

**BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA**

In the matter of the application for )  
acquisition of control of VOYA )  
INSURANCE AND ANNUITY COMPANY )  
by VENERABLE HOLDINGS, INC.; VA )  
CAPITAL COMPANY LLC; APOLLO )  
PRINCIPAL HOLDINGS I, L.P.; APOLLO )  
PRINCIPAL HOLDINGS I GP, LLC; )  
APOLLO GLOBAL MANAGEMENT, LLC; )  
ATHENE LIFE RE LTD.; ATHENE )  
HOLDING LTD.; LEON BLACK; JOSHUA )  
HARRIS; and MARK ROWAN; )  
CRESTVIEW INDIGO III (TE), L.P.; )  
CRESTVIEW INDIGO III HOLDINGS, L.P.; )  
CRESTVIEW PARTNERS III )  
MANAGEMENT, LLC; BARRY S. )  
VOLPERT; and THOMAS S. MURPHY, JR. )  
REVERENCE CAPITAL PARTNERS )  
OPPORTUNITIES FUND II, L.P.; )  
REVERENCE CAPITAL PARTNERS )  
OPPORTUNITIES FUND II (CAYMAN), )  
L.P.; RCP OPP FUND II GP, L.P.; RCP )  
GENPAR LP; RCP GENPAR HOLDCO )  
LLC; PETER C. ABERG; MILTON R. )  
BERLINSKI; and ALEXANDER A. )  
CHULACK )

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

**I. INTRODUCTION**

Venerable Holdings, Inc., a Delaware corporation (“Venerable”), VA Capital Company, LLC, a Delaware limited liability company (“VA Capital”), Apollo Principal Holdings I, L.P., a Delaware limited partnership (“Apollo Holdings”), Apollo Principal Holdings I GP, LLC, a Delaware limited liability partnership (“Apollo Holdings GP”), Apollo Global Management, LLC, a Delaware limited liability company (“Apollo Global Management”), Leon Black, Joshua Harris, Marc Rowan, Athene Life Re Ltd., a Bermuda reinsurer (“Athene Life Re”), Athene Holding Ltd., a Bermuda exempted company (“Athene Holding”), Crestview Indigo III (TE), L.P., a Delaware limited partnership (“Crestview Indigo (TE)”), Crestview Indigo III Holdings, L.P., a Delaware limited partnership (“Crestview Indigo Holdings”), Crestview Partners III Management, LLC, a Delaware limited liability company (“Crestview Partners”), Barry S. Volpert, Thomas S. Murphy, Jr., Reverence Capital Partners Opportunities Fund II, L.P., a Delaware limited partnership (“Reverence Delaware”), Reverence Capital Partners Opportunities Fund II (Cayman), L.P., a Cayman Islands exempted limited partnership (“Reverence Cayman”), RCP Opp Fund II GP, L.P., a Delaware limited partnership (“RCP Fund GP”), RCP GenPar LP, a Delaware limited partnership (“RCP GenPar LP”), RCP GenPar HoldCo LLC, a Delaware limited liability company (“RCP

GenPar HoldCo”), Peter C. Aberg, Milton R. Berlinski, and Alexander A. Chulack (collectively, the “Applicants”) seek permission to acquire control of Voya Insurance and Annuity Company, an Iowa domestic insurer (the “Domestic Insurer”) and a direct wholly-owned subsidiary of Voya Holdings, Inc., a Connecticut corporation (“Voya Holdings”), which in turn is a wholly-owned subsidiary of Voya Financial, Inc., a Delaware corporation (“Voya”). The Master Transaction Agreement, dated as of December 20, 2017 (the “Master Transaction Agreement”), among Voya, VA Capital, and Athene Holding, provides that, subject to the terms and conditions contained in the Master Transaction Agreement, Venerable will purchase all of the issued and outstanding shares of capital stock of the Domestic Insurer from Voya Holdings at the closing of the acquisition.

In accordance with the provisions of Iowa Code<sup>1</sup> § 521A.3, Applicants have filed an Amended Form A (the “Form A Statement”) applying for approval of its acquisition of control of the Domestic Insurer with the Commissioner of Insurance of the State of Iowa (the “Commissioner”).

Pursuant to the provisions of Iowa Code § 521A.3(4)(b), and at the request of Applicants, a public hearing was held Thursday, March 15, 2018, at the Iowa Insurance Division (“Division”) for the purpose of determining whether the proposed acquisition of control of the Domestic Insurer by Applicants complies with the statutory requirements set forth in Iowa Code § 521A.3(4)(a).

## **II. JURISDICTION**

Notice of the public hearing conducted on March 15, 2018, was provided to the parties in accordance with Iowa Code § 17A.12. (*Exhibit II*) The Commissioner has jurisdiction over this matter under Iowa Code §§ 17A.11, 17A.12, and 521A.3.

## **III. EVIDENCE PRESENTED**

At the public hearing, the Applicants offered six exhibits as follows:

- Exhibit I: Written affidavit of Mr. Valay Shah, dated March 14, 2018.
- Exhibit II: Written affidavit of Mr. David M. Marcinek, dated March 14, 2018.
- Exhibit III: Affidavit of Domestic Insurer, verifying receipt of the Form A Statement and Notice of Public Hearing, dated March 6, 2018
- Exhibit IV: Notice of Public Hearing on the Form A Statement issued by the Insurance Division of Iowa to the Applicants, dated February 23, 2018.
- Exhibit V: Copy of Form A Statement regarding the acquisition of control of the Domestic Insurer by the Applicants, dated February 5, 2018, with sub-exhibits, certain portions of which are held confidential pursuant to the provisions of Iowa Code §§ 22.7(6) and 505.8(9) and Iowa Administrative Code rule 191–1.3(11)(c), as filed with the Division.

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<sup>1</sup> All references to the Iowa Code herein are to the Code of 2018.

Exhibits I through V were received into the record. (*Trans. at 12–13*) At the conclusion of the hearing the Commissioner agreed to hold the record open to allow the Applicants to submit the remaining biographical affidavits prepared by independent third-parties. Additionally the Applicants offered the following additional exhibit, which the Commissioner also received into the record:

Exhibit VI: Combined Iowa Market Share Information for the Domestic Insurer and Apollo Insurers.

The final documents were submitted to the Commissioner on May 11, 2018, at which time the record was closed.

In addition, the Applicants called two witnesses at the public hearing, Mr. Valay Shah and Mr. David M. Marcinek, who were each authorized to speak on behalf of all of the Applicants. (*Trans. at 13–14, 36, 38*)

Mr. Shah is a Principal at Apollo Global Management. Mr. Shah testified that he was personally familiar with the proposed transaction and assisted in preparing the Form A Statement. Mr. Shah testified that the Form A Statement submitted in this matter is complete, accurate, and up-to-date. (*Trans. at 13–15*) He affirmed that there have been no material changes with respect to the information provided in the Form A Statement since the Form A Statement was filed with the Division. (*Trans. at 34*) Mr. Shah also indicated that there were no contracts that are part of the proposed transaction that the Division and Commissioner have not been made aware of. (*Trans. at 35–36*).

Mr. Shah testified that the Applicants seek permission to acquire control of the Domestic Insurer through the acquisition by Venerable of all of the issued and outstanding capital stock of the Domestic Insurer, pursuant to the terms of a Master Transaction Agreement, dated as of December 20, 2017 (the “Master Transaction Agreement”), between VA Capital (the parent company of Venerable), Athene Holding, and Voya. In addition, Venerable will purchase all of the outstanding membership interests in Directed Services LLC, a Securities and Exchange Commission-registered broker-dealer and indirect wholly owned subsidiary of Voya Holdings, and all of the outstanding equity interests in Services Company, which will be formed as a wholly owned subsidiary of Voya prior to closing of the proposed transaction for the purpose of transferring employees supporting the Domestic Insurer’s business to Venerable. Mr. Shah further testified that, upon the conclusion of the proposed acquisition, the Applicants will be the controlling persons of the Domestic Insurer. (*Trans. at 16–17*)

Mr. Shah’s testimony described the aggregate consideration the Applicants will pay in the proposed transaction and the complex calculations the Applicants and Voya will use to determine such aggregate consideration. Overall, under the Master Transaction Agreement, Venerable is obligated to pay Voya a maximum consideration of \$600 million for the shares of the Domestic Insurer and the two affiliates noted above (the “Maximum Funding Amount”). The consideration paid by Venerable will be largely determined by the difference between the Domestic Insurer’s estimated total adjusted book value (the “Total Book Value”) and the estimated required adjusted book value (the “Required Book Value”), as each are defined in, and calculated pursuant to, the

Master Transaction Agreement.<sup>2</sup> To the extent the Total Book Value exceeds the Required Book Value, Venerable will pay Voya such excess amount, but only to the extent such funds are available from the Maximum Funding Amount. If there are not sufficient funds in the Maximum Funding Amount to pay such excess, Voya will purchase up to \$100 million of senior notes from VA Capital, the proceeds of which will be used by Venerable to pay the additional amount of excess. Furthermore, if the total payments made by Venerable are less than \$500 million, Venerable will contribute such difference in cash to the Domestic Insurer, up to \$200 million. Conversely, in the event the Total Book Value is less than the Required Book Value, Voya will instead contribute cash to the Domestic Insurer in the amount of such shortfall, up to \$200 million. Notwithstanding any of the payments and considerations detailed above, Venerable has agreed to pay Voya a minimum of \$10,000 in consideration at closing.<sup>3</sup> (*Trans. at 23–24; Exhibit V*)

Mr. Shah also testified regarding the chain of control and financial wherewithal of the Applicants after the purchase of the Domestic Insurer. VA Capital is a newly formed Delaware limited liability company formed to invest in Venerable, a newly incorporated Delaware corporation formed for the purpose of acquiring the Domestic Insurer and potentially other closed block variable annuity businesses. (*Trans. at 17*)

Mr. Shah’s testimony confirmed that, upon closing of the proposed transaction, VA Capital will be owned by five investors: Apollo Global Management, Crestview Partners, Reverence Capital Partners, L.P. (“Reverence”), Athene Holding, and Voya. Each of Apollo Global Management (through its investment vehicle, Apollo Holdings), Crestview Partners (through its investment vehicles, Crestview Indigo (TE) and Crestview Indigo Holdings), and Reverence (through its investment vehicles, Reverence Delaware and Reverence Cayman) will each purchase a 22.9% membership interest in VA Capital. Athene Holding, through its wholly owned subsidiary, Athene Life Re, will purchase a 21.4% membership interest in VA Capital. Additionally, Voya will purchase a 9.9% membership interest in VA Capital.<sup>4</sup> (*Trans. at 18–23, 25; Exhibit V*)

Apollo Global Management is a publicly traded company and operates as a global alternative investment manager raising, investing, and managing private equity, credit, and real estate funds. According to Mr. Shah’s testimony, as of December 31, 2017, Apollo Global Management had total assets under management of approximately \$248.9 billion. Apollo Global Management, and its subsidiaries, are operated and controlled by BRH Holdings GP Limited (“BRH Holdings”) and managed by AGM Management, LLC (“AGM Management”). Leon Black, Joshua Harris, and

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<sup>2</sup> According to the Form A Statement, the consideration paid in the proposed transaction will be used as follows: (i) first, for the purchase by Venerable from Voya (or its affiliates) the total amount of the Domestic Insurer’s issued and outstanding notes that exceed \$350 million (which is anticipated to be approximately \$85 million); (ii) second, to purchase the membership interests of Directed Services LLC (which are not to exceed \$4 million); and (iii) finally, to Voya to the extent the Total Book Value exceeds the Required Book Value. (*Exhibit V*)

<sup>3</sup> The Applicants have noted that scenario would occur in the event the Total Book Value is equal to the Required Book Value at closing. (*Exhibit V*)

<sup>4</sup> Iowa Code § 521A.1(3) provides that “[c]ontrol will be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person.” As Voya will only own a 9.9% membership in the Domestic Insurer upon the closing of the proposed transaction, Voya is not presumed not have “control” over the Domestic Insurer, and thus is not an applicant in this proceeding.

Marc Rowan are the managing partners of AGM Management, and each owns one-third of BRH Holdings. (*Trans. at 18–19*)

Crestview Partners was formed solely to manage and control Crestview Indigo (TE) and Crestview Indigo Holdings. The two owners of Crestview Partners, Barry S. Volpert and Thomas S. Murphy, Jr., are also the co-founders of Crestview Advisors, an SEC-registered investment adviser that manages funds with over \$7 billion of aggregate capital commitments. (*Trans. at 20–21; Exhibit V*)

Reverence is a private investment firm with approximately \$938.85 million of assets under management. Reverence’s pooled investment vehicles, Reverence Delaware and Reverence Cayman, are controlled by a number of Reverence management vehicles, which are in turn owned and controlled by Peter C. Aberg, Milton R. Berlinski, and Alexander A. Chulack. (*Trans. at 21–23*)

Athene Holding is a publicly traded company and is a leading retirement services company that issues, reinsures and acquires retirement savings products for both individuals and institutions seeking to fund retirement needs. Forty-five percent of the total voting power of Athene Holding’s equity is controlled by Apollo Global Management, BRH Holdings and its above-named owners, and their affiliates. (*Trans. at 19–20; Exhibit V*)

Given the above and the financial statements provided by the Applicants, Mr. Shah testified that the Applicants are financially sound and that the acquisition of the Domestic Insurer will neither jeopardize its financial position nor prejudice the interests of its policyholders. (*Trans. at 30–31*) Mr. Shah also testified that after the proposed acquisition of control the Domestic Insurer will continue to satisfy the requirements for issuance of a license to write the line or lines of insurance for which it is presently licensed. (*Trans. at 28–29*)

Mr. Shah further testified that the proposed acquisition will not substantially lessen competition in insurance in Iowa. Mr. Shah stated that, according to 2016 year-end data from S&P Global Market Intelligence, the combined market shares in Iowa in all lines of business currently offered by the Domestic Insurer and the Applicants’ current subsidiaries meet the exemption standards set forth by the National Association of Insurance Commissioner’s Model Insurance Holding Company System Regulatory Act (“NAIC Model Act”). (*Trans. at 28, 30*) According to the specific market share information provided by the Applicants, the effect of the proposed transaction will have less than a one percent (1%) increase in market share in only one line of active business. (*Exhibit VI*)

Mr. Shah testified that the individual Applicants and the directors and executive officers of the entity Applicants who will be involved in managing the Domestic Insurer after the proposed acquisition have all served insurance companies or other companies in the financial services industry for year. Mr. Shah noted that such individuals’ biographical affidavits had been provided to the Division, and background checks had been requested. Mr. Shah further stated such individuals’ experiences indicate that they have the competence, experience, and integrity such that the interests of the policyholders and the public will not be jeopardized. (*Trans. at 26–28, 32*)

Following the closing of the proposed transaction, Mr. Marcinek will be the Senior Managing Director of Venerable and the Chief Executive Officer of VA Capital. Mr. Marcinek noted that

VA Capital is the direct parent of Venerable, and following the closing of the proposed transaction, Venerable will be the direct parent of the Domestic Insurer. Mr. Marcinek testified that he was personally familiar with the proposed transaction and also assisted in preparing the Form A Statement. He affirmed that the information contained within the Form A Statement is complete, accurate, and up-to-date. (*Trans. at 37–39*) Mr. Marcinek also indicated that there were no contracts that are part of the proposed transaction that the Division and Commissioner have not been made aware of. (*Trans. at 44*)

Mr. Marcinek testified about the plans that the Applicants have regarding the Domestic Insurer. Mr. Marcinek noted that the Domestic Insurer currently offers various insurance products, including variable annuities, fixed and indexed annuities, life insurance, and payout annuities for pre-retirement wealth accumulation and post-retirement income management. He testified that, subject to certain changes, Venerable will continue oversight and management of the Domestic Insurer's run-off variable annuity and payout annuity lines of business in a manner consistent with current practice. Mr. Marcinek stated that Venerable will maintain existing operations in West Chester, Pennsylvania, and Des Moines, Iowa. In addition, Mr. Marcinek testified that the Domestic Insurer's core senior leadership team will continue under Venerable's ownership to support the continuity of the Domestic Insurer's business operations. (*Trans. at 39–40*)

However, Mr. Marcinek testified that the Applicants do plan to change the life insurance business and operations of the Domestic Insurer. He stated that, immediately prior to the closing of the proposed transaction, the Domestic Insurer will undergo a series of restructuring transactions to transfer the businesses of the Domestic Insurer that will not be acquired by Venerable in the proposed transaction to certain affiliates of Voya.<sup>5</sup> Upon completion of the restructuring, Mr. Marcinek noted that the Domestic Insurer will retain only its closed block variable annuity business and its fixed and indexed annuity businesses. Mr. Marcinek stated that the Domestic Insurer will then cede twenty percent (20%) of its fixed and indexed annuity business to Athene Annuity & Life Assurance Company ("Athene Delaware")<sup>6</sup> on a coinsurance basis, with certain parts of the separate account fixed annuity business to be ceded to Athene Delaware pursuant to a separate modified coinsurance agreement. The remaining eighty percent (80%) will be ceded to Athene Life Re on a modified coinsurance basis.<sup>7</sup> Mr. Marcinek further stated that the Domestic Insurer will cede its closed block variable annuity business to a newly created Arizona special purpose life reinsurance captive insurance company, which will become a wholly owned subsidiary of the Domestic Insurer after closing of the proposed transaction ("New Captive").<sup>8</sup> Future payout annuities arising from the closed block variable annuity business will be

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<sup>5</sup> The lines of business that will not be acquired by Venerable and will be retained by Voya and its affiliates in the proposed transaction are the Domestic Insurer's individual life insurance business (including a block of variable annuity business), employee benefits business, and retained asset account business. The Domestic Insurer has filed with the Division separate Form D Statements with respect to each of the restructuring transactions. (*Exhibit V*)

<sup>6</sup> Athene Delaware is an insurance company organized under the laws of the State of Delaware and an indirect and wholly owned subsidiary of Athene Holding. (*Exhibit V*)

<sup>7</sup> The Form A Statement indicates that the fixed annuity business reinsurance transactions between the Domestic Insurer and each of Athene Delaware and Athene Life Re will take place immediately prior to the closing of the proposed transaction. (*Exhibit V*)

<sup>8</sup> Specifically, the Form A Statement indicates that the New Captive is to be named "Rocky Range, Inc." The New Captive will be formed by Venerable. Immediately upon closing of the proposed transaction, Venerable will contribute all of its equity interests in the New Captive to the Domestic Insurer, such that the New Captive will be a wholly-owned subsidiary of the Domestic Insurer. (*Exhibit V*)

automatically assumed by Athene Delaware and Athene Life Re pursuant to an assumption consent agreement. The payout annuities will then be reinsured pursuant to separate reinsurance agreements entered into between either the Domestic Insurer or the New Captive and each of Athene Delaware and Athene Life Re on a twenty percent (20%) coinsurance basis and an eighty percent (80%) modified coinsurance basis respectively. Mr. Marcinek testified that Form D prior notices of transaction have been submitted to the Division for review and approval with respect to each of these transactions. In addition, Mr. Marcinek further testified that, although the Applicants have no current plans to have the Domestic Insurer declare any dividends or distributions following the closing of the proposed transaction, Voya may seek the Division's approval to pay a dividend and make a distribution of excess capital to Voya Holdings immediately prior to closing. Beyond intending to change the name of the Domestic Insurer to "Venerable Insurance and Annuity Company" after closing of the proposed transaction, the Applicants do not have any plans to make any other material changes in the business operations, corporate structure, or management of the Domestic Insurer. (*Trans. at 40-43; Exhibit V*)

#### IV. FINDINGS OF FACT

The statutory requirements that the Applicants' acquisition plan must meet are relatively straightforward. Iowa Code § 521A.3(4)(a) provides that the Commissioner is to approve an application for acquisition of control if, after a public hearing on such acquisition, the applicant has demonstrated to the Commissioner all of the following:

1. That after the change of control the domestic insurer will 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;
2. That the effect of the acquisition of control will not substantially lessen competition in insurance in the State of Iowa;
3. That the financial condition of any acquiring party will not jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;
4. That 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 to make any other material change in its business or corporate structure or management, are not unfair or unreasonable to policyholders of the insurer and are not contrary to the public interest;
5. That the competence, experience, and integrity of those persons who would control the operation of the insurer are sufficient to indicate that the interests of the policyholders of the insurer and of the public will not be jeopardized by the acquisition of control; and
6. That the acquisition of control is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon the evidence in the record viewed as a whole, the Commissioner finds as follows:

1. After the change of control, the Domestic Insurer will be able to satisfy Iowa licensure requirements and continue writing the line or lines of insurance for which it is presently licensed.

Iowa Code § 521A.3(4)(a)(1) requires an applicant to demonstrate to the Commissioner that, after the 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. Shah testified that after the proposed acquisition of control, the Domestic Insurer will continue to satisfy the requirements for issuance of a license to write the lines of insurance for which it is presently licensed. Mr. Shah further testified that post-acquisition the Domestic Insurer will continue to satisfy all capital and surplus requirements for licensure under Iowa law. In particular, the Commissioner notes that the Applicants' plan of operations for the Domestic Insurer, which was attached to the Form A Statement, calls for a sound plan of operation, with sufficient capital levels, sound capital and investment management plans, and a comprehensive risk management approach. This is supported by the testimony of both Mr. Shah and Mr. Marcinek that the Domestic Insurer's current senior leadership team will continue to manage and support the continuity of the Domestic Insurer's business upon the completion of the proposed transaction. (*Trans. at 27, 40*) Although the Applicants intend to cede almost all of the Domestic Insurer's retained business pursuant to proposed coinsurance and modified coinsurance agreements with New Captive, Athene Life Re, and Athene Delaware, Mr. Marcinek testified that the reinsurance structure is intended to provide a more stable and predictable arrangement with each entity sufficiently capitalized. (*Trans. at 40–42*) Mr. Shah and Mr. Marcinek's testimonies gain further support from the evidence regarding the financial strength and significant financial resources of the Applicants and the evidence that the proposed acquisition will not jeopardize the financial position of the Domestic Insurer. (*Exhibit V; Trans. at 18–23*)

The Commissioner finds that the Domestic Insurer's ability to satisfy Iowa licensure requirements and its ability to continue writing existing lines of insurance for which it is licensed will be unimpaired after the change of control.

2. The Applicants' acquisition of control of the Domestic Insurer will not substantially lessen competition in insurance in Iowa.

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

Mr. Shah testified that the combined market shares in Iowa of all lines of business of the Domestic Insurer and the Applicants' subsidiaries would meet the exemption standards set forth in the NAIC Model Act.<sup>9</sup> (*Trans. at 28*) The Commissioner found this testimony to be conclusory, without

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<sup>9</sup> Section 3.1(D) of the NAIC Model Act provides competitive standards for the acquisition of control of an insurer. See NAIC Model Act § 3.1(D), available at <http://www.naic.org/store/free/MDL-440.pdf>. However, an acquisition is exempt from the competitive standards of Section 3.1(D) if:

- as an immediate result of the acquisition,
- (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
  - (ii) There would be no increase in any market share, or
  - (iii) In no market would
    - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and



any discussion of the actual lines of business that overlap and the actual percentage increase in such combined market shares. Further, the competitive standards set forth in the NAIC Model Act—and the exemptions thereto—have neither been adopted by the Iowa General Assembly in Iowa Code chapter 521A nor incorporated into the regulations of the Commissioner and Division relating to insurance holding company systems.<sup>10</sup> As such, the Commissioner and Division requested that the Applicants supplement the record with further evidence regarding the competitive impact in Iowa.

The market share information subsequently provided by the Applicants and received into the record shows that the Applicants' subsidiaries that conduct insurance business<sup>11</sup> and the Domestic Insurer only overlap in two lines of business in Iowa based on 2017 direct written premiums reported by S&P Global Market Intelligence: the ordinary individual annuities product line and the ordinary life insurance product line. (*Exhibit VI*) However, the Form A Statement provides that, as part of the restructuring transactions prior to closing, the Domestic Insurer will transfer its life insurance business to ReliaStar Life Insurance Company ("ReliaStar"), an indirect wholly owned subsidiary of Voya. (*Exhibit V*) As the Applicants will not be acquiring the Domestic Insurer's life insurance business, the Commissioner will only consider the overlap in the ordinary individual annuities product line.

Combined, the Domestic Insurer and the Applicants hold almost five percent of the ordinary individual annuities product line market share in Iowa. Upon the closing of the proposed transaction, the Applicants' Iowa market share of the ordinary individual annuities product line will increase approximately 0.8 percent. (*Exhibit VI*) The Commissioner notes that a significant portion of the Domestic Insurers' annuities business that will be acquired by the Applicants is the closed block variable annuity business, which as a closed block that has been placed in run-off since early 2010,<sup>12</sup> the acquisition of which would generally have little to no competitive impact on the Iowa insurance market. Further, as the market share information in Exhibit VI was based upon 2017 direct written premiums, the overlap discussed above only includes the Domestic Insurer's fixed and indexed annuity business, and not the closed block variable annuity business.

On the basis of this evidence, and the evidence that the only overlapping line of insurance in Iowa between the Domestic Insurer's active business that will be acquired by the Applicants and the business of the Applicants' subsidiaries will result in approximately a 0.8 percent increase in the

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(II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph . . . , a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

*Id.* § 3.1(B)(2)(d). The Commissioner notes that the additional evidence provided by the Applicants in Exhibit VI does support the conclusion that the proposed acquisition would be exempt from the competitive standards in the NAIC Model Act. (*Exhibit VI*)

<sup>10</sup> See Iowa Code § 521A.4; Iowa Admin. Code r. 191–45.1 et seq.

<sup>11</sup> The only Applicant that currently conducts insurance business operations in Iowa is Athene Holding and its subsidiaries. However, separate and apart from the proposed acquisition of the Domestic Insurer, Apollo Global Management anticipates to acquire a controlling interest in OneMain Holdings, Inc. ("OneMain"), a publicly traded Delaware corporation, and a number of OneMain's indirect wholly owned subsidiaries that conduct insurance business in Iowa (none of which are Iowa domestic insurers). As such, the Applicants included the OneMain insurers in the market share information reported. (*Exhibit VI*)

<sup>12</sup> See Closed Blocks, VOYA FINANCIAL, <http://investors.voya.com/our-businesses/closed-blocks/default.aspx> (last accessed April 3, 2018).

Applicants' current market share (*Exhibit VI*), the Commissioner finds that the Applicants' acquisition of control of the Domestic Insurer will not substantially lessen competition in insurance in Iowa.

3. The Applicants' financial condition will not jeopardize the financial stability of the Domestic Insurer or prejudice the interests of its policyholders.

Iowa Code § 521A.3(4)(a)(3) 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.

Evidence in the record indicates that the total purchase price required to consummate the Applicants' acquisition of control of the Domestic Insurer will not be determined until shortly before closing, but at the extremes, will be no more than \$700 million and no less than \$10,000. The funds necessary for the required closing payments will come from four types of sources. First, each of Athene Life Re, Apollo Holdings, Crestview Indigo (TE), Crestview Indigo Holdings, Reverence Delaware, and Reverence Cayman has committed to purchase equity in VA Capital for cash (the "Equity Commitments"). Second, as part of the overall transaction, Voya has committed to purchase a 9.9% membership interest in VA Capital (the "Seller Subscription"). Each of the Equity Commitments and Seller Subscription will be proportional to each Applicants' or Voya's equity interest in VA Capital, and collectively will provide an aggregate of up to \$420 million towards the total purchase price. Third, each of Athene Delaware and Athene Annuity and Life Company, an Iowa insurance company and indirect wholly owned subsidiary of Athene Holding ("Athene Iowa") have each entered into debt commitment letters with Venerable and VA Capital, whereby Athene Delaware and Athene Iowa severally, and not jointly, have committed to lend to Venerable up to an aggregate of \$180 million in exchange for subordinated notes issued by Venerable. Finally, as described above, if the total purchase price is ultimately more than \$600 million, Voya may purchase up to \$100 million of senior notes from VA Capital, the proceeds of which will be contributed to Venerable to pay such excess purchase price. (*Exhibit V*)

Mr. Shah's testimony indicates that the Applicants are financially strong. VA Capital's three main investors—Apollo Global Management (which also controls Athene Holding), Crestview Partners, and Reverence—collectively manage nearly \$257 billion of capital on behalf of their respective investors. Through VA Capital, each investor, along with Voya, has committed substantial equity to support Venerable's acquisition of the Domestic Insurer. Mr. Shah also testified the Applicants' financial statements were submitted along with the Form A Statement and that these statements demonstrate that the financial health of the Applicants will in no way jeopardize the financial interests of the Domestic Insurer or prejudice the interests of the policyholders. (*Exhibit V; Trans. at 18–23, 30–31*)

Although Mr. Marcinek testified that although the Applicants are considering certain coinsurance agreements and modified coinsurance agreements whereby the Domestic Insurer would collectively cede all of its remaining business post-closing to New Captive, Athene Life Re, and Athene Delaware (*Trans. at 40–41*), the Applicants' business plans continue to call for sufficient capital levels. Specifically, their business plan indicates the Domestic Insurer will target a risk-based capital ratio of 350 percent post-acquisition. (*Exhibit V*)

Given the facts in the record, the Commissioner finds neither the acquisition itself nor the other post-acquisition plans will create a material adverse financial impact on the Domestic Insurer. There being no evidence of a material adverse financial impact on the Domestic Insurer, the Commissioner further finds that the interests of the Domestic Insurer's policyholders will not be prejudiced by the Applicants' financial position.

4. The Applicants' proposed post-acquisition changes in the Domestic Insurer's business or corporate structure or management are not unfair or unreasonable to the Domestic Insurer's policyholders and are not contrary to the public interest.

Iowa Code § 521A.3(4)(a)(4) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals to liquidate the domestic insurer, sell its assets or consolidate or merge it with any person, or to make any other material change 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.

The facts in the record indicate that the Applicants have no present plans to liquidate, consolidate, or merge the Domestic Insurer, beyond the transactions described in the Form A Statement, or to sell its assets. The Domestic Insurer's retained business—the closed block variable annuity and fixed annuity businesses—employees supporting this business, and existing operations in West Chester, Pennsylvania, and Des Moines, Iowa will all be maintained. (*Trans. at 17, 35, 39; Exhibit V*)

As discussed above, the Applicants intend to cede 20 percent of the fixed annuity business to Athene Delaware on a coinsurance basis and the remaining 80 percent to Athene Life Re on a modified coinsurance basis. The Applicants also intend to cede the closed block variable annuity business to New Captive, the future payout annuities of which will be reinsured by Athene Delaware on a 20 percent coinsurance basis and Athene Life Re on an 80 percent modified coinsurance basis. Form D Statements have been submitted to the Division with respect to these reinsurance transactions. Mr. Marcinek stated that the reinsurance agreements are intended to provide a more stable and predictable arrangement, with each entity sufficiently capitalized. Additionally, Mr. Marcinek noted that, although the reinsurance of the closed block variable annuity business through New Captive will be similar to reinsurance currently provided by the Domestic Insurer's affiliate, Roaring River II, Inc., an indirect wholly owned subsidiary of Voya, the reinsurance provided by New Captive will provide enhanced benefits through (i) being a wholly owned subsidiary of the Domestic Insurer and (ii) covering the entire closed block variable annuity business rather than only the policy riders. (*Trans. at 40–42*)

In addition to the proposed reinsurance agreements, the Form A Statement provides that the Domestic Insurer will enter into a number of administrative services agreements with Voya subsidiaries, whereby some Voya subsidiaries will provide certain administrative services to the Domestic Insurer with respect to the closed block variable annuity and fixed annuity businesses retained by the Domestic Insurer, and conversely, the Domestic Insurer will provide certain administrative services to other Voya subsidiaries with respect to those lines of business that were transferred out of the Domestic Insurer prior to the proposed acquisition and retained by Voya subsidiaries. The Domestic Insurer will also enter into certain affiliate agreements with various providers affiliated with the Applicants, including an investment management agreement, a shared

services and cost sharing agreement, and a tax sharing agreement. Separate Form D Statements have been submitted to the Division with respect to each of these agreements. (*Exhibit V*) Overall, Mr. Marcinek's testimony along with the other evidence in the record indicates that the proposed post-acquisition changes, while still subject to the Division's approval, are fair and reasonable.

On the basis of the foregoing evidence, the Commissioner finds that the Applicants' proposed post-acquisition business plans and transactions are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

5. The competence, experience and integrity of those persons who will control the operation of the Domestic Insurer are sufficient to indicate that the interests of the Domestic Insurer's policyholders and the public will not be jeopardized by the Applicants' acquisition of control of the Domestic Insurer.

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

To that end, the Commissioner must review detailed information of the person or persons who would be in control of the insurer in the event the application is approved. This analysis focuses not on intermediate control but on ultimate control of the insurer. An "ultimate controlling person" is broadly defined in Iowa Administrative Code rule 191-45.2(3) as one who is not controlled by any other person. An ultimate controlling person may include, but is not limited to, an individual or business enterprise.

The complex structure of the proposed acquisition has resulted in multiple ultimate controlling persons in this application. The acquiring party, Venerable, is a wholly owned subsidiary of VA Capital. VA Capital is in turn controlled, through intermediaries, by Athene Holding, Apollo Global Management, Crestview Partners, and Reverence's management vehicle, RCP GenPar HoldCo. Athene Holding and Apollo Global Management are each controlled by Leon Black, Joshua Harris, and Marc Rowan. Crestview Partners is controlled by Barry S. Volpert and Thomas S. Murphy, Jr. Finally, RCP GenPar HoldCo is controlled by Peter C. Aberg, Milton R. Berlinski, and Alexander A. Chulack.

Facts in the record indicate that these ultimate controlling persons are experienced and competent based upon their experience in the insurance and financial industries. Biographical affidavits for each of the individual ultimate controlling parties along with those of the directors and executive officers of both the entity ultimate controlling parties and the Domestic Insurer post-closing were submitted to the Division, along with background reports on the biographical affidavits prepared by an independent third-party. (*Exhibit V*) In addition, during the course of the public hearing in this matter the Commissioner had an opportunity to observe and ask questions of Mr. Marcinek, who will be the Senior Managing Director of Venerable and the Chief Executive Officer of VA Capital after the closing of the proposed transaction.

The Commissioner finds that the competence, experience, and integrity of those individuals and entities who would control the operation of the Domestic Insurer after the acquisition are sufficient

to indicate that the interests of the Domestic Insurer's policyholders and of the public will not be jeopardized by the Applicants' proposed acquisition of control of the Domestic Insurer.

6. The Applicants' acquisition of control of the Domestic Insurer is not likely to be hazardous or prejudicial to the insurance-buying public.

Iowa Code § 521A.3(4)(a)(6) requires an applicant to demonstrate to the Commissioner that the acquisition of control of the domestic insurer is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon a thorough review of the record in this proceeding, including Exhibits I through VI, and the testimonies of Mr. Shah and Mr. Marcinek, the Commissioner finds that the Applicants' acquisition of control of the Domestic Insurer is not likely to be hazardous or prejudicial to the insurance-buying public of the State of Iowa. The Form A Statement submitted by Applicants, the exhibits thereto, the testimonies of Mr. Shah and Mr. Marcinek, and the other exhibits entered into the record of this proceeding collectively demonstrate that the criteria set forth in Iowa Code § 521A.3(4)(a)(1)–(5) are established. When viewed as a whole, the record indicates that there are no other factors which might make the merger hazardous or prejudicial to the insurance-buying public. Accordingly, the requirements of Iowa Code § 521A.3(4)(a)(6) have likewise been established.

The Commissioner finds that the Applicants' acquisition of control of the Domestic Insurer is not likely to be hazardous or prejudicial to the insurance-buying public.

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

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, that the Applicants have demonstrated to the Commissioner all six requirements set forth in, and required by, Iowa Code § 521A.3(4)(a). The Applicants' proposed acquisition of control of the Domestic Insurer should be approved.

## **ORDER**

**IT IS ORDERED** that:

The application of Venerable Holdings, Inc. and the other above-named Applicants for approval of the acquisition of control of Voya Insurance and Annuity Company, an Iowa domestic insurer, is **APPROVED**.

