

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION)	
OF CONTROL OF FIRST FOUNDERS)	HEARING OFFICER'S
ASSURANCE COMPANY BY TRISURA)	REPORT
GUARANTEE (US) HOLDING COMPANY)	
AND TRISURA GROUP LTD)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated September 15, 2023, as amended and restated as of January 23, 2024, Trisura Guarantee (US) Holding Company (“TGHC”) and its parent Trisura Group Ltd. (“TG”) (each referred to hereafter as an “Applicant” and collectively, “Applicants”) filed with the New Jersey Department of Banking and Insurance (“Department”) an application to acquire control (“Form A filing”) of First Founders Assurance Company (“First Founders”), a New Jersey domiciled insurance company.

The proposed acquisition of control of First Founders will occur pursuant to a Stock Purchase and Sale Agreement, dated August 9, 2023, by and between TGHC, and the Sheppard Group, LLC (“Seller”) (“SPS Agreement”). Per the SPS Agreement, TGHC will acquire 100% of the voting securities of First Founders from the Seller. The voting securities consist of 10,000 shares of common stock at \$100.00 par value.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing relating to the Form A filing was held on February 5, 2024. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2(b). Public comments were allowed to be submitted through the close of business on February 5, 2024. No

comments were received. No other documents were required, and the record was closed on February 5, 2024.

Findings of Fact

First Founders is a licensed property and casualty insurance company incorporated on December 25, 2003, under the laws of the State of New Jersey, and commenced business operations on August 16, 2004. First Founders is a direct wholly owned subsidiary of The Sheppard Group, LLC (i.e., the Seller), a New Jersey Limited Liability Company, which is directly controlled by Shea 2017 Common Trust. First Founders is authorized to transact the business of fidelity and surety insurance as specified in N.J.S.A. 17:17–1(g). First Founders is licensed in the states of New Jersey and New York. First Founders is also authorized by the Bureau of the Fiscal Service, U.S. Department of the Treasury, to write Federal surety bonds. Department of Treasury (2023) Treasury Circular 570.

The Applicants intend to acquire 100% of the issued and outstanding shares of First Founders from the Seller. The Seller owns of 100% of the issued and outstanding securities of the First Founders (10,000 issued and outstanding common shares at \$100.00 par value). In consideration of Proposed Acquisition of Control, TGHC will pay Seller in cash the Closing Date Purchase Price¹, which shall not be lesser than \$12,800,000 (the “Floor”) subject to adjustment but not greater than \$13,600,000 (the “Cap”), as set forth in the SPS Agreement. In the event the purchase price is calculated to exceed the Cap, First Founders either will (i) issue a distribution or

¹ “Closing Date Purchase Price” – means (a) 2.25 times the result of (i) the First Founders’ surplus as regards policyholders determined in accordance with SAP as set forth on the First Founders’ most recent financial statements (annual or quarterly, as the case may be); (ii) plus or minus (as the case may be) the Adjusted Amount; (iii) plus Potential Recoveries; plus (b) Adjusted Estimated Reserves.

(ii) redeem shares of its stock, in each case in an amount to reduce the purchase price so it does not exceed the Cap and pay the Seller such amounts (the “Pre-closing Adjustment”). Among other terms, the SPS Agreement sets forth (i) the formula for determining any payment to Seller of Pre-closing Adjustments (adjustments, if any, prior to closing to reduce the purchase price to the Cap or less through First Founders payment of distributions and dividends or redeeming shares of First Founder’s capital stock prior closing), and (ii) post-closing purchase price adjustments payable to either the Seller or to Applicant, based upon First Founder’s surplus.

Upon consummation of the proposed acquisition of control, First Founders will become a direct wholly owned subsidiary of TGHC, which is a direct wholly owned subsidiary of TG, a publicly traded entity listed on the Toronto Stock Exchange under the symbol “TSU.”

TGHC is a Delaware domiciled insurance holding company incorporated on April 4, 2023, formed to acquire First Founders. TG was incorporated under the Business Corporations Act (Ontario) on January 27, 2017. TG is a platform for specialty insurance, operating surety, risk solutions, corporate insurance, and program insurance business lines. TG has investments in wholly owned subsidiaries in Canada and the United States through which it conducts insurance and reinsurance operations.

TG owns subsidiaries Trisura Insurance Company (“TIC” NAIC #22225), Trisura Specialty Insurance Company (“TSIC” NAIC #16188), and Bricktown Specialty Insurance Company (“BSIC” NAIC #17166). In Canada, TG owns Trisura Guarantee Insurance Company (“Trisura Canada”). TIC, TSIC and BSIC are Oklahoma-based insurance companies primarily focused on targeted business written with Program Administrators or Managing General Agents. TIC provides surety solutions and focuses on mid-market risks in contract surety, commercial surety, and fidelity.

The source of funds is existing cash on hand within TG. Immediately prior to the closing, TG will contribute the cash necessary to pay the Closing Date Purchase Price to TGHC. TG will not finance any portion of TGHC's acquisition of First Founders. The nature and amount of consideration for the acquisition was determined through arms-length negotiations.

Applicants represent that they have no present plans for First Founders to declare extraordinary dividends. Further, the Applicants have no plans to liquidate, sell any assets of First Founders other than asset sales in the ordinary course of business. The Applicants intend to appoint new directors and officers for First Founders, each of whom is experienced in the insurance industry and currently affiliated with TG. The Applicants have no current plans to make any material changes in the business operations, other than those described in the Form A filing. Applicants plan to continue to operate and expand First Founders as an issuer of surety bonds in the jurisdictions in which the First Founders is admitted and authorized to write surety business.

The Applicants provided three years of pro-forma financial projections for First Founders. Surplus is projected to increase from \$6,017,955 at year-end 2024 to \$6,426,693 at year-end 2025. The Applicants project growth in direct premiums written through expansion to additional states and additional capacity due to anticipated increases in financial ratings.

Applicants submitted TG's Audited Consolidated Financial Statements for the year ended December 31, 2022 and for the year ended December 31, 2021, which includes the year ended December 31, 2020 comparative statement ("Consolidated Financial Statements") and unaudited consolidated financial statements through September 30, 2023. The Consolidated Financial Statements comprise the financial results of TG and all entities controlled by TG on a consolidated basis of presentation. TG's Consolidated Financial Statements have been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International

Accounting Standards Board. TG's Consolidated Financial Statements at December 31, 2022, and 2021, contain an unqualified audit opinion. Likewise, TG's Consolidated Financial Statements at December 31, 2021 and 2020, also contain an unqualified audit opinion. For the years ended December 31, 2022, 2021, and 2020, TG's Consolidated Financial Statements report assets of \$3.162 billion, \$2.347 billion, and \$1.335 billion, respectively.

Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

(1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:

(i) After the change of control the 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 it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein ... [applying the competitive standard as set forth in the statute];

(iii) 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;

(iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring

party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

(v) 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 unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) 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 of the insurer and of the public to permit the merger or other acquisition of control; or

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

Upon a review of the documents submitted into evidence, the Department staff has determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, First Founders will continue to meet the requirements to transact the business for which it is presently licensed pursuant to Title 17 of the New Jersey Statutes. There is nothing in the record to indicate that, after the proposed transaction, First Founders would not be able to continue to satisfy the requirements to transact the business for which they are presently licensed.

Second, it does not appear that the proposed transaction will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1d shall apply. The statute utilizes a complex formula based on the market

shares of the insurers involved in the transaction. First Founders and TIC, an Oklahoma domiciled insurer, which is wholly owned by TG and thus an involved insurer, compete in one line of insurance: Surety. Based on market data for the U.S. States and Territories for 2022, TG held a market share of 0.15% in the line of Surety. Data for 2022 indicates TIC wrote direct written premiums of \$94 thousand and \$167 thousand in 2021 and 2022, respectively, in New Jersey. In New Jersey, First Founders wrote direct written premiums of \$395 thousand for the year ended 2022, and \$345 thousand for the year ended 2021. Combined, TIC and the First Founders represent less than 1% of the surety market in New Jersey. The statute by its terms does not apply if, “as an immediate result of the acquisition, the combined market share of the involved insurers would not exceed five percent of the total market...” N.J.S.A. 17:27A–4.1b(2)(d). Based on market data, the combined market shares for the First Founders, TG and TG’s subsidiaries would not exceed five percent of the total market for the line of Surety in which they compete. Accordingly, the proposed acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A–4.1 because it does not substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, it does not appear that the financial condition of the Applicants will jeopardize the financial condition of the First Founders. TG’s Consolidated Financial Statements for the years ended December 31, 2022 and 2021, and for the years ended December 31, 2021 and 2020 were reviewed for adequacy and the review revealed no concerns. As noted above, TG is a publicly traded entity listed on the Toronto Stock Exchange. Accordingly, the amounts in TG’s Consolidated Financial Statements are presented in Canadian Dollars. For the purpose of addressing the factors in N.J.S.A. 17:27A–2(d)(1)(iii) and (iv), the Department converted the amounts into U.S. Dollars. For the years ended December 31, 2022, 2021, and 2020, TG’s Consolidated Financial Statements report assets of \$3.162 billion, \$2.347 billion, and \$1.335

billion, respectively. According to the Applicant's financial information, it does not appear that the financial condition of First Founders will be jeopardized.

Fourth, it appears that the financial condition of the Applicants is such that they have been solvent for the three-year period immediately prior to the date of the proposed acquisition. TG's Consolidated Financial Statements for the years ended December 31, 2022, 2021, and 2020 report positive net income from operations before taxes. For the years ended December 31, 2022, 2021, and 2020, TG's Consolidated Financial Statements report net income before taxes of \$26.16 million, \$62.95 million, and \$30.89 million, respectively. Furthermore, for the years ended December 31, 2022, 2021, and 2020, TG's Consolidated Financial Statements report Capital and Surplus of \$356.8 million, \$280.8 million, and \$226.8 million. Finally, no debt or loans will be utilized to fund the acquisition. As stated above, Applicants have not, and will not be borrowing or financing any funds for the acquisition. The source of funds for the acquisition is existing cash within TG. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the Applicants do not propose to liquidate the First Founders nor sell its assets. No extraordinary dividends, liquidation, sale, merger, or other material change is anticipated in connection with this change of control, other than those described in the Form A filing.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience, and integrity of the person who will control the operations of the First Founders are such that it would not be in the best interest of the policyholders and of the public to permit the acquisition of control.


Seventh, there is nothing in the record from which it may be concluded that the proposed transaction is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

Recommendation

Based on the foregoing analysis, the Department staff recommend that the proposed transaction be approved.

Upon a review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff I therefore recommend that the proposed transaction be approved.

February 6, 2024
Date



Lauren Glantzberg
Hearing Officer

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Exhibits List

In the Matter of the Acquisition of Control of First Founders Assurance Company (the “Domestic Insurer”) by Trisura Guarantee (US) Holding Company and Trisura Group Ltd (each an “Applicant” and collectively, the “Applicants”)

- Exhibit 1 Form A Statement and related filings dated September 15, 2023.
- Exhibit 2 Applicants submitted supplemental information on October 18, 2023.
- Exhibit 3 Applicants submitted supplemental information on October 24, 2023.
- Exhibit 4 Applicants submitted an Amended and Restated Form A Statement dated November 13, 2023, and related filings on November 14, 2023.
- Exhibit 5 Applicants resubmitted biographical affidavits in public redacted form and confidential filing on November 15, 2023.
- Exhibit 6 Applicants submitted supplemental information on December 14, 2023.
- Exhibit 7 Applicants submitted supplemental information and Trisura Group Ltd. Consolidated Financial Statement as of September 30, 2023, on January 5, 2024.
- Exhibit 8 Applicants submitted supplemental information on January 10, 2024.
- Exhibit 9 Applicants submitted supplemental information on January 12, 2024.
- Exhibit 10 Applicants submitted supplemental information on January 16, 2024.
- Exhibit 11 Applicants submitted supplemental information on January 17, 2024.
- Exhibit 12 Applicants submitted supplemental information on January 19, 2024.
- Exhibit 13 Applicants submitted supplemental information on January 23, 2024.
- Exhibit 14 Applicants submitted a Second Amended and Restated Form A Statement dated as of January 23, 2024.
- Exhibit 15 Applicants submitted supplemental information on January 24, 2024.
- Exhibit 16 Waiver of 20–day notice of hearing submitted by Robert Ansehl, Partner, Thompson Hine LLP, Attorneys At Law, on behalf of the Domestic Insurer.
- Exhibit 17 Waiver of 20–day notice of hearing submitted by Anna Mandel, Associate, ArentFox Schiff LLP, on behalf of the Applicants.

- Exhibit 18 Affidavit of Publication of Notice of Hearing in The Record, reflecting publication on January 29, 2024.
- Exhibit 19 Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on January 29, 2024.
- Exhibit 20 Affidavit of Publication of Notice of Hearing in Star Ledger, reflecting publication on January 29, 2024.