

GNW/China Oceanwide: Delaware Insurance Staff Recommends Deal Approval at Public Hearing; McInerney Anticipates Dec. 31 Closing

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Takeaways

The staff of the Delaware Department of Insurance, or DOI, recommended that the department approve the acquisition of Genworth Financial by China Oceanwide. The staff statement came during the DOI's public hearing on the transaction today, Nov. 28.

Dave Lonchar, director of DOI's Bureau of Examination, Rehabilitation and Guaranty testified in front of retired judge Stephen Lamb, that the "department recommends approval of the application."

Genworth CEO Tom McInerney, CFO Kelly Groh, chief compliance and security officer John Apostle as well as China Oceanwide director Xiao Xiao Zhao also testified in support of the merger. They were not cross examined by DOI and there were no witnesses who spoke in opposition to the deal.

McInerney reiterated that the parties expect to close the transaction by the end of 2018. In addition to Delaware, the parties require insurance approvals from Virginia, North Carolina and New York insurance regulators, all of which are coordinating their reviews with DOI. The parties also require approvals from Chinese regulators SAFE and MOFCOM, which is now part of SAMR.

The staff of the Delaware Department of Insurance, or DOI, today, Nov. 28, formally recommended that the regulator approve the acquisition of Genworth Financial by China Oceanwide. Dave Lonchar, director of the DOI's Bureau of Examination, Rehabilitation and Guaranty testified at the regulator's public hearing on the transaction that the applicants met all of the statutory requirements for a change of control under Delaware law.

Insurance Commissioner Trinidad Navarro tapped former Chancery Court Judge Stephen Lamb, now of Paul Weiss, to act as hearing officer for the proceeding and to provide him with a recommendation based upon the evidence and testimony introduced today.

Lamb also heard from a variety of Genworth executives, including CEO Tom McInerney, CFO Kelly Groh, chief compliance and security officer John Apostle and senior actuary Harry Dunn. China Oceanwide director Xiao Xiao Zhao also testified. There was no cross of the witnesses nor were any witnesses presented in opposition to the deal.

McInerney reiterated that the parties expect to close the merger by the end of 2018, anticipating that the remaining regulatory approvals would be obtained by then. In addition to Delaware, the parties require approvals from the Virginia Bureau of Insurance, the New York Department of Financial Services and the North Carolina Department of Insurance. Counsel for the DOI stated that those regulators were coordinating with Delaware to review the deal. The merging parties also require approval from two Chinese regulators, the State Administration for Foreign Exchange and the Ministry of Commerce. The parties have won the approval of China's National Development and Reform Commission.

Both McInerney and Zhao directly addressed a negative research report issued by Hindenburg Research, an investment company that is short Genworth stock. Hindenburg filed a letter with the DOI but did not testify. McInerney and Zhao vigorously refuted Hindenburg's claims as wholly unfounded and based on flawed, cursory research.

Remaining regulatory risk should be viewed as relatively low. This is due to the positive recommendation by DOI staff, the coordination between DOI and other remaining state insurance regulators and the rarity of SAFE or MOFCOM disapproving foreign currency outflows after NDRC affirms them. Should foreign currency controls prove an issue with Chinese regulators, the parties have proposed an alternative financing plan involving offshore entities which is accounted for in the DOI staff approval recommendation.

The DOI repeatedly cited the commitment by China Oceanwide to commit significant funds to stabilize Genworth's finances, including \$175 million capital contribution to the ailing long term care insurance subsidiary, or GLIC, and \$200 million redemption of an inter-affiliate note. Consequently, according to the DOI, GLIC's capital reserves will increase by \$175 million and its liquidity will increase by a total of \$375 million. The DOI also cited the commitment by China Oceanwide to add an additional \$1.5 billion in capital no later than March 2020.

Lonchar also detailed the steps taken by the DOI to verify and assess the merger application representations. For example, Lonchar said that the DOI had hired Kroll, a worldwide investigative firm, to conduct background checks in China of China Oceanwide's executives and outside auditors.

At the conclusion of the hearing, the DOI and the merging parties said they would work together to submit a single recommended order to Lamb. Lamb did not specify a date by which he wanted the proposal submitted. Lamb will, in turn, make his recommendation to Insurance Commissioner Navarro.

--Andrew Lowenthal