

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF DELAWARE**

IN THE MATTER OF: )

The Proposed Indirect Acquisition of Control of )  
HIGHMARK BCBSD INC., a domestic insurer doing ) Docket No. 2192-2013  
business as BlueCross BlueShield of Delaware, by UPE, )  
a Pennsylvania nonprofit corporation )  
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**PROPOSED ORDER AND RECOMMENDATIONS**

On February 14, 2012, UPE (“Applicant”), a non-member nonprofit corporation formed and existing under the laws of the State of Pennsylvania, filed a Form A Statement Regarding the Acquisition of Control (the “Application”) of Highmark BCBSD Inc., a domestic insurer doing business as BlueCross BlueShield of Delaware (“Domestic Insurer”), with the Department of Insurance of the State of Delaware (the “Department”) requesting approval of the proposed indirect acquisition of control (the “Acquisition”) of Domestic Insurer by Applicant, pursuant to that certain Affiliation Agreement, dated October 31, 2011, as amended (the “Agreement”), between Domestic Insurer’s ultimate parent company, Highmark Inc., a Pennsylvania corporation (“Highmark”) and West Penn Allegheny Health System, Inc. (“WPAHS”).

By order dated March 26, 2013, Commissioner Stewart appointed me hearing officer in the above-captioned matter pursuant to 29 *Del. C.* § 10125. In accordance with Chapter 101 of Title 29 of the Delaware Code Annotated, 18 *Del. C.* § 5003, and 18 *Del. C.* § 6311, a hearing was held on April 17, 2013 (the “Hearing”). The following is my proposed order and recommendations issued pursuant to 29 *Del. C.* § 10126.

Appearing and testifying in person on behalf of Applicant<sup>1</sup> and Highmark was Karen Hanlon, Senior Vice President for Financial Planning and Analysis for Highmark. Also participating on behalf of Applicant was outside counsel, Frederick K. Campbell and S. Doak Foster of Mitchell, Williams, Selig, Gates & Woodyard, PLLC.

Appearing and testifying in person for the Department were Holly Conley, Financial Analyst for the Department, and Gregg Bealuk, Advisor to the Department. Also present on behalf of the Department were W. Harding Drane, Jr., Deputy Attorney General and counsel to the Department, and outside counsel for the Department, Michael Houghton, Leslie A. Polizoti, Ryan Stottmann and Sara A. Gelsinger of Morris, Nichols, Arsht, & Tunnell LLP.

Appearing in person for the Department of Justice of the State of Delaware (the “DOJ”) was Kevin Carroll, Deputy Attorney General for the DOJ.

Notice of the Hearing was published on March 28, 2013 and March 29, 2013, in the Delaware State News and in the News Journal Newspaper, newspapers of general circulation. See Hearing Exhibits 39 and 40.

Pursuant to a decision and final order dated December 31, 2011 (the “Final Domestic Affiliation Order”), Commissioner Stewart approved the affiliation of Domestic Insurer and Highmark (the “Domestic Affiliation”) conditioned upon the imposition of forty-nine (49) conditions (the “Existing Conditions”). The proposed affiliation set forth in the Application was identified during the course of the Department’s review of the Domestic Affiliation and specifically referenced in Existing Condition 35. However, because Domestic Insurer was not, at the time, affiliated with Highmark, and because the scope of the proposed Acquisition was still evolving at the time the Domestic Affiliation was being reviewed by the Department, a final

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<sup>1</sup> Karen Hanlon testified that she was authorized by Applicant to testify on its behalf. (*See* Exhibit 33)

review by the Department was not possible and, therefore, no additional conditions related specifically to the proposed Acquisition were imposed at that time. Since the entry of the Final Domestic Affiliation Order, the proposed Acquisition has increased in scope (as more fully set forth on the record and summarized herein), and now requires the Department's formal review which has resulted in the consensual revision of certain Existing Conditions (the "Modified Conditions") and the creation of additional conditions (the "Additional Conditions" and together with the Modified Conditions, the "New Conditions"). I find that with the inclusion of the New Conditions, the Application by which Applicant is seeking indirect acquisition of control of Domestic Insurer complies with Delaware law and recommend that the Commissioner approve the Application subject to the New Conditions set forth on Exhibit A hereto and identified at Exhibit 34, and recommend that this approval become effective only if and when the Pennsylvania Insurance Department (the "PID") approves the Highmark/WPAHS affiliation. While I have not included in my recommendation the conditions propounded by Blackstone Advisory Partners L.P.,<sup>2</sup> financial advisor to the PID, in its report prepared in connection with the PID's review of the Acquisition, I concur with the Department and the DOJ that these are conditions appropriate for consideration by the Commissioner for inclusion in her order regarding the Application; however, I also concur with the Department that such conditions are appropriate for the PID, as the Applicant's and Highmark's primary regulator, to consider.

### **I. Summary of Record**

The record in this matter consists of the sworn testimony of Karen Hanlon, on behalf of Applicant and Highmark, and Holly Conley and Gregg Bealuk, each on behalf of the Department, the oral statement provided at the Hearing by Kevin Carroll on behalf of the DOJ in

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<sup>2</sup> These proposed conditions can be found in Exhibit 28-B.

support of the April 12, 2013 letter of the DOJ identified at Exhibit 43, the oral comments and questions provided at the Hearing by Jo Ann Fields, M.D., as well as exhibits identified and admitted into evidence at the Hearing, a list of which is attached hereto as Exhibit B.

**A. The testimony of Karen Hanlon and the exhibits admitted into evidence may be summarized, in pertinent part, as follows:**

*Domestic Insurer*

Domestic Insurer is a controlled affiliate of Highmark and will become an indirect controlled affiliate of Applicant following the Acquisition. Following the closing of the Domestic Affiliation, which became effective as of January 1, 2012, BCBSD changed its name to Highmark Blue Cross Blue Shield Delaware. Domestic Insurer offers a number of health plans and programs for individuals, families and organizations, including group, family and individual, dental and vision plans. The Domestic Affiliation has allowed Domestic Insurer to provide its over 396,000 members with enhanced capabilities, including web-based provider cost information and other health and wellness programs. Domestic Insurer also allows providers access to enhanced services, such as real-time claims estimation and adjudication, new reimbursement approaches and data sharing capabilities.

*Highmark*

Highmark is a Pennsylvania non-stock, nonprofit corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988, with origins dating back to the 1930s. Highmark, as it is constituted today, was created through the 1996 consolidation of Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield. It does business as Highmark Blue Cross Blue Shield in western Pennsylvania and Highmark Blue Shield in the remainder of Pennsylvania. Highmark is authorized by the PID to operate a hospital plan and a professional

health services plan in Pennsylvania pursuant to Pennsylvania's Health Plan Corporations Act. Under this authority, Highmark provides traditional indemnity, or "fee for service," health care insurance coverage to groups and individuals in Pennsylvania. In addition to its indemnity coverage, Highmark also offers health insurance coverage in 49 of Pennsylvania's 67 counties, through a preferred provider organization, or "PPO" program. Highmark is also an administrative services only, or "ASO," provider for certain self-insured groups.

Highmark is one of the 10 largest health insurance companies in the United States in terms of membership, with a total health membership of over 5.3 million. It is also the largest, in terms of total revenue, of those Blue Cross Blue Shield plans in the U.S. that remain not-for-profit.

Highmark has several subsidiaries that provide a variety of insurance products in numerous states, including health maintenance organization (HMO) coverage; group and individual Medicare products; vision, dental, and stop loss coverage; and reinsurance.

Highmark has an "A-" rating from A.M. Best and an "A" rating from Standard & Poors. As of December 31, 2012, Highmark's statutory financial statement reflected that Highmark had \$4.1 billion in surplus and over \$7.3 billion in assets, and that its net income for 2012 was over \$163 million. As of December 31, 2012, Highmark's RBC was within the range defined as "sufficient" (550% to 750% of authorized control level) by the PID.

### *Applicant*

Applicant was formed on October 20, 2011, as a non-member Pennsylvania nonprofit corporation. The corporation was organized for scientific, educational, and charitable purposes and in this connection has filed an application with the Internal Revenue Service requesting that the Applicant be recognized as exempt from federal income tax pursuant to Section 501(c)(3) of

the Internal Revenue Code of 1986 as amended; Applicant received certification as such on March 3, 2012, as shown in Exhibit 38. At the closing of the transaction contemplated in the Agreement, the Applicant will be the sole member of the class of members of Highmark which will elect Highmark's Board of Directors. It is not expected that the Applicant will have significant operations separate from Highmark or WPAHS.

*Description of the Acquisition*

As more detailed in the Application and the Agreement, effective January 1, 2012, Highmark became the Ultimate Controlling Person of Domestic Insurer pursuant to the Final Domestic Affiliation Order issued by the Department, which approved the agreement for BCBSD, Inc. and Highmark to affiliate (the "BCBSD Affiliation Agreement"), subject to the Existing Conditions. On October 31, 2011, Highmark and WPAHS entered into the Agreement, pursuant to which a new nonprofit corporation has been created to establish an integrated health care financing and delivery system in western Pennsylvania. Under the Agreement, at closing, Applicant will become the sole voting corporate member of Highmark. Applicant will hold all rights in the new class of corporate membership in Highmark, which will be created and exist in addition to the current class of members, which consists of members of the Board of Directors of Highmark. Highmark's Board of Directors will continue to have significant control over its insurance operations. All initial Directors of Applicant have been drawn from the Directors of Highmark.

Applicant will also become the sole corporate member of a new nonprofit subsidiary of Applicant, UPE Provider Sub. UPE Provider Sub will become the sole member of WPAHS which, in turn, is the parent company of various entities in the WPAHS health system of hospitals and other healthcare providers. Applicant and UPE Provider Sub will each have certain

reserved powers in WPAHS and, at all times, at least a majority of the Board of WPAHS will be appointed by Applicant.

Applicant anticipates that there will be no change to the capitalization, organizational structure or any other aspect of Domestic Insurer as a result of the Acquisition. The separate corporate existence of Domestic Insurer will continue, and the daily management and Board of Directors of Domestic Insurer will remain as they were prior to the Acquisition. The Acquisition will not interfere with Domestic Insurer's ongoing community support and charitable activity commitments. Moreover, the financial condition of Applicant or Highmark, as a result of the Highmark/WPAHS affiliation, is not expected to jeopardize the financial stability of Domestic Insurer, or prejudice the interest of its subscribers or members.

**B. Holly Conley, Financial Analyst for the Department, testified in pertinent part to the following:**

(a) She is one of the individuals at the Department responsible for reviewing the Application. She reviewed the Application to determine whether the indirect change of control of Domestic Insurer that will result from the closing of the Highmark/WPAHS affiliation should be approved. Of particular relevance to the Department's inquiry was whether the proposed affiliation, or Highmark's integrated delivery network plan ("IDN Plan"), could or would result in Highmark making significant financial commitments that will affect its liquidity and overall financial stability, and thus potentially affect Domestic Insurer. These potential financial effects on Highmark could affect, for example, Highmark's ability to meet its contractual obligations to Domestic Insurer, and to provide services to Domestic Insurer required under the BCBSD Affiliation Agreement, and, therefore, increase the risk that Domestic Insurer would need to disaffiliate from Highmark.

(b) She recounted the history of the Application, noting that the proposed Highmark/WPAHS affiliation was brought to the Department's attention in 2011, in connection with the Department's review of the Domestic Affiliation. Pursuant to the terms of the BCBSD Affiliation Agreement, Highmark became the controlling entity of Domestic Insurer. The Department approved the BCBSD Affiliation Agreement with the inclusion of the Existing Conditions, many of which were intended to, and do, protect the financial stability of Domestic Insurer. At the time the Department was reviewing the Domestic Affiliation, Highmark had proposed an affiliation with WPAHS. The proposal contemplated the formation of Applicant, which would be the parent entity of two direct subsidiaries, the first being Highmark, and the second being UPE Provider Sub as the parent of WPAHS. Because Domestic Insurer was not yet affiliated with Highmark, and because the terms of Highmark's affiliation with WPAHS were not final, the Department was not in a position to review formally the affiliation between Highmark and WPAHS. The Department did, however, analyze the structure and terms of the then-contemplated Highmark-WPAHS affiliation, and determined that it did not require the Department to disapprove the Domestic Affiliation under the Section 5003 criteria. Based on the Department's preliminary analysis of the then-contemplated affiliation with WPAHS, the Department imposed Existing Condition 35 on the Domestic Affiliation that prohibited Highmark from passing on to Domestic Insurer any direct or indirect costs associated with a Highmark-WPAHS affiliation. The Department also noted at that time that a Highmark-WPAHS affiliation would require formal Department approval if the Highmark-WPAHS terms were finalized; thus, the Department would still have the ability to impose additional conditions, if warranted based on the final proposed affiliation terms. After the BCBSD Affiliation Agreement closed on December 31, 2011, Applicant filed the Application. The Application

underwent a series of supplements and changes, including Change No. 2, which was filed with the Department on February 28, 2013. The change presented Amendment No. 1 to the Agreement which significantly changed the terms of the proposed affiliation. The change also included information about Highmark's IDN Plan, and certain other affiliations with Pennsylvania hospitals that Highmark had entered into.

(c) She discussed how the current proposed Highmark-WPAHS transaction differs from the Highmark-WPAHS affiliation contemplated in 2011. Specifically, she identified two significant differences from what was proposed in 2011: (i) overall corporate structure, and (ii) Highmark's financial commitment. The overall corporate structure changed because additional health care provider entities, including Jefferson Regional Medical Center and Saint Vincent Health System, either are or will be brought under the control of UPE Provider Sub as part of Highmark's IDN Plan. Highmark's financial commitments also materially increased since the Department's preliminary 2011 review, at which time Highmark expected a financial commitment of approximately \$475 million in the form of grants and loans. Now, the \$475 million commitment increased to approximately \$1.8 billion, which includes a \$475 million allocation in grants and loans to WPAHS, up to a \$646 million purchase of WPAHS bonds, and up to \$733 million in allocations to other IDN Plan projects like funding for the Jefferson Regional Medical Center and the Saint Vincent Health System, the entities brought into the current corporate structure contemplated by the Applicant-related change in control.

(d) She then addressed how the changes to the terms and structure of the proposed Highmark-WPAHS affiliation required the Department to analyze the Acquisition as it relates to the change in control of Domestic Insurer independently of the analysis that it performed in 2011. The outcome of the Department's analysis and negotiations with Applicant

and Highmark resulted in the consensual New Conditions on the proposed indirect change of control of Domestic Insurer, with the objective to protect Domestic Insurer, its policyholders, and the general public.

(e) Based upon her review and that of the Department, the Department has made the following findings relative to the criteria set forth in 18 Del. Code Section 5003(d):

18 *Del. C.* § 5003(d)(1)(a) provides: After the change of control, the insurer may not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

The proposed acquisition of control does not involve a change to the corporate identity of Domestic Insurer, its status as a health service corporation under Chapter 63 of the Delaware Insurance Code, or its ability to satisfy all applicable licensing standards. The Application and the Department's review of the same does not indicate that the Applicant plans to make changes to Domestic Insurer that would cause it to be unable to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed. After the proposed acquisition of control, all relevant entities of Domestic Insurer will continue to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which they are presently authorized.

18 *Del. C.* § 5003(d)(1)(b) provides: The effect of the merger or other acquisition of control would be substantially to lessen the competition in insurance in the State of Delaware or tend to create a monopoly therein.

Applicant does not write insurance in Delaware or elsewhere and, therefore, the proposed acquisition of control would have little, if any, effect on the insurance market in the State of Delaware. Therefore, the Department finds that the Acquisition does not violate this standard.

Further, any effects on competition in insurance and provider markets that would likely occur in Pennsylvania as a result of the Agreement are appropriately under review by the PID.

18 *Del. C.* § 5003(d)(1)(c) provides: The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders.

The Department finds that, with the imposition of the New Conditions on the Acquisition, the financial condition of Applicant is such that it will not jeopardize the financial stability of Domestic Insurer or prejudice the interest of its policyholders. The Department's review of the Application and additional information provided by the Applicant, the PID, and Blackstone, and the Delaware Examination Team's (as defined below) independent review of the Blackstone report at the request of the Department, demonstrated that Applicant will be well-capitalized and unlikely to jeopardize Highmark's financial stability at the time the transaction closes. Because Applicant's financial condition is unlikely to jeopardize Highmark, it is also unlikely to jeopardize Domestic Insurer.

18 *Del. C.* § 5003(d)(1)(d) provides: The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

Per Item 5 of the Application, as confirmed by Applicant and Highmark in a Modified Condition that the Department proposes be imposed, the Department finds that neither Applicant nor Highmark have any present plans or proposals to liquidate Domestic Insurer; to sell Domestic Insurer's assets or to merge Domestic Insurer with any other person; or to make any other material changes in Domestic Insurer's business operations or corporate structure or

management. Further, Applicant has qualified for exemption from federal income tax as a 501(c)(3) nonprofit company, and the transaction will not affect the non-profit status of Domestic Insurer. Following the proposed acquisition of control, Applicant has no plans to change the capitalization, organizational structure, daily management, composition or membership of the board of directors, or any other aspect of the operations of Domestic Insurer.

18 *Del. C.* § 5003(d)(1)(e) provides: The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the best interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

As a result of the Acquisition, Applicant will indirectly control Domestic Insurer. Applicant's Board of Directors will initially be drawn from the directors that sit on Highmark's Board. The Department has reviewed the biographical affidavits and third-party background checks of each of the individuals named as an officer or director of Applicant, including the affidavit of William Winkenwerder, who replaced Kenneth Melani as CEO of both Applicant and Highmark and as member of the boards of directors of both Applicant and Highmark in July 2012. The Department reviewed information regarding the proposed Board of Directors of the Applicant because Applicant will indirectly control Domestic Insurer.

However, after the Acquisition, the current Board of Directors which directly controls the operation of Domestic Insurer, will not change. Therefore, the Department finds that the competence, experience and integrity of the persons who will control the operations of Domestic Insurer are such that it is in the best interest of Domestic Insurer's policyholders and the public to permit the acquisition of control.

The Department notes, however, that Blackstone's analysis stated some significant and important concerns regarding the way that Highmark's management approached the Agreement. The Department believes that such a concern is more appropriately addressed by Highmark's primary regulator.

18 *Del. C.* § 5003(d)(1)(f) provides: The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

The Department has reviewed Blackstone's analysis and has engaged the Delaware Examination Team to review Blackstone's analysis. Blackstone and the Delaware Examination Team agree that the Agreement could impact Highmark's overall financial strength because Highmark may not recover a portion of its investment in WPAHS, and Highmark's investment in WPAHS and the IDN Plan significantly decreases Highmark's liquidity. This impact on Highmark's financial strength could result in a liquidity crisis or a situation where Highmark seeks to convert to a for-profit entity or sell itself, which may cause Domestic Insurer to seek to disaffiliate. Disaffiliation is not a preferred option for Domestic Insurer, given Domestic Insurer's significant reliance on Highmark providing technology and other services to Domestic Insurer. Therefore, the Department finds that the Agreement must be subject to the New Conditions that will enhance the oversight of the Department over the affiliation between Highmark and Domestic Insurer in a way that protects the commitments that Highmark made to Domestic Insurer; provide an "early warning" of any Highmark or Applicant-related financial instability; and enhance the protection of Domestic Insurer, and the commitments to Domestic Insurer, should the need to disaffiliate arise. These New Conditions are designed to protect the insurance buying public in the State of Delaware and ensure that this Acquisition will not be hazardous or prejudicial to the insurance buying public.

(f) Based upon her review and that of the Department, the Department has made the following findings relative to the criteria set forth in 18 Del. Code Section 6311(b):

Section 6311 requires conditions that will preserve the amount, determined in accordance with Delaware law, that constitutes the surplus or reserves of Domestic Insurer. Such conditions must include, without limitation, the four conditions set forth in Section 6311 regarding (i) Department approval of changes in Domestic Insurer's certificate of incorporation, (ii) Department approval of expenditures or transfers of funds by Domestic Insurer to Applicant or Highmark, (iii) the composition of the board of directors of Domestic Insurer and (iv) consent to the Department Commissioner's ability to seek relief for statutory or contractual violations.

The Department believes that the requirements of Section 6311 are met by the Existing Conditions identified in Exhibit 3, including, for example, Conditions 1-6, 9-11 and 35, and through the New Conditions, including, for example, Condition 3 and a revision to the existing Condition 35.

(g) Based upon her review and that of the Department, the Department has made the following findings relative to the criteria set forth in the Existing Conditions imposed on Highmark in connection with the Department's approval of the BCBSD Affiliation Agreement in 2011:

Domestic Insurer has informed the Department, by a letter that is Exhibit 36, that Domestic Insurer is satisfied that Highmark has complied to date with the Existing Conditions and with Highmark's other contractual obligations in connection with the Domestic Affiliation. In addition, the Board of Directors of Domestic Insurer has informed the Department, by providing meeting minutes that are Exhibit 37, that it will not exercise its right under Existing

Condition 23 to withdraw Domestic Insurer from the Domestic Affiliation, a right which arose because of the change in control of Highmark that would result from the Acquisition.

The Department has determined that the Modified Conditions and the Additional Conditions are warranted. The Department believes that these New Conditions, all of which are shown on Exhibit A hereto and at Exhibit 34, are necessary to protect Domestic Insurer, its policyholders, and the public, based on any possible liquidity and financial stability issues that Highmark may face.

The Department finds that the New Conditions should be placed on the Acquisition. As a threshold matter, because Applicant would exercise control over Domestic Insurer as a result of the Agreement, the Department finds that it should be made clear that Applicant (in addition to Highmark and related entities) should be bound both by the Existing Conditions imposed in connection with the Domestic Affiliation and by the New Conditions imposed in connection with the Acquisition.

**C. Gregg Bealuk, Advisor for the Department, testified in pertinent part to the following:**

(a) He is a contract financial examiner and advisor to the Department, specifically engaged to assist in the Department's financial review of the proposed change in control of Domestic Insurer, according to certain statutory standards enumerated in Title 18 of the Delaware Code, Section 5003. At the Department's request, he, with the assistance of actuarial consultants from INS Consultants, Inc. (Mr. Bealuk, together with INS Consultants, Inc., constitute the "Delaware Examination Team"), who are the Department's outside consultants, reviewed the analysis performed by Blackstone for the PID, including the key question of what effects the Agreement will have on the financial condition of Highmark. In

connection with reviewing certain of those statutory standards, the Department asked the Delaware Examination Team to review the Existing Conditions that were imposed on the Domestic Affiliation in 2011 to determine whether the proposed change in control would violate any of the Existing Conditions, or require their modification.

(b) He testified to the effect the Agreement will have on Domestic Insurer and the relationship between Highmark and Domestic Insurer. Mr. Bealuk noted that Domestic Insurer sits on the Highmark side of the new structure, as an affiliate, not a subsidiary. The Agreement results in an indirect change in control over Domestic Insurer. Currently, Domestic Insurer is affiliated with Highmark, and Highmark is the sole member of, and exercises control over, Domestic Insurer. As a result of the Acquisition, Highmark will become controlled by Applicant due to Applicant becoming the sole voting corporate member of Highmark and therefore, Domestic Insurer will experience an indirect change of control. The relationship between Highmark and Domestic Insurer is governed by the BCBSD Affiliation Agreement. Under that agreement, Highmark became the sole member of Domestic Insurer, but the business and affairs of Domestic Insurer continue to be managed by its Board of Directors. The Board includes “independent” directors, who were initially nominated by Domestic Insurer, and other directors, who are elected by Highmark. Under this contractual relationship, Highmark provides a wide range of administrative services to Domestic Insurer, including services relating to human resources, marketing and sales, customer service, enrollment and membership and provider relations. Domestic Insurer pays for these services “at cost” with no provision for profit to Highmark. Domestic Insurer also integrated its health administration systems onto Highmark’s technology platform. Highmark also provided a claims guarantee to Domestic Insurer. Despite the close level of integration between Highmark and Domestic Insurer, Highmark is restricted

from using the reserves or other assets of Domestic Insurer. For example, without Department approval, the only economic transfers permitted by Domestic Insurer to Highmark are those costs for (i) integrating Domestic Insurer to Highmark's technology platform, (ii) ongoing payments for administrative services and (iii) repayments by Domestic Insurer of monies borrowed from Highmark under a line of credit agreement. This is enumerated in Existing Condition 9.

(c) He testified that, although Highmark exercises control over Domestic Insurer, Domestic Insurer was not "merged" with Highmark and can unwind its affiliation with Highmark in certain circumstances. The terms of the BCBSD Affiliation Agreement and the Existing Conditions imposed by the Department include a number of "Triggering Events" that give rise to the independent directors' ability to disaffiliate Domestic Insurer from Highmark. If Domestic Insurer disaffiliates, a number of Existing Conditions are triggered that are intended to facilitate Domestic Insurer's transition away from Highmark. These include requiring that Highmark continue providing administrative services for three years, providing information to Domestic Insurer to assist with a transition, giving Domestic Insurer additional time to repay funds borrowed under the line of credit agreement, and requiring payment by Highmark of up to \$17.5 million of the expense of Domestic Insurer migrating away from the Highmark technology platform if the disaffiliation occurs in a specified period of time (to be increased to \$27,500,000 pursuant to New Condition 9). Mr. Bealuk emphasized that disaffiliation is not a desirable outcome for Domestic Insurer, and thus suggested that the Department consider conditions that will enhance the Department's oversight over the Domestic Affiliation to ensure that Highmark has the ability to fulfill, and is fulfilling, its commitments to Domestic Insurer.

(d) He testified that the Delaware Examination Team met with the Department, Morris Nichols, Blackstone and the PID's legal counsel, during which they

discussed the financial-related conclusions reached by Blackstone and other issues regarding the financial stability of Highmark. The team reviewed a number of documents, including certain documents provided to the Department in connection with the Application, the report prepared by Blackstone in connection with the PID's review of the Agreement, and a number of projections provided by Highmark. These projections included a variety of scenarios that Highmark could face over the next five years, including a "worst-case" scenario.

(e) As to the scope of his review of the Blackstone report, he testified that the Delaware Examination Team did not conduct a full-blown examination of Highmark's financial condition, nor did they separately verify the accuracy or completeness of source data publicly available or provided by Highmark and utilized by Blackstone. The team reviewed the projections provided by Highmark in conjunction with Blackstone's analysis and the conclusions reached in Blackstone's report to provide a Delaware-focused analysis of Highmark's financial condition under the Agreement and whether Highmark's financial condition could jeopardize or harm Domestic Insurer, its policyholders, or the public. Although the Delaware Examination Team reviewed Blackstone's entire report, their focus was on the sections of the report related to Highmark's continuing financial condition, mainly Section IV titled "Financial Impact on Highmark." The Delaware Examination Team also focused on the analysis in Section V titled "Highmark's Financial Costs and Benefits," to the extent it was relevant to the potential impact of the transaction on Highmark.

(f) As to the Blackstone methodologies, he testified of his understanding that the report is based on extensive discussions with, and review of documents from, the relevant parties to the proposed transaction, including Highmark, WPAHS and Applicant. He understood that Blackstone also had discussions with relevant industry participants, including other hospitals

and insurance companies in western Pennsylvania such as University of Pittsburgh Medical Center (“UPMC”). Blackstone also analyzed Applicant’s projected balance sheet as of the closing, noting that Applicant is projected to have \$327 million of total assets and total reserves of \$80.1 million upon closing of the Agreement. He did not believe that Applicant’s financial condition is such that it will jeopardize Domestic Insurer or prejudice its policyholders as, upon closing of Agreement, it appears that Applicant will be well-capitalized.

(g) As to Blackstone’s analysis as it relates to the potential impact of the transaction on Highmark’s financial condition, he testified that Blackstone first analyzed the capital commitment of Highmark associated with the Highmark-WPAHS affiliation, and then analyzed the capital commitment associated with Highmark’s broader IDN Plan. Highmark’s proposed affiliation with WPAHS is the core of its overall IDN Plan, which Highmark believes will preserve and promote choice and competition in the western Pennsylvania health care market. Specifically, Highmark hopes to create a full-service integrated network that will align physicians, hospitals and other providers to work towards a common goal of quality and efficiency. Highmark plans to affiliate with a number of other hospitals in western Pennsylvania in addition to WPAHS, and has launched a number of initiatives in support of its IDN Plan.

(h) As to Blackstone’s analysis of Highmark’s capital commitment, he testified that Blackstone first attempted to determine the true “size” of the transaction, *i.e.* the full amount of the capital commitment Highmark has stated it will make to implement its WPAHS affiliation and its IDN Plan. Highmark intends to commit approximately \$1.2 billion in support of its Affiliation with WPAHS, including approximately \$475 million of funds advanced to WPAHS in the form of loans and grants, as well as Highmark’s plan to purchase nearly \$650 million of WPAHS’s bonds. As of the end of 2012, Highmark had already spent approximately

\$233 million on WPAHS alone. In addition to the \$1.2 billion committed just to WPAHS, Highmark also plans to commit significant capital to other areas of its IDN Plan. This includes committing approximately \$308 million to its physician network, \$139 million to medical malls and \$233 million to community hospitals other than WPAHS. These expenditures, combined with Highmark's commitment to WPAHS, result in a total capital commitment by Highmark of over \$1.8 billion. Furthermore, if Highmark were required to incur WPAHS's liabilities, including pension liabilities, this total grows to over \$2.4 billion.

(i) As to the scenarios that Blackstone considered as part of the financial analyses, he testified that Blackstone first looked at the "transaction case" scenario, which involved analysis of two sets of projections: "base case" projections – which are what Highmark expects to achieve – and "downside case" projections – which were created by Highmark at Blackstone's request and using assumptions provided by Blackstone. The "base case" projections assume full implementation of Highmark's IDN Plan (including a successful WPAHS affiliation) and assume that UPMC will be "out-of-network" beginning in 2013. The "downside case" projections assume a variety of factors that reduce Highmark's and WPAHS's projected financial condition, including an assumption that UPMC remains "in-network" and that WPAHS has 50% less growth in patient volumes than it projects to have. The second scenario is the "no transaction" scenario, where Highmark assumed that WPAHS will continue to deteriorate and will ultimately be taken over by a for-profit entity. Without WPAHS at the center of Highmark's provider strategy, Highmark projects that potential IDN Plan-related savings will be limited and healthcare costs will increase significantly. Highmark assumes that it will also lose significant enrollment, and that UPMC remains "in-network."

(j) As to the transaction case scenario and the difference between the impacts of the base case projections and the downside case projections, he testified that there are a variety of projected impacts, including Highmark's projected RBC ratio and its ability to recover on the loans it made to WPAHS as part of the Agreement. Starting with the RBC ratio, Highmark's RBC is lower under the downside case projections than under the base case projections. However, at no point under either set of projections is Highmark's RBC projected to drop below the BlueCross BlueShield Association's minimum required RBC ratio, nor below the 425% threshold that was included as a triggering event in the Existing Conditions. Turning to Highmark's ability to recover the financial commitments it made to WPAHS, under the base case scenario, Highmark projects to be able to recover approximately 99% of the \$850 million it has loaned (or will loan) to WPAHS by the middle of 2013. Under the downside case, Highmark would only be able to recover approximately 57% of this amount.

(k) As to whether Highmark conducted any other "stress testing" of its RBC projections, he testified that Highmark took its projected 2016 RBC ratio and applied a series of assumptions, including that Highmark has to write off approximately \$400 million of its loans to WPAHS, that it has to invest another \$250 million into the provider strategy and that there is another major financial downturn similar to 2008. Blackstone noted that Highmark's "stress test" assumed that Highmark would earn \$1 billion between now and 2016. Blackstone thus asked Highmark to conduct another "stress test" assuming that Highmark's earnings were flat from 2013-2015 and that it would have to write off more loans to WPAHS and invest \$500 million of additional funding on the provider side. In both stress tests, Highmark's RBC is not projected to drop below the BlueCross BlueShield Association's minimum required RBC ratio, nor below the 425% threshold that was included as a triggering event in the Existing Conditions.

(l) As to Blackstone's analysis of which of the various projections was most realistic, he testified that Blackstone first noted that Highmark's projections were largely driven by assumptions about the number of patient discharges at WPAHS facilities. In 2012, WPAHS had approximately 57,000 inpatient discharges. Under Highmark's "base case" scenario, this number is projected to grow to over 89,000 discharges by 2017. Blackstone noted that these assumptions appear to be "optimistic." Based on Blackstone's analysis and discussions with other hospitals in western Pennsylvania, Blackstone does not think it is feasible that WPAHS could gain over 30,000 discharges in the next five years. Under the downside scenario, WPAHS is projected to gain a substantially smaller number of discharges over the next five years. In its report, Blackstone concludes that these projections "appear reasonable as a potential outcome . . . and indicate that Highmark's investments into [WPAHS] face substantial doubt as to the likelihood of full recovery." Based on Blackstone's analysis, it appears that a more realistic scenario is something closer to the "downside case" than the "base case."

(m) As to Blackstone's specific analyses about Highmark's projected liquidity, he testified that Blackstone took a similar "downside" view of Highmark's projected liquidity by assuming that Highmark made all of its WPAHS and IDN Plan expenditures at the closing of the transaction. Under that scenario, Highmark's liquid assets would be cut in half, from approximately \$3 billion to approximately \$1.5 billion. Blackstone does note that this scenario is not expected to occur, as the WPAHS and IDN Plan expenditures will actually be made over the course of four years (not all at once) and Highmark's expected earnings should also increase Highmark's liquidity.

(n) As to Blackstone's conclusions about Highmark's future financial strength, he testified that Blackstone concludes that Highmark's IDN Plan will result in a

“material change in Highmark’s financial profile as a significant portion of Highmark’s current balance of net liquid assets will be converted into illiquid, highly concentrated and, in the case of WPAHS, high-risk investments.” Blackstone believes that this shift of liquidity may significantly impact Highmark’s financial flexibility and capacity to react to unforeseen adverse operational and financial conditions. Thus, Blackstone was unable to conclude that Highmark’s total IDN Plan capital commitments will not, in the long term, potentially jeopardize the financial stability of Highmark, absent the imposition of certain safeguards.

(o) As to the “no transaction” scenario, he testified that Highmark has indicated that it plans to expend significant resources on its IDN Plan—about \$1.2 billion—even if the WPAHS affiliation does not go through. Blackstone performed comparative analyses, comparing Highmark’s net income projections, credit profile and RBC ratio under the “no transaction” case and the “transaction case” using the base case projections. He further testified that because of Highmark’s commitment to expend about \$1.2 billion even without the Agreement, the “no transaction” scenario demonstrates the benefits to western Pennsylvania policyholders if Highmark successfully implements the full IDN Plan. The impact of the Agreement on western Pennsylvania is being reviewed by the PID, and is not a consideration under the Delaware analysis. For purposes of the Department’s analysis, he testified that the “no transaction” scenario is probably most important for its fundamental premise, that Highmark will expend \$1.2 billion on the IDN plan even without WPAHS, the core of the IDN plan.

(p) As to his conclusion regarding the financial impact of the proposed transaction on Highmark, he testified that the Delaware Examination Team agrees with Blackstone’s conclusion that the transaction itself is not likely to jeopardize Highmark’s financial stability. For example, even under the downside and stress test scenarios, Highmark’s

RBC ratio is still likely to be above the levels required by the BlueCross BlueShield Association and the RBC threshold set by Delaware in connection with the affiliation between Highmark and Domestic Insurer. However, it does appear that the proposed transaction and Highmark's IDN Plan could negatively impact Highmark's liquidity. According to Blackstone, Highmark's IDN Plan will materially decrease its liquidity and will reduce the quality of its investment portfolio. Blackstone noted that Highmark's plan, when combined with possible adverse economic and financial conditions, could materially lessen Highmark's financial flexibility and capacity to respond to adverse circumstances. This could impact Delaware and Domestic Insurer in two ways:

- First, Domestic Insurer relies on Highmark to provide a wide range of services, as well as provide a guarantee for all of Domestic Insurer's claims. Highmark's lack of liquidity could impact its ability to continue providing these services and the claims guarantee.
- Second, Blackstone noted that a lack of liquidity could leave Highmark vulnerable to future economic shocks or competitive actions. For example, an economic downturn combined with competitive moves from UPMC could leave Highmark in a position where it would need to convert to a for-profit entity or sell itself to another entity. As the entity directly controlling Domestic Insurer, Highmark's conversion or sale would obviously impact Domestic Insurer.

(q) As to the options Domestic Insurer has in the event that Highmark faces a liquidity crisis or seeks to convert or sell itself, he testified that Domestic Insurer's only real option is to disaffiliate with Highmark, and as such recommends enhancing the Existing Conditions to protect Domestic Insurer should it need to disaffiliate. In addition, the Delaware Examination Team recommends imposing the Additional Conditions that will allow the

Department to increase its oversight over Domestic Insurer if issues begin to arise. These Additional Conditions will also ensure that Highmark and Applicant are able to fulfill, and are fulfilling, their obligations under the Conditions and the terms of the BCBSD Affiliation Agreement. He testified that disaffiliation is not a desirable option for Domestic Insurer, because Domestic Insurer is still in the process of integrating with Highmark. The two companies are closely tied together, and Domestic Insurer relies heavily on Highmark's technology platform as well as its provision of a wide range of administrative services. Based on his ongoing target examination of Domestic Insurer, it would be very difficult for Domestic Insurer to continue as a viable, independent company if it were required to disaffiliate at any point in the next five years. However, based on the information the Delaware Examination Team has reviewed with regard to this transaction, it appears Highmark is currently performing its obligations under the BCBSD Affiliation Agreement and it will have the ability to continue to perform its obligations under the affiliation agreement subsequent to Highmark-WPAHS transaction. In addition, the basic non-profit nature of the organization is not changing as a result of the transaction.

(r) As to his views regarding potential conditions that could protect Domestic Insurer and Delaware policyholders, he testified that given the Delaware Examination Team's conclusion that the Agreement and Highmark's IDN Plan increase the risk that Domestic Insurer would need to disaffiliate from Highmark, and given Domestic Insurer's ongoing integration to, and relationship with, Highmark, the Delaware Examination Team believes that a number of the New Conditions are appropriate including:

- First, a series of conditions designed to provide "early warning" to the Department could be appropriate. These conditions could require notice to the Department if Highmark takes certain actions in Pennsylvania, such as providing the PID with notice pursuant to

conditions that may be imposed by Pennsylvania should the PID determine to approve the transaction or if Highmark requests that Pennsylvania modify any conditions or final order entered, should the PID determine to approve the transaction.

- Second, a series of conditions designed to make disaffiliation a more feasible option for Domestic Insurer could be appropriate. These conditions could include requiring additional financial assistance from Highmark in the event of a disaffiliation.
- Finally, given Highmark's ongoing commitment to its IDN Plan and the significant funds it has expended pursuing that and other strategies, it could be appropriate to impose conditions specifically prohibiting Highmark from passing any costs associated with those strategies onto Domestic Insurer or otherwise involving Domestic Insurer in those non-Delaware strategies.

(s) He testified that the New Conditions satisfy each of the concerns that he noted.

## **II. Findings Of Fact And Conclusions Of Law**

18 *Del. C.* § 5003 prohibits any person other than the insurer from entering into any agreement to acquire control of such insurer without complying with the filing requirements listed in 18 *Del. C.* § 5003(b).

Pursuant to 18 *Del. C.* § 5003 (d) the Insurance Commissioner shall give approval to such acquisition of control unless the Insurance Commissioner finds that:

(1) After the change of control, Domestic Insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which each is presently licensed;

(2) The effect of the acquisition would be substantially to lessen competition in the insurance in Delaware or tend to create a monopoly;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policy holders;

(4) The plans which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest;

(5) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders or of the insurer and of the public to permit the acquisition of control; or

(6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Furthermore, pursuant to 18 *Del. C.* § 6311(b), “[i]f a health service corporation regulated under this chapter proposes to enter into a transaction in which it will become controlled by another entity, the Insurance Commissioner shall place conditions upon any approval of the change of control intended to preserve that amount, determined in accordance with Delaware law, that constitutes the surplus or reserves of the health service corporation. Such conditions shall include, without limitation, requiring:

(1) Review and approval by the Department of Insurance of any change in the certificate of incorporation of the health service corporation;

(2) Review and approval by the Department of Insurance of any individual expenditure or transfer of funds or coordinated series of expenditures or transfers of funds by the

health service corporation in excess of \$500,000 to the controlling entity or any affiliate of such controlling entity, which review and approval shall assess the commercial reasonableness of the proposed expenditure or transfer;

(3) A majority of the board of directors of the health service corporation to consist of persons not employed by the health service corporation or any of its affiliates who are residents of Delaware and have been so for at least 5 years prior to appointment; and

(4) Recognition of, and consent to, the ability of Insurance Commissioner to seek appropriate relief from the Court of Chancery or other court of appropriate jurisdiction to prevent the entity controlling the health service corporation from improperly using the assets of the health service corporation for the benefit of the controlling entity rather than the benefit of the health service corporation and its subscribers, or otherwise violating the terms of this section, Chapter 50 of this title, or any agreement between the health service corporation and the controlling entity or affiliate thereof.”

I have considered the statutory requirements for approval of acquisition of control of Domestic Insurer in accordance with the provisions of 18 *Del. C.* § 5003, 18 *Del. C.* § 6311, and 29 *Del. C.* § 10128. I have also considered compliance with the Existing Conditions. The following findings are made:

(1) Due and proper notice of the Hearing was given as required by the Delaware Insurance Code.

(2) Domestic Insurer is licensed in Delaware to write the lines of insurance for which it is presently licensed.

(3) Applicant is a nonprofit corporation formed under Pennsylvania law.

(4) The Acquisition of Domestic Insurer by Applicant was presented for approval by the Insurance Commissioner in the form of the Application.

(5) The Application satisfies the filing requirements of 18 *Del. C.* § 5003(a).

(6) After the Acquisition, there will not be a change to the corporate identity of Domestic Insurer, its status as a health service corporation under Chapter 63 of the Delaware Insurance Code, or its ability to satisfy all applicable licensing standards. The Applicant does not plan to make changes to Domestic Insurer that would cause it to be unable to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed. After the proposed acquisition of control, all relevant entities of Domestic Insurer will continue to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which they are presently authorized.

(7) The Acquisition will not substantially lessen competition in insurance in Delaware or tend to create a monopoly. Applicant does not write insurance in Delaware or elsewhere and, therefore, the proposed acquisition of control would have little, if any, effect on the insurance market in the State of Delaware. Any effects on competition in insurance and provider markets that would likely occur in Pennsylvania as a result of the Agreement are appropriately under review by the PID.

(8) With the imposition of the New Conditions, the financial condition of Applicant will not jeopardize the financial stability of Domestic Insurer or prejudice the interest of its policyholders. Applicant will be well-capitalized and unlikely to jeopardize Highmark's financial stability at the time of closing on the Agreement and, therefore, is also unlikely to jeopardize Domestic Insurer.

(9) As of the date the New Conditions become effective, neither Applicant nor Highmark have plans to liquidate Domestic Insurer; to sell Domestic Insurer's assets or to merge Domestic Insurer with any other person; or to make any other material changes in Domestic Insurer's business operations or corporate structure or management. Further, Applicant has qualified for exemption from federal income tax as a 501(c)(3) nonprofit company, and the transaction will not affect the non-profit status of Domestic Insurer. Following the proposed acquisition of control, and as of the date the New Conditions become effective, neither Applicant nor Highmark have plans to change the capitalization, organizational structure, daily management, composition or membership of the board of directors, or any other aspect of the operations of Domestic Insurer.

(10) With the imposition of the New Conditions, the Acquisition is not likely to be hazardous or prejudicial to the insurance buying public. The Agreement could impact Highmark's overall financial strength because Highmark may not recover a portion of its investment in WPAHS and Highmark's investment in WPAHS and the IDN Plan significantly decreases Highmark's liquidity. This impact on Highmark's financial strength could result in a liquidity crisis or a situation where Highmark seeks to convert or sell itself, which may cause Domestic Insurer to seek to disaffiliate. Disaffiliation is not a preferred option for Domestic Insurer, given Domestic Insurer's significant reliance on Highmark's provision of technology and other services to Domestic Insurer. Therefore, the requested approval should be subject to the New Conditions which will enhance the oversight of the Department over the Domestic Affiliation in a way that protects the commitments that Highmark made to Domestic Insurer, will provide an "early warning" of any Highmark or Applicant-related financial instability, and will enhance the protection of Domestic Insurer and the commitments to Domestic Insurer, should the

need to disaffiliate arise. These New Conditions will protect the insurance buying public in the State of Delaware and will help to ensure that this change of control will not be hazardous or prejudicial to the insurance buying public.

(11) The requirements of Section 6311 are met by the Existing Conditions, including, for example, Existing Conditions 1-6, 9-11 and 35, which conditions will be further strengthened through the imposition of the New Conditions, including, for example, New Condition 3 and New Condition 7 which is a revision to Existing Condition 35.

(12) As of the date of the Hearing, there was no evidence to suggest that Highmark has not been in compliance with the Existing Conditions.

### **III. Recommendations**

In view of the foregoing evidence, findings of fact, and conclusions of law stated herein, it appears that the criteria established under 18 *Del. C.* § 5003 for the acquisition of control of Domestic Insurer have been met. Furthermore, it appears that the factors under 18 *Del. C.* § 6311(b) have been satisfied. Finally, the evidence presented at the Hearing suggests that the Existing Conditions have been satisfied thus far. I, therefore, recommend the Application be APPROVED, subject to the conditions attached as Exhibit A, and recommend that the approval become effective only if and when the PID approves the Highmark/WPAHS affiliation. Attached hereto is a proposed Final Order and Decision.

**SO RECOMMENDED** this 25th day of April, 2013.

  
Neil B. Glassman, Esquire  
Hearing Officer

**Exhibit A**  
**(New Conditions)**

**Conditions to Indirect Acquisition of Control of Highmark BCBSD Inc. by UPE**

<u>No.</u>	<u>Condition</u>
1	<p>“Highmark” means Highmark, Inc. and its affiliates (including, without limitation, a person or entity that directly or indirectly controls, is controlled by, or is under common control with, Highmark, Inc.), and any of their successors and assigns. For clarity, “Highmark” includes UPE, but does not include Highmark BCBSD Inc. (“BCBSD”).</p> <p>Highmark and BCBSD shall be bound by these Conditions to Indirect Acquisition of Control of Highmark BCBSD, Inc. by UPE (the “Conditions”) and to the Conditions to Affiliation (the “BCBSD Conditions”) imposed by the Delaware Insurance Commissioner’s December 30, 2011 Decision and Final Order in the matter of The Proposed Affiliation of BCBSD, Inc., doing business as Blue Cross Blue Shield of Delaware, with Highmark Inc., Docket No. 1509-10.</p>
2	<p>As of the date these Conditions become effective, Highmark has no plans or proposals to liquidate BCBSD or sell BCBSD’s assets or consolidate or merge it with any person or entity, or make any other material changes to BCBSD’s business or corporate structure or management. Highmark will present any such plans or proposals for review by the Delaware Department of Insurance (the “DOI”) in accordance with Delaware law.</p>
3	<p>In the event that Highmark’s other insurance regulators approve the acquisition of control of Highmark by UPE and:</p> <p>(i) Highmark gives notice to its other insurance regulators pursuant to any final order or certain conditions imposed by those other regulators, which conditions are identified below (the “Regulator Conditions”) in connection with the affiliation contemplated by the October 31, 2011 Affiliation Agreement by and among UPE, Highmark Inc. and West Penn Allegheny Health System, Inc. (“WPAHS”), et al. (as amended) (the “Highmark/WPAHS Affiliation”); or</p> <p>(ii) Highmark seeks relief from, or requests modifications to, any final order or the Regulator Conditions; then:</p> <p>Highmark shall provide simultaneous notice to the DOI, and shall provide the DOI with all documents provided to the other regulators. Highmark will submit, and the DOI will accept, documents with the same level of confidentiality as such documents are submitted to the other regulators; however, such documents will then become subject to applicable provisions of Delaware law regarding confidentiality.</p> <p>The Regulator Conditions are conditions that were described in Blackstone’s Report and which relate to: limiting the amounts of future capital that Highmark may expend; addressing Blackstone’s concern about the process that was followed by Highmark in connection with the Proposed Affiliation; monitoring and reporting requirements; and developing plans for West Penn if Highmark is unable to turn it around. The particular Regulator Conditions will be specifically identified after the DOI receive any and all approvals from other Highmark insurance regulators.</p>

4	The DOI has the ability, at any time, to require Highmark to produce such records, books or other information or papers in its possession as are reasonably necessary to ascertain the financial condition of Highmark.

5	<p>BCBSD Condition 34 is modified as follows:</p> <p><b>Old No. 34:</b> The additional reporting obligations required in these conditions, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i>, will remain in effect for four (4) years after the consummation of the Affiliation, unless it is determined by the DOI that an extension of reporting is appropriate.</p> <p><b>New No. 34 (emphasis added to show changes):</b> The additional reporting obligations required in <i>the BCBSD Conditions and in these Conditions</i>, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i>, will remain in effect for <u>five (5)</u> years after the consummation of the <i>Highmark/WPAHS Affiliation</i>, unless it is determined by the DOI that <u>a different time period is appropriate</u>.</p>
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6	<p><b>BCBSD Condition No. 23 is modified as follows (emphasis added to show changes):</b></p> <p>Triggering Events giving rise to the Class A Directors' ability to withdraw BCBSD from the Affiliation (withdrawal being permitted, not required, upon a Triggering Event) include those Triggering Events listed in § 13.1 of the Bylaws, and the following:</p> <ul style="list-style-type: none"> <li>(a) Highmark materially fails to perform its obligations under the Business Affiliation Agreement, the Administrative Services Agreement, or the Line of Credit Agreement; provided, however, that Highmark shall have a reasonable period to cure any such material failure;</li> <li>(b) Highmark becomes the subject of a delinquency proceeding pursuant to Pennsylvania law (including, but not limited to, a proceeding involving the rehabilitation or liquidation of Highmark);</li> <li>(c) Highmark's risk-based capital ratio falls <u>at or</u> below <u>500%</u>; or</li> <li>(d) A 'Form A' or similar regulatory filing by Highmark of a conversion or change-of-control is approved by the regulator with which it is filed.</li> </ul>
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BCBSD Condition 35 is modified as follows:

**Old No. 35:** In the event that Highmark affiliates with West Penn Allegheny Health System, or in the event any Highmark funds are expended in a failed attempt to so affiliate, Highmark will not, directly or indirectly, pass any up-front or ongoing costs associated with that affiliation (including any costs associated with the provider division that is contemplated to be formed) or attempted affiliation onto BCBSD.

**New No. 35:** (a) The only economic transfers that BCBSD is permitted to make to Highmark (including, without limitation, and subject to paragraph (b), UPE and UPE subsidiaries) are those set forth in BCBSD Condition No. 9. In addition, Highmark is prohibited from including, in any of the transfers identified in Condition No. 9, any costs or any amounts associated with, or related to, the Highmark/WPAHS Affiliation, Highmark's strategy to create an integrated delivery network in Western Pennsylvania (the "IDN Plan"), any non-insurance initiatives that Highmark may undertake in the future ("Non-Insurance Initiatives"), or any unrestricted grant in exchange for control or potential control, by Highmark of any entity, whether such control is given at the time of the grant or in the future ("Unrestricted Grants").

(b) BCBSD is prohibited from participating in, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. In addition, BCBSD is prohibited from acting in concert or participation with Highmark to make, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. For clarity, and not by way of limitation, the preceding sentences apply to any grant, loan or other expenditure made by BCBSD to Highmark or any other entity, including, but not limited to, any party (i) over which Highmark maintains control or seeks to gain control, or (ii) with whom Highmark contracts or seeks to contract.

(c) Thus, except as provided in paragraph (b), Highmark is not permitted to, directly or indirectly, pass onto BCBSD, or in any way involve BCBSD in the funding of, any up-front or ongoing costs or expenditures associated with, or related in any way to, the Highmark/WPAHS Affiliation (including any costs associated with the provider division that is contemplated to be formed), the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants. For clarity, and without limitation, the restrictions in this condition apply to any failed attempts to affiliate with WPAHS.

(d) The intent of this condition and of Condition No. 9 is to ensure that, except as provided in paragraph (b), BCBSD is not funding in any way the Highmark/WPAHS Affiliation, the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants, and is to ensure that the only economic transfers between BCBSD and Highmark are the ones set forth in Condition 9, which benefit BCBSD and its policyholders and preserve BCBSD's surplus and reserves. This Condition, and Condition No. 9, shall be construed broadly, and terms shall be implied as appropriate to ensure that no economic transfers will be made in a way technically permitted by the language of the conditions, but in violation of their intent.

BCBSD Condition No. 49 is modified as follows:

**Old No. 49:** In the event a “Triggering Event,” as defined in Condition 23 above, occurs during the three (3) year period immediately following the closing of the Affiliation and results in a withdrawal by BCBSD from the Affiliation, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$35 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011. Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$40 million, Highmark will be responsible for \$17.5 million of such expense and BCBSD will be responsible for all excess expenses.

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**New No. 49 (emphasis added to show changes):** In the event a “Triggering Event,” as defined in BCBSD Condition 23 above, occurs during the five (5) year period immediately following the closing of the Highmark/WPAHS Affiliation and results in a withdrawal by BCBSD from its Affiliation with Highmark, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$27,500,000 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., ~~undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011.~~ Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$60 million, Highmark will be responsible for \$27,500,000 million of such expense and BCBSD will be responsible for all excess expenses.

BCBSD Condition No. 47 is modified as follows:

**Old No. 47:** Prior to Closing, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$17,500,000.00. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a triggering event within the first three years after the Closing of the Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.

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**New No. 47 (emphasis added to show changes):** As soon as practicable following the closing of the Highmark/WPAHS Affiliation, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$27,500,000. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a Triggering Event within the first five years after the closing of the Highmark/WPAHS Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.

**Exhibit B**

**(Exhibit List)**

In the Matter of:  
**The Proposed Indirect Acquisition of Control of HIGHMARK BCBSD INC., a domestic insurer doing business as  
 BlueCross BlueShield of Delaware, by UPE, a Pennsylvania nonprofit corporation**

Docket No. 2192-2013

HEARING EXHIBITS

April 17, 2013

Exhibit No.	Bates Range	Date	Party Proponent	Confidential	Description
1	n/a	6/30/2007 - 6/30/2011	DOI	x	Compilation of West Penn Allegheny Health System & Subsidiaries Consolidated Financial Statements 6/30/07 – 6/30/11
2	n/a	12/31/2007 - 12/31/2011	DOI	x	Compilation of Highmark, Inc. Combined Financial Statements 12/31/07 – 12/31/11
3	n/a	12/30/2011	DOI		Decision and Final Order and Conditions to Affiliation In the Matter of: The Proposed Affiliation of BCBSD, Inc. with Highmark, Inc.
4	n/a	2/14/2012	DOI	x	Form A Statement and Filings <sup>1</sup>
5	n/a	2/17/2012	DOI	x	Supplement No. 1 to Form A Statement
6	n/a	4/10/2012	DOI	x	Supplement No. 2 to Form A Statement
7	n/a	7/24/2012	DOI	x	Change No. 1. To Form A Statement and Filings
8	UPE-0014509-91	8/13/2012	DOI	x	Jefferson Regional Medical Center Affiliation Agreement
9	n/a	9/6/2012	DOI	x	Supplement No. 3 to Form A Statement

<sup>1</sup> The Form A Statement and Filings as well as Supplements and Changes thereto are marked confidential because all or portions of those filings are confidential. A set of public binders will be available at the hearing that contains only non-confidential exhibits.

**In the Matter of:**  
**The Proposed Indirect Acquisition of Control of HIGHMARK BCBSB INC., a domestic insurer doing business as BlueCross BlueShield of Delaware, by UPE, a Pennsylvania nonprofit corporation**

Docket No. 2192-2013

**HEARING EXHIBITS**

April 17, 2013

Exhibit No.	Bates Range	Date	Party Proponent	Confidential	Description
10	DE-DOI-0033049-54	10/19/2012	DOI	x	Saint Vincent Health System Amended & Restated Term Sheet
11	n/a	11/13/2012	DOI		Compilation of Moody's WPAHS Rating Actions from 2/3/2011, 11/22/2011, 9/28/2012 and 11/13/2012
12	n/a	12/4/2012	DOI		Compilation of S&P's WPAHS Rating Actions from 11/15/2011, 5/21/2012 and 12/4/2012
13	n/a	1/11/2013	DOI		Compilation of Fitch's WPAHS Rating Actions from 6/12/23/2011, 6/21/2012, 10/25/2012 and 1/11/2013
14	n/a	1/24/2013	DOI		Compilation of Moody's Highmark Rating Actions from 3/30/2012, 6/25/2012 and 1/24/2013
15	n/a	1/28/2013	DOI		Compilation of S&P Highmark Rating Actions from 12/13/2010, 5/3/2011 and 1/28/2013
16	n/a	2/5/2013	DOI	x	Highmark Board of Directors Special Meeting Minutes and H2C Fairness Opinion and Report
17	n/a	2/7/2013	DOI		Compilation of A.M. Best's Highmark Rating Actions from 4/13/2011, 11/2/2011 and 2/7/2013
18	n/a	2/13/2013	DOI	x	WPAHS Information Update for PID presentation materials
19	n/a	2/14/2013	DOI	x	Materials provided as supplement to 2/7/13 Blackstone discussion (received 2/14/13)
20	n/a	2/28/2013	DOI	x	Change No. 2 to Form A Statement and Filings
21	n/a	3/8/2013	DOI	x	UPMC Out of Network Projections and supporting materials
22	n/a	3/8/2013	DOI	x	UPMC In Network Projections and supporting materials

**In the Matter of:  
The Proposed Indirect Acquisition of Control of HIGHMARK BCBSD INC., a domestic insurer doing business as  
BlueCross BlueShield of Delaware, by UPE, a Pennsylvania nonprofit corporation**

Docket No. 2192-2013

**HEARING EXHIBITS**

April 17, 2013

<b>Exhibit No.</b>	<b>Bates Range</b>	<b>Date</b>	<b>Party Proponent</b>	<b>Confidential</b>	<b>Description</b>
23	n/a	3/8/2013	DOI	x	Supplement No. 1 to Change No. 2 to Form A Statement
24	n/a	3/13/2013	DOI		Supplement No. 2 to Change No. 2 to Form A Statement
25	n/a	3/26/2013	DOI	x	Downside Case Projections and supporting materials
26	n/a	3/26/2013	DOI		Hearing Officer Appointment
27	n/a	3/28/2013	DOI		Notice of Public Hearing
28-A	n/a	4/8/2013	DOI	x	Blackstone Report on Highmark's Proposed Change of Control and Affiliation with West Penn Allegheny Health System, Inc. (UNREDACTED)
28-B	n/a	4/8/2013	DOI		Blackstone Report on Highmark's Proposed Change of Control and Affiliation with West Penn Allegheny Health System, Inc. (REDACTED)
29	n/a		DOI		Statement of 2011 Surplus Levels for Blue Cross and Blue Shield Plans in Pennsylvania
30	DE-DOI-0024609-37		DOI	x	UPE's Supplemental Response to PID Information Request 4.3.10
31	n/a	4/17/2013	DOI		Testimony of Holly Conley
32	n/a	4/17/2013	DOI		Testimony of Gregg Bealuk
33	n/a	4/17/2013	DOI		Testimony of Karen Hanlon

**In the Matter of:  
The Proposed Indirect Acquisition of Control of HIGHMARK BCBSD INC., a domestic insurer doing business as  
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34	n/a	4/17/2013	DOI		Conditions to Indirect Acquisition of Control of Highmark BCBSD, Inc. by UPE
35	n/a	TBD	DOI		Pennsylvania Insurance Department Conditions
36	n/a		DOI		BCBSD Letter Regarding Highmark Compliance with 49 Conditions
37	n/a	4/10/2013	DOI	x	BCBSD Meeting Minutes
38	n/a		DOI		UPE 501(c)(3) certificate
39	n/a		DOI		News Journal Affidavit of Publication
40	n/a		DOI		Delaware State News Affidavit of Publication
41	n/a		DOI		Motions & Orders for Admission Pro Hac Vice
42	n/a	4/11/2013	DOI	x	Supplement No. 3 to Change No. 2 to Form A Statement
43	n/a	4/13/2013	DOI		Department of Justice Highmark Acquisition Letter
44	n/a	4/17/2013	DOI		Exhibit List

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**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF DELAWARE**

IN THE MATTER OF: )  
 )  
The Proposed Indirect Acquisition of Control of )  
HIGHMARK BCBSD INC., a domestic insurer doing ) Docket No. 2192-2013  
business as BlueCross BlueShield of Delaware, by UPE, )  
a Pennsylvania nonprofit corporation )  
 )  
 )

**FINAL ORDER AND DECISION**

This is the final order and decision on an application made to the Delaware Department of Insurance pursuant to 29 *Del. C.* Chapter 101, 18 *Del. C.* § 5003, and 18 *Del. C.* § 6311.

On February 14, 2012, UPE, a nonprofit corporation formed and existing under the laws of the Pennsylvania filed a Form A Statement Regarding the Acquisition of Control (the "Application") of Highmark BCBSD Inc., a domestic insurer doing business as BlueCross BlueShield of Delaware ("Domestic Insurer"), with the Department of Insurance of the State of Delaware requesting approval of the proposed indirect acquisition of control of Domestic Insurer by Applicant, pursuant to that certain Affiliation Agreement, dated October 31, 2011, between Domestic Insurer's ultimate parent company, Highmark Inc., a Pennsylvania corporation and West Penn Allegheny Health System, Inc. Supplements to the Application thereafter were filed by the Applicant. This is my order on the Application, as supplemented.

In accordance with 29 *Del. C.* Chapter 101, and 18 *Del. C.* §§ 5003 and 6311, subsequent to notice in accordance with law, a hearing (the "Hearing") on the Application was held on April 17, 2013 before Neil B. Glassman, Esquire who was appointed by my authority as the hearing officer by order dated March 26, 2013. The appearances of counsel and the parties

and their representatives are set forth in the Proposed Order and Recommendations of the Hearing Officer and are incorporated herein by reference, as are the defined terms set forth therein.

### **Findings of Fact and Conclusion of Law**

The findings of fact and conclusions of law contained in the Proposed Order and Recommendations dated April 25, 2013 appear well reasoned and amply supported by the summary of evidence contained therein and the Exhibits introduced into evidence at the Hearing. The summary of evidence, findings of fact and conclusions of law contained in the hearing officer's Proposed Order and Recommendations (attached hereto), are incorporated by reference and adopted herein in their entirety.

### **Decision**

For the reasons set forth above, subject to the imposition of the conditions attached hereto as Exhibit A, the proposed indirect acquisition of control of Highmark BCBSD, Inc., a domestic insurer doing business as BlueCross BlueShield of Delaware, by UPE is hereby approved. This approval becomes effective only if and when the Pennsylvania Insurance Department approves the Highmark/WPAHS affiliation.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**Exhibit A**  
**(New Conditions)**

**Conditions to Indirect Acquisition of Control of Highmark BCBSD Inc. by UPE**

<u>No.</u>	<u>Condition</u>
1	<p>“Highmark” means Highmark, Inc. and its affiliates (including, without limitation, a person or entity that directly or indirectly controls, is controlled by, or is under common control with, Highmark, Inc.), and any of their successors and assigns. For clarity, “Highmark” includes UPE, but does not include Highmark BCBSD Inc. (“BCBSD”).</p> <p>Highmark and BCBSD shall be bound by these Conditions to Indirect Acquisition of Control of Highmark BCBSD, Inc. by UPE (the “Conditions”) and to the Conditions to Affiliation (the “BCBSD Conditions”) imposed by the Delaware Insurance Commissioner’s December 30, 2011 Decision and Final Order in the matter of The Proposed Affiliation of BCBSD, Inc., doing business as Blue Cross Blue Shield of Delaware, with Highmark Inc., Docket No. 1509-10.</p>
2	<p>As of the date these Conditions become effective, Highmark has no plans or proposals to liquidate BCBSD or sell BCBSD’s assets or consolidate or merge it with any person or entity, or make any other material changes to BCBSD’s business or corporate structure or management. Highmark will present any such plans or proposals for review by the Delaware Department of Insurance (the “DOI”) in accordance with Delaware law.</p>
3	<p>In the event that Highmark’s other insurance regulators approve the acquisition of control of Highmark by UPE and:</p> <p>(i) Highmark gives notice to its other insurance regulators pursuant to any final order or certain conditions imposed by those other regulators, which conditions are identified below (the “Regulator Conditions”) in connection with the affiliation contemplated by the October 31, 2011 Affiliation Agreement by and among UPE, Highmark Inc. and West Penn Allegheny Health System, Inc. (“WPAHS”), et al. (as amended) (the “Highmark/WPAHS Affiliation”); or</p> <p>(ii) Highmark seeks relief from, or requests modifications to, any final order or the Regulator Conditions; then:</p> <p>Highmark shall provide simultaneous notice to the DOI, and shall provide the DOI with all documents provided to the other regulators. Highmark will submit, and the DOI will accept, documents with the same level of confidentiality as such documents are submitted to the other regulators; however, such documents will then become subject to applicable provisions of Delaware law regarding confidentiality.</p> <p>The Regulator Conditions are conditions that were described in Blackstone’s Report and which relate to: limiting the amounts of future capital that Highmark may expend; addressing Blackstone’s concern about the process that was followed by Highmark in connection with the Proposed Affiliation; monitoring and reporting requirements; and developing plans for West Penn if Highmark is unable to turn it around. The particular Regulator Conditions will be specifically identified after the DOI receive any and all approvals from other Highmark insurance regulators.</p>

4	The DOI has the ability, at any time, to require Highmark to produce such records, books or other information or papers in its possession as are reasonably necessary to ascertain the financial condition of Highmark.
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5	<p>BCBSD Condition 34 is modified as follows:</p> <p><b>Old No. 34:</b> The additional reporting obligations required in these conditions, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i>, will remain in effect for four (4) years after the consummation of the Affiliation, unless it is determined by the DOI that an extension of reporting is appropriate.</p> <p><b>New No. 34 (emphasis added to show changes):</b> The additional reporting obligations required in <i>the BCBSD Conditions and in these Conditions</i>, which are in addition to those required by the Delaware Code, including those contained in 18 Del. C. c. 50, will remain in effect for <i>five (5)</i> years after the consummation of the <i>Highmark/WPAHS Affiliation</i>, unless it is determined by the DOI that <i>a different time period is appropriate</i>.</p>
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6	<p><b><u>BCBSD Condition No. 23 is modified as follows (emphasis added to show changes):</u></b></p> <p>Triggering Events giving rise to the Class A Directors' ability to withdraw BCBSD from the Affiliation (withdrawal being permitted, not required, upon a Triggering Event) include those Triggering Events listed in § 13.1 of the Bylaws, and the following:</p> <ul style="list-style-type: none"> <li>(a) Highmark materially fails to perform its obligations under the Business Affiliation Agreement, the Administrative Services Agreement, or the Line of Credit Agreement; provided, however, that Highmark shall have a reasonable period to cure any such material failure;</li> <li>(b) Highmark becomes the subject of a delinquency proceeding pursuant to Pennsylvania law (including, but not limited to, a proceeding involving the rehabilitation or liquidation of Highmark);</li> <li>(c) Highmark's risk-based capital ratio falls <i>at or</i> below <i>500%</i>; or</li> <li>(d) A 'Form A' or similar regulatory filing by Highmark of a conversion or change-of-control is approved by the regulator with which it is filed.</li> </ul>
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BCBSD Condition 35 is modified as follows:

**Old No. 35:** In the event that Highmark affiliates with West Penn Allegheny Health System, or in the event any Highmark funds are expended in a failed attempt to so affiliate, Highmark will not, directly or indirectly, pass any up-front or ongoing costs associated with that affiliation (including any costs associated with the provider division that is contemplated to be formed) or attempted affiliation onto BCBSD.

**New No. 35:** (a) The only economic transfers that BCBSD is permitted to make to Highmark (including, without limitation, and subject to paragraph (b), UPE and UPE subsidiaries) are those set forth in BCBSD Condition No. 9. In addition, Highmark is prohibited from including, in any of the transfers identified in Condition No. 9, any costs or any amounts associated with, or related to, the Highmark/WPAHS Affiliation, Highmark's strategy to create an integrated delivery network in Western Pennsylvania (the "IDN Plan"), any non-insurance initiatives that Highmark may undertake in the future ("Non-Insurance Initiatives"), or any unrestricted grant in exchange for control or potential control, by Highmark of any entity, whether such control is given at the time of the grant or in the future ("Unrestricted Grants").

(b) BCBSD is prohibited from participating in, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. In addition, BCBSD is prohibited from acting in concert or participation with Highmark to make, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. For clarity, and not by way of limitation, the preceding sentences apply to any grant, loan or other expenditure made by BCBSD to Highmark or any other entity, including, but not limited to, any party (i) over which Highmark maintains control or seeks to gain control, or (ii) with whom Highmark contracts or seeks to contract.

(c) Thus, except as provided in paragraph (b), Highmark is not permitted to, directly or indirectly, pass onto BCBSD, or in any way involve BCBSD in the funding of, any up-front or ongoing costs or expenditures associated with, or related in any way to, the Highmark/WPAHS Affiliation (including any costs associated with the provider division that is contemplated to be formed), the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants. For clarity, and without limitation, the restrictions in this condition apply to any failed attempts to affiliate with WPAHS.

(d) The intent of this condition and of Condition No. 9 is to ensure that, except as provided in paragraph (b), BCBSD is not funding in any way the Highmark/WPAHS Affiliation, the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants, and is to ensure that the only economic transfers between BCBSD and Highmark are the ones set forth in Condition 9, which benefit BCBSD and its policyholders and preserve BCBSD's surplus and reserves. This Condition, and Condition No. 9, shall be construed broadly, and terms shall be implied as appropriate to ensure that no economic transfers will be made in a way technically permitted by the language of the conditions, but in violation of their intent.

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BCBSD Condition No. 49 is modified as follows:

**Old No. 49:** In the event a “Triggering Event,” as defined in Condition 23 above, occurs during the three (3) year period immediately following the closing of the Affiliation and results in a withdrawal by BCBSD from the Affiliation, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$35 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011. Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$40 million, Highmark will be responsible for \$17.5 million of such expense and BCBSD will be responsible for all excess expenses.

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**New No. 49 (emphasis added to show changes):** In the event a “Triggering Event,” as defined in BCBSD Condition 23 above, occurs during the five (5) year period immediately following the closing of the Highmark/WPAHS Affiliation and results in a withdrawal by BCBSD from its Affiliation with Highmark, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$27,500,000 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., ~~undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011.~~ Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$60 million, Highmark will be responsible for \$27,500,000 million of such expense and BCBSD will be responsible for all excess expenses.

BCBSD Condition No. 47 is modified as follows:

**Old No. 47:** Prior to Closing, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$17,500,000.00. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a triggering event within the first three years after the Closing of the Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.

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**New No. 47 (emphasis added to show changes):** As soon as practicable following the closing of the Highmark/WPAHS Affiliation, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$27,500,000. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a Triggering Event within the first five years after the closing of the Highmark/WPAHS Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.