

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

In the Matter of the Proposed)
Acquisition of Control of)
)
KANSAS SUPERIOR SELECT, INC.)
)
NAIC No. 16713)
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by:)
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MFO AHP LLC AND MFO AHP SUB LLC)
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Docket No. 87744

ORDER

Now on this 1st day of April 2021, 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 K.A.R. 40-1-28¹ in the form of a “Form A” Statement Regarding the Acquisition of Control of a Domestic Insurer dated November 18, 2020 (“Form A Statement”) by MFO AHP LLC and MFO AHP SUB LLC (“Applicants”). The Form A Statement relates to the proposed acquisition of control of Kansas Superior Select, Inc. (“Domestic HMO”), a Kansas domestic health maintenance organization, by the Applicants.

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*.

¹ K.A.R. 40-1-28 incorporates the Kansas Insurance Department’s “policy and procedure providing insurance holding company system reporting forms and instructions”, dated September 15, 2020.

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 the Domestic HMO 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. The Applicants initially filed a fully executed Form A Statement with the Department on October 20, 2020. The Applicants subsequently filed a fully executed Amended and Restated and Corrected Form A Statement on November 18, 2020. In the Form A Statement, the Applicants request approval of the acquisition of control of the Domestic HMO by the Applicants.

- c. The Applicants submitted various exhibits to the Form A Statement, including, without limitation, the Securities Purchase Agreement (“Agreement”), financial statements, organizational charts, and NAIC biographical affidavits.
- d. 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.
- e. MFO AHP LLC (“MFO”) is a limited liability company (“LLC”) domiciled in Michigan with its statutory home office in Birmingham, Michigan. Mark T. Mitchell owns 0.1% of the Class A voting Units of MFO and is its sole Manager. MFO AHP SUB LLC (“MFO SUB”) is a limited liability company domiciled in Michigan with its statutory home office in Birmingham, Michigan. MFO is MFO SUB’s sole member and Manager. As stated in the Form A Statement, Mr. Mitchell, the ultimate controlling person (“UCP”) of the Applicants, has extensive experience with the development and leadership of complex healthcare systems, including accountable care organizations and emerging healthcare companies.
- f. The Domestic HMO is a Kansas corporation with its statutory home office address in Wichita, Kansas. Currently, the Domestic HMO is owned by five owners with the following percentage ownership of the Domestic HMO’s outstanding common stock: American Health Holdings, LLC (whose UCP is American Health Companies, Inc. (“AHC”)) – 20.976%; ML – KSS, LLC (whose UCP is Medicalodges, Inc.) – 20.976%; Klaton Insurance Partners, LLC (whose UCP is Klaton Enterprises, LLC) – 20.976%; KSSI Advantage, LLC (whose UCP is R.H. Montgomery Properties, Inc.) – 20.976%; and Central Kansas Select, LLC – 16.097%.

2. **Structure of the Transaction**

- a. Prior to and in connection with the Applicants' proposed acquisition of the Domestic HMO, AHC and certain affiliates will enter into corporate reorganizations ("Reorganization") that will allow the Applicants to take advantage of certain state tax benefits associated with net operating losses that are not available if the Reorganization does not occur. As part of the Reorganization, AHC will convert into an LLC ("AHC LLC"). In addition, FLP, Limited Partnership ("FLP"), a limited partnership domiciled in Florida, will be formed and will become the sole owner of all of the membership interests in AHC LLC.
 - b. According to the Form A Statement and exhibits, the Applicants propose to acquire control of the Domestic HMO through the acquisition of FLP, which will own all of the membership interests in AHC LLC, which in turn owns 93% of the membership interests in American Health Holdings, LLC, which in turn owns 20.976% of the common stock of the Domestic HMO.
 - c. On December 18, 2020, AHC, the AHC Employee Stock Ownership Trust, and the Applicants entered into a Securities Purchase Agreement ("Agreement") under which MFO SUB will purchase all of the general partner interests of FLP and MFO will purchase all of the limited partner interests of FLP as of the date the transactions described in the Agreement are consummated ("Closing"). Accordingly, as of the Closing, the Applicants will indirectly control 20.976% of the Domestic HMO.
3. **Consideration for the Agreement.** Under the terms of the Agreement, the purchase price for the limited and general partner interests in FLP to be acquired by the Applicants

is \$107.5 million, subject to certain adjustments set forth in the Agreement (the “Purchase Price”).

4. Source of the Purchase Consideration.

- a. As stated in the Form A filing, the Applicants intend to make future business plans relating to the purchase of the entire AHC holding company system. As a result, the Applicants anticipate that in addition to the Purchase Price, the Applicants will seek an additional \$112.5 million of funds necessary to effectuate the anticipated future business plans. Accordingly, the Applicants intend to obtain total funding of \$220.0 million (the \$107.5 million Purchase Price and \$112.5 million of additional funds for future business plans) (the “Total Funding”) to effectuate the purchase of the FLP general and limited partnership interests and the Applicant’s future business plans.
- b. As stated in the Form A filing, Mr. Mitchell is contributing \$19.2 million toward the Total Funding, with the remaining \$200.8 million of the Total Funding obtained from lenders through a series of financing arrangements with unrelated banking and lending institutions.

- 5. Future Plans.** As part of the Form A, the Applicants indicated that they do not have any plans to liquidate the Domestic HMO or merge the Domestic HMO with any other entity. Further, the Applicants indicated that they do not have any plans to sell the assets of the Domestic HMO or make any other material change in its business operations, corporate structure or management. Finally, the Applicants indicated that they do not have any plans to cause the Domestic HMO to declare any extraordinary dividend.

APPLICABLE LAW

6. 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

7. 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.
8. The evidence shows that after the change of control, the Domestic HMO 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.
9. The evidence shows that the financial condition of the Applicants does not jeopardize the financial stability of the Domestic HMO or prejudice the interest of its policyholders.
10. The evidence shows that the Applicants have no current plans or proposals to liquidate the Domestic HMO, sell its assets or consolidate or merge it with any person, or make

any material change in Domestic HMO's current active business operations, corporate structure, or management.

11. The evidence shows that the competence, experience, and integrity of those persons who would control the operation of the Domestic HMO are such that it would not be harmful to the interest of policyholders of the Domestic HMO and of the public to permit the acquisition of control by the Applicants.
12. The evidence shows that the acquisition of control of the Domestic HMO 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 the Domestic HMO 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 Agreement is effected no later than ninety (90) days after the date of 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 Applicant 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 Applicant petitions 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 Applicant files a petition for judicial review, the agency officer to be served on behalf of the Department is:

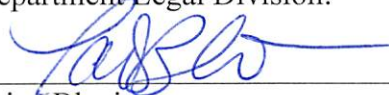
Justin McFarland, General Counsel
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, Kansas 66604

IT IS SO ORDERED THIS 1st DAY OF APRIL 2021, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Vicki Schmidt
Commissioner of Insurance

Approved by the Kansas Insurance
Department Legal Division:



Paige Blevins
Staff Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order was forwarded via first class mail, postage prepaid on the 2nd day of April 2021, to:

Nora Liggett, Esq.
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Attorney for Applicants



Toni Garrard
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