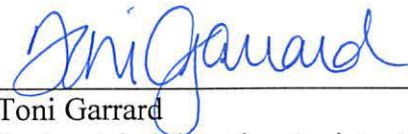
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Paige Blevins  
Staff Attorney

**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 14<sup>th</sup> day of October 2019, to:

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Toni Garrard  
Senior Administrative Assistant