

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

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In the matter of the application of)
CF TURUL LLC, FCOF UB INVESTMENTS LLC,))
FORTRESS CREDIT OPPORTUNITIES)
FUND (A) LP, FORTRESS CREDIT)
OPPORTUNITIES (B) LP, FORTRESS CREDIT)
OPPORTUNITIES (C) L.P., FCO FUND GP LLC,)
FCOF II UB INVESTMENTS LLC, FORTRESS)
CREDIT OPPORTUNITES FUND II (A) LP,)
FORTRESS CREDIT OPPORTUNITIES FUND II)
(B) LP, FORTRESS CREDIT OPPORTUNITIES)
FUND II (C) L.P., FCO FUND II GP LLC,)
FTS SIP L.P., FCO MA GP LLC, DRAWBRIDGE)
SPECIAL OPPORTUNITIES FUND LP,)
DRAWBRIDGE SPECIAL OPPORTUNITIES)
GP LLC, FORTRESS PRINCIPAL INVESTMENT)
HOLDING IV LLC, DRAWBRIDGE)
SPECIAL OPPORTUNITIES ADVISORS LLC,)
FORTRESS CREDIT OPPORTUNITIES MA)
ADVISORS LLC, FORTRESS CREDIT)
OPPORTUNITIES MA ADVISORS LLC,)
DRAWBRIDGE SPECIAL OPPORTUNITIES)
ADVISORS LLC, HYBRID GP HOLDINGS LLC,)
FORTRESS OPERATING ENTITY I LP,)
FIG LLC, PETER L. BRIGER, JR. AND)
CONSTANTINE M. DAKOLIAS for a plan to)
acquire control of FIDELITY & GUARANTY)
LIFE INSURANCE COMPANY)
)

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER**
(Iowa Code chapter 521A)

I. INTRODUCTION

CF Turul LLC (“CF Turul”), a Delaware limited liability company, FCOF UB Investments LLC, a Delaware limited liability company, Fortress Credit Opportunities Fund (A) LP, a Delaware limited partnership, Fortress Credit Opportunities Fund (B) LP, a Delaware limited partnership, Fortress Credit Opportunities Fund (C) L.P., a Cayman exempted limited partnership, FCO Fund GP LLC, a Delaware limited liability company, FCOF II UB Investments LLC, a Delaware limited liability company, Fortress

Credit Opportunities Fund II (A) LP, a Delaware limited partnership, Fortress Credit Opportunities Fund II (B) LP, a Delaware limited partnership, Fortress Credit Opportunities Fund II (C) L.P., a Cayman exempted limited partnership, FCO Fund II GP LLC, a Delaware limited liability company, FTS SIP L.P., a Jersey limited partnership, FCO MA GP LLC, a Delaware limited liability company, Drawbridge Special Opportunities Fund LP, a Delaware limited partnership, Drawbridge Special Opportunities GP LLC, a Delaware limited liability company, Fortress Principal Investment Holding IV LLC, a Delaware limited liability company, Fortress Credit Opportunities Advisors LLC, a Delaware limited liability company, Fortress Credit Opportunities MA Advisors LLC, a Delaware limited liability company, Drawbridge Special Opportunities Advisors LLC, a Delaware limited liability company, Hybrid GP Holdings LLC, a Delaware limited liability company, Fortress Operating Entity I LP, a Delaware limited partnership, FIG LLC, a Delaware limited liability company, Peter L. Briger, Jr. and Constantine M. Dakolias (collectively referred to as “Applicants”) seek to remove control restrictions on CF Turul’s conversion and voting rights with respect to the Series A Participating Convertible Preferred Stock (“Convertible Preferred Stock”) of Harbinger Group Inc. (“Harbinger”), a New York Stock Exchange traded company. Harbinger indirectly owns approximately 80.7 percent of the common stock of Fidelity & Guaranty Life Insurance Company (“Fidelity & Guaranty”).

The Applicants wish to acquire control of Fidelity & Guaranty and have filed an application with the Iowa Insurance Commissioner (“Commissioner”) for permission to do so. Fidelity & Guaranty is an Iowa domiciled insurance company.

Pursuant to Iowa Code section 521A.3(4)(b) (2013), and at the Applicants’ request, a public hearing was held Tuesday, March 25, 2014 at the Iowa Insurance Division (“Division”) for the purpose of determining whether Applicants’ proposed acquisition of control of Fidelity & Guaranty complies with the statutory requirements set forth in Iowa Code section 521A.3(4)(a) (2013).

II. JURISDICTION

The Commissioner has jurisdiction over this matter under Iowa Code section 521A.3 (2013).

III. EVIDENCE PRESENTED

In support of the application, Applicants submitted a "Statement Regarding the Acquisition of Control of Domestic Insurer" with attached exhibits ("Form A") containing details relating to Applicants' operations. At the public hearing conducted by the Commissioner in this matter on March 25, 2014, Applicants submitted the testimony of Andrew McKnight, Managing Director in the Credit Funds business unit at FIG LLC and John Neumark, Managing Director in Fortress Investment Group LLC's ("Fortress") Credit Funds business unit.

Mr. McKnight and Mr. Neumark testified in support of the proposed acquisition. An additional comment was made by Eric Marhoun, General Counsel and Secretary for Fidelity & Guaranty in support of the Applicants.

At the close of the hearing, the record was left open for the limited purpose supplementing information on a background report and furnishing a legal opinion, which was an exhibit to the Securities Purchase Agreement that was referenced in the Form A. On March 27, 2014, the record was officially closed following the Division's receipt of the supplemental information and legal opinion.

All evidence was admitted without objection and is part of the record considered by the Commissioner in issuing the following findings, conclusions and order.

No one appeared at the hearing to oppose Applicants' request or otherwise offer evidence or contradict or question Applicants' submission of evidence.

IV. FINDINGS OF FACT

The statutory requirements that the Applicants' acquisition plan must meet are relatively straightforward. Iowa Code section 521A.3(4)(a) (2013) requires a showing by the Applicants that the facts and circumstances supporting their application for acquisition of control of insurers meet five standards.

Briefly, these standards relate to (1) Applicants' post-acquisition ability to retain an Iowa license and continue writing existing lines of insurance, (2) the effect of the acquisition on insurance competition in Iowa, (3) the effect of Applicants' financial condition on Fidelity & Guaranty and its policyholders, (4) the effect of Applicants' anticipated changes to Fidelity & Guaranty's operations on its policyholders and the public interest, and (5) the effect those persons that Applicants' choose to lead Fidelity

& Guaranty in the future will have on the interests of its policyholders and the public. Each requirement is discussed in greater detail below.

If Applicants establish that their application for acquisition of control meets these requirements, section 521A.3(4)(a) (2013) requires the Commissioner to approve the application.

Applying the foregoing standards to the evidence presented by the record, when viewed as a whole, the Commissioner finds the following facts:

1. **After a change of control, Fidelity & Guaranty will be able to satisfy Iowa licensure requirements and thus continue writing the line or lines of insurance for which they are presently licensed.**

Iowa Code section 521A.3(4)(a)(1) (2013) requires an applicant to demonstrate to the Commissioner that, after a change of control, the acquired domestic insurer will be able to satisfy the requirements for issuing a license to write the line or lines of insurance for which it is presently licensed.

Mr. Neumark testified that upon lifting of the control restrictions, there will be no material change to Fidelity & Guaranty's business operations that would adversely affect its ability to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed. *Trans.* at 38.

The Commissioner finds that Fidelity & Guaranty's ability to satisfy Iowa licensure requirements and their ability to continue writing existing lines of insurance for which they are presently licensed will be unimpaired after a change of control.

2. **Applicants' acquisition of control of Fidelity & Guaranty will not substantially lessen insurance industry competition within Iowa.**

Iowa Code section 521A.3(4)(a)(2) (2013) requires an applicant to demonstrate to the Commissioner that the effect of acquiring control will not substantially lessen competition in insurance in Iowa.

Mr. Neumark affirmed, as part of his testimony, that the proposed transaction will not substantially lessen competition or create a monopoly in the State of Iowa. *Trans.* at 38.

The Commissioner finds that Applicants' acquisition of control of Fidelity & Guaranty will not substantially lessen competition in insurance in Iowa.

3. Applicants' financial condition will not jeopardize the financial stability of Fidelity & Guaranty, or prejudice the interests of their policyholders.

Iowa Code section 521A.3(4)(a)(3) (2013) requires an applicant to demonstrate to the Commissioner that the applicant's financial condition will not jeopardize the financial stability of the acquired domestic insurer, or prejudice the interest of its policyholders.

Mr. McKnight testified that CF Turul was formed solely for the purpose of entering into and effectuating the transactions contemplated by the Securities Purchase Agreement, dated May 12, 2011, by Harbinger, CF Turul, Providence TMT Debt Opportunity Fund II, L.P., PECM Strategic Funding L.P., and Wilton Re Holdings Limited. *Trans.* at 19.

CF Turul is owned, directly and indirectly, by certain credit investment funds managed by affiliates of Fortress and such credit investment funds, ("Fortress Investment Funds"). *Trans.* at 16. The Fortress Investment Funds are limited partnerships each controlled by its general partner and each with its investments managed by its investment advisor. *Id.* The general partners and investment advisors of the Fortress Investment Funds are affiliates of FIG LLC and Fortress. *Id.*

Pursuant to the Securities Purchase Agreement, CF Turul acquired 205,000 shares of Convertible Preferred Stock, which indirectly owns 80.7 percent of Fidelity & Guaranty's common stock, for an amount of cash equal to \$205 million. *Trans.* at 26. On an as-converted basis, CF Turul's shares of Convertible Preferred Stock represent 16.1 percent of the outstanding and issued shares of common stock of Harbinger. *Trans.* at 23.

CF Turul members contributed the capital to purchase the Convertible Preferred Stock. *Trans.* at 26. The source of consideration for the Convertible Preferred Stock did not include any loans. *Id.* at 27.

Mr. McKnight explained that holders of shares of the Convertible Preferred Stock are entitled to vote on all matters on which the holders of shares of Harbinger's Common Stock are entitled to vote. *Trans.* at 21. As of any record date, each holder of shares of Convertible Preferred Stock is entitled to the number of votes such holder would have if all shares of Convertible Preferred Stock held by such holder on such date had been converted into shares of Common Stock of Harbinger immediately prior thereto, subject to certain exceptions. *Trans.* at 21-22.

These exceptions include a restriction prohibiting a holder of shares of Convertible Preferred Stock from having voting rights in excess of 9.9 percent of total current voting power unless the holder has received all approvals from insurance regulatory authorities required to lift the restriction. *Trans.* at 22. Similarly, the shares of Convertible Preferred Stock may not be converted into Common Stock with respect to any holder to the extent that, following such conversion, such holder would beneficially own more than 9.9 percent of Harbinger's outstanding Common Stock until the receipt by such holder of all approvals from insurance regulatory agencies required to lift such restriction. *Id.*

Lifting the control restrictions on voting and conversion rights with respect to the Convertible Preferred Stock will allow CF Turul to exercise its full voting power as a holder of shares of Convertible Preferred Stock and will give it the ability to convert its shares into Common Stock of Harbinger in excess of 9.9 percent. *Trans.* at 25. Lifting these control restrictions will have no impact on the capital structure of Fidelity & Guaranty. *Id.*

Mr. Neumark testified that Applicants' have no present plans to cause Fidelity & Guaranty to declare any extraordinary dividends. *Trans.* at 37. The financial statements submitted by the Applicants demonstrate that they and their affiliates are financially sound. *Id.* at 38-39. Also, lifting of the control restrictions will in no way jeopardize the financial position of Fidelity & Guaranty or prejudice the interests of its policyholders in any way. *Id.* at 39.

There being no evidence of adverse financial impact on Fidelity & Guaranty, the Commissioner also finds that the interests of the Fidelity & Guaranty's policyholders will not be prejudiced by Applicants' financial condition.

4. Applicants' proposed post-acquisition changes in Fidelity & Guaranty's business, or corporate structure, or management are not unfair or unreasonable to Fidelity & Guaranty's policyholders and are not contrary to the public interest.

Iowa Code section 521A.3(4)(a)(4) (2013) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals for material changes to the acquired domestic insurer's business, or corporate structure or management are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

Mr. McKnight testified that upon lifting of the control restrictions, Fidelity & Guaranty will continue to maintain its separate corporate existence. *Trans.* at 28.

Mr. Neumark testified that Applicants have no present plans or proposals to liquidate Fidelity & Guaranty, sell any of their assets, or consolidate or merge them with any person, or to make any other material change in their business, investment policy, corporate structure, or management. *Trans.* at-38-39. He further testified that Applicants have no plans to cause Fidelity & Guaranty to declare any extraordinary dividends or sell its assets. *Trans.* at 37-38.

Mr. McKnight testified that Fidelity & Guaranty will continue to conduct its business and operations in substantially the same manner as they are presently conducted. *Trans.* at 27-28. The Applicants have no plans to make any changes to the senior management or Board of Directors of Fidelity & Guaranty, nor do they intend to replace any material agreements currently in place with Fidelity & Guaranty. *Trans.* at 28. The capitalization, policyholder surplus, risk based capital levels and other aspects of the financial condition of Fidelity & Guaranty will not change in any way as a result of the change of control. *Trans.* at 27.

The Commissioner finds that Applicants' proposed post-acquisition changes in Fidelity & Guaranty's business, corporate structure and management are not contrary to the public interest.

5. The competence, experience, and integrity of those individuals who will control Fidelity & Guaranty after acquisition are sufficient to indicate that Fidelity & Guaranty policyholder interests and the public interest will not be jeopardized by Applicants' acquisition of control of the Fidelity & Guaranty.

Iowa Code section 521A.3(4)(a)(5) (2013) requires an applicant to demonstrate to the Commissioner that the competence, experience, and integrity of those the applicant selects to control the acquired domestic insurer are sufficient to indicate that policyholders' interests and the public's interest will not be jeopardized by acquisition.

Mr. Neumark testified that all of the directors, executive officers and authorized signatories of entity Applicants and the individuals listed as Applicants are very experienced and competent based on their history with the companies they serve and their prior work experience. *Trans.* at 40. Mr. Neumark emphasized that the composition of the Board of Directors and the executive officers of Fidelity will not change as a result of the control restrictions. *Id.*

The Commissioner finds that the competence, experience, and integrity of those individuals who will control the Fidelity & Guaranty after acquisition are sufficient to indicate that the Fidelity & Guaranty policyholder interest and the public interest will not be jeopardized by Applicants' acquisition of control of the Fidelity & Guaranty.

V. CONCLUSIONS OF LAW

The legislature has vested discretion in the Commissioner not only to hold hearings and make factual findings, but also to interpret and apply the law.

Iowa Code section 521A.3(4)(a) (2013) requires the Commissioner to approve an application for acquisition of control if, after a public hearing, the applicant demonstrates all five criteria listed within that section to the Commissioner.

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, Applicants have demonstrated to the Commissioner all five requirements set forth in, and required by, section 521A.3(4)(a) (2013). Applicants' proposed acquisition of control of the Fidelity & Guaranty should be approved.

ORDER

IT IS THEREFORE ORDERED that:

The application of CF Turul LLC, FCOF UB Investments LLC, Fortress Credit Opportunities Fund (A) LP, Fortress Credit Opportunities Fund (B) LP, Fortress Credit Opportunities Fund (C) L.P., FCO Fund GP LLC, FCOF II UB Investments LLC, Fortress Credit Opportunities Fund II (A) LP, Fortress Credit Opportunities Fund II (B) LP, Fortress Credit Opportunities Fund II (C) L.P., FCO Fund II GP LLC, FTS SIP L.P., FCO MA GP LLC, Drawbridge Special Opportunities Fund LP, Drawbridge Special Opportunities GP LLC, Fortress Principal Investment Holding IV LLC, Fortress Credit Opportunities Advisors LLC, Fortress Credit Opportunities MA Advisors LLC, Drawbridge Special Opportunities Advisors LLC, Hybrid GP Holdings LLC, Fortress Operating Entity I LP, FIG LLC, Peter L. Briger, Jr. and Constantine M. Dakolias for approval of a plan to acquire control of Fidelity & Guaranty Life Insurance Company is **APPROVED**.

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2013). Any action challenging the Order shall comply with the requirements of Iowa Code chapter 17A (2013).

Any application for rehearing shall comply with the requirements of Iowa Code chapter 17A (2013).

DATED this 30th day of April, 2014.



NICK GERHART

Iowa Insurance Commissioner

Copies to:

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