



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

-----X  
 In the Matter of: X  
 X  
 PROPOSED ACQUISITION OF CONTROL OF: X  
 SENIOR WHOLE HEALTH OF CONNECTICUT, INC., a X  
 Connecticut health care center X  
 by X Docket No. EX 07-15  
 FLEXPOINT FUND, L.P., a limited partnership organized X  
 under the laws of Delaware X  
 -----X

### DECISION AND ORDER

#### I. INTRODUCTION

On February 1, 2007, Flexpoint Fund, L.P. a Delaware limited partnership (“Flexpoint” or “Applicant”), filed an Application on Form A (“Application”) with the Connecticut Insurance Department (the “Department”) pursuant to 38a-129 to 38a-140 of the Connecticut General Statutes requesting approval by the Insurance Commissioner of the State of Connecticut (“Commissioner” or “Insurance Commissioner”) for the Proposed Acquisition of Control (the “Proposed Acquisition” or “Controlling Interest”) of Senior Whole Health of Connecticut, Inc., a Connecticut health care center (“SWHCT” or “HCC”).

Senior Health Holdings, LLC, a Delaware limited liability company, (“SHH”) and its wholly-owned subsidiary, Senior Health Holdings, Inc., a Delaware corporation (“SHH, Inc.”) jointly own SWHCT. The Proposed Acquisition of a controlling interest of SWHCT, if approved, will be achieved when the applicant acquires an additional 1,982,822 SHH Class B Preferred Units pursuant to an Amended and Restated Purchase and Exchange Agreement by and among SHH, the Investors Named Therein and the Other Parties Named Therein, dated December 18, 2006 and pursuant to a Limited Liability Company Agreement of SHH by and among SHH and the executing Members dated December 18, 2006 (the “Agreements”). Pursuant to the Agreements, Flexpoint paid \$4,575,000 for 1,672,149 newly issued Class B Preferred Units in SHH and loaned \$5,425,000 to SHH, Inc. in exchange for a Promissory Note. Flexpoint will exchange the existing Promissory Note, including the principal and accrued interest, for an additional 1,982,822 Class B Preferred Units of SHH. This will bring Flexpoint’s total ownership in SHH to approximately 19.42%.

On February 14, 2007, I issued a notice of hearing in which I ordered that a public hearing concerning the application for approval of the Proposed Acquisition of Control of the HCC be held on March 7, 2007. The hearing notice was subsequently published in *The Hartford Courant*, once a week for two consecutive weeks during the period of February 15, 2007 to March 2, 2007, inclusive. The notice of hearing was also filed by the Department with the Office of the Secretary of State on February 14, 2007 and was published on the Department’s Internet website. In accordance with section 38a-8-48 of the Regulations of the Connecticut State Agencies, the following were designated as parties to this proceeding: the Applicants and the HCC.

The following individuals participated in and/or testified at the public hearing on behalf of the Applicant and HCC:

Charles E. Glew, Jr., Principal, Flexpoint Partners, LLC

John Kreitler, Esq., Shipman & Goodwin LLP represented the Applicant. Edward J. Samorajczyk, Jr., Esq. of Robinson & Cole LLP represented the HCC.

The following Department staff participated in the public hearing:

Beth Cook, Esq., Kathy Belfi and Joan Nakano.

Pursuant to the published hearing notice, the public was given an opportunity to speak at the hearing or to submit written comments no later than the close of business on March 2, 2007 by an Order dated February 14, 2007. No public officials or members of the public signed up to speak, spoke at the hearing, or submitted written testimony.

## II. FINDINGS OF FACT

After reviewing the exhibits entered into the record of this proceeding, and based on the written and oral testimony of the witnesses, the undersigned makes the following findings of fact:

1. Flexpoint was formed on December 15, 2004 and went effective October 2005.
2. Flexpoint is a private equity fund focused on investing in health care and financial services industries.
3. Flexpoint currently has \$225,000,000 of committed capital for investment at its sole discretion.

4. The sole Principals of Flexpoint are Donald J. Edwards, Ethan A. Budin, and Charles E. Glew, Jr.
5. The Principals of Flexpoint are experienced investors and investment managers, particularly in health care and financial services industries.
6. Pursuant to the Agreements, Flexpoint paid \$4,575,000 for 1,672,149 newly issued Class B Preferred Units in SHH and loaned \$5,425,000 to SHH, Inc. in exchange for a Promissory Note.
7. Flexpoint will exchange the existing Promissory Note, including the principal and accrued interest, for an additional 1,982,822 Class B Preferred Units of SHH. This will bring Flexpoint's total ownership in SHH to approximately 19.42% which will be a controlling interest.
8. The parties agreed upon the terms of the Agreement and the Note Purchase Agreement pursuant to arm's length good faith negotiations.
9. In determining the amount of consideration, the parties agreed upon an internal valuation of SHH.
10. The biographical affidavits of the principals of Flexpoint which include each individual's educational background, professional credentials, and employment history, are included in the record and the files of the Insurance Department.
11. Following the exchange of the Promissory Note for the additional shares, Mr. Glew will serve as Flexpoint's representative on the Boards of both SHH and SWHCT.

12. Flexpoint's ownership interest in SHH and the HCC does not provide sufficient rights or authority to dictate the actions of either SHH or the HCC. Therefore, following the Proposed Acquisition, the Applicant does not intend any material changes in the operation, corporate structure or management of either SHH or the HCC.
13. Following the Proposed Acquisition, SWHCT will continue to operate from its current statutory home office location at 290 Pratt Street, Meriden, CT 06450.
14. Flexpoint, in conjunction with a vote of the majority in interest of the holders of the Class B Preferred Units, can request after December 2011 that SHH redeem the Class B Preferred Units.

### III. DISCUSSION

Section 38a-132(b) of the Connecticut General Statutes specifically requires the approval of the proposed acquisition of control of the HCC unless it is determined that:

- (A) After the change of control, the HCC would not be able to satisfy the requirements for the issuance of licenses to write the lines of business for which they are presently licensed;
- (B) The effect of the merger or acquisition of control would be to substantially lessen competition of insurance in this state or tend to create a monopoly in Connecticut;
- (C) The financial condition of the acquiring party is such as might jeopardize the financial stability of the HCC or prejudice the interests of its policyholders;
- (D) The plans or proposals which the acquiring party has to liquidate the HCC, 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 HCC and not in the public interest;

- (E) The competence, experience and integrity of those persons who would control the operations of the HCC are such that it would not be in the interest of the policyholders of the HCC and of the public to permit the merger or acquisition of control; or
- (F) The acquisition of control of the HCC is likely to be hazardous or prejudicial to those buying insurance.
  - A. The ability of the HCC to satisfy the requirements for the issuance of licenses to write the line or lines of business for which they are presently licensed following the proposed acquisition of control.**

The HCC is a domestic insurance company currently licensed pursuant to section 38a-41 of the Connecticut General Statutes. Section 38a-72 of the Connecticut General Statutes requires that a domestic health care center must have a minimum of \$500,000 in capital and \$500,000 in paid-in surplus in the aggregate. The HCC currently satisfies the requirements for the issuance of a license to write the lines of business for which it is licensed.

As noted in the findings of fact, following consummation of the Proposed Acquisition, the Applicant has no plans or proposals to make any material changes in the operation, corporate structure or management of either SHH or the HCC. In addition to the criteria set forth in section 38a-72 of the Connecticut General Statutes, the Department considers the location of the insurer and the management of the company when evaluating an insurer's ability to operate pursuant to 38a-41 of the Connecticut General Statutes. The HCC will continue to operate at its Connecticut statutory location with its current management.

The Applicant also submitted evidence that the information contained in the biographical affidavits for the principals of the Applicant, and the proposed Applicant representative to the SHH and HCC Boards, attest to the competence, experience and integrity of the individuals who

will hold the controlling interest and responsibility for the governance and operation of the HCC, and should insure the safe and expert operation of the HCC following the Proposed Acquisition of a controlling interest.

Accordingly, it is the conclusion of the Insurance Department that the evidence contained in the record supports a finding that the Applicant will be able to satisfy the requirements for the issuance of the necessary license of an insurer for which it is presently licensed following the proposed acquisition of control of the HCC.

**B. Whether the effect of the Proposed Acquisition would be to substantially lessen competition of insurance in this state or tend to create a monopoly herein.**

The Proposed Acquisition of a controlling interest by Flexpoint would have no effect on competition in this state nor would it tend to create a monopoly therein.

**C. Whether the financial condition of the Applicant is such as might jeopardize the financial stability of the HCC or prejudice the interests of their policyholders.**

Based on the written testimony and the evidence contained in the record, there is no evidence that would indicate the financial condition of the Applicant might jeopardize the financial condition of the HCC, or prejudice the interest of the policyholders. On the contrary, the financial stability of the HCC is strengthened through this investment by Flexpoint.

**D. Whether the plans or proposals which the Applicant has to liquidate the HCC, sell their assets or consolidate or merge them with any person, or to make any other material change in their business or corporate structure or management, are unfair and unreasonable to policyholders of the HCC and not in the public interest.**

The record reveals that the Applicant has no current plans or proposals to liquidate the HCCs, to sell their assets, or consolidate or merge them with any other entity.

Accordingly, the record supports the conclusion that there are no plans or proposals for the HCC that are unfair and unreasonable to policyholders of the HCC or not in the public interest.

**E. Whether the competence, experience and integrity of those persons who would control the operation of the HCC are such that it would not be in the interest of the policyholders of the HCC and of the public to permit the Proposed Acquisition or other acquisition of control.**

The record includes the biographical affidavits of those individuals who are the principals of the Applicant and who will represent the Applicant on the boards of SHH and the HCC following the Proposed Acquisition of a controlling interest. The biographical affidavits disclose each individual's educational background, professional credentials and their employment history. In addition, the Applicant has represented, and the biographical affidavits confirm, that during the last ten years none of the proposed directors or officers of the Applicants and HCC have been convicted in a criminal proceeding (excluding minor traffic violations) or have been convicted or otherwise penalized for violating any federal or state law regulating the business of insurance securities or banking, (or in the case of an alien person, such equivalent provision as applicable). During the last ten years, none of the proposed directors or officers of the Applicants have been the subject of any proceeding under the Federal Bankruptcy Code, (or in the case of an alien person, such equivalent provision as applicable) or have been affiliated with a business or organization which has been subject to such proceeding.

Furthermore, no principal of the Applicant has had a revocation, suspension or disciplinary sanction imposed against him by a governmental agency. None of the filed biographical affidavits contain any information that reflects negatively on the integrity of these

individuals. The competence, experience, and integrity of those persons who would achieve a controlling interest of the HCC after the Proposed Acquisition is such that it would be in the interest of policyholders of the HCC, and in the public interest to permit the Proposed Acquisition.

**F. Whether the acquisition is likely to be hazardous or prejudicial to those buying insurance.**

Based on the financial strength of the Applicant, the affirmation that the current plans of the Applicant for the HCC will provide a strong and stable financial environment for the HCC, it is hereby concluded that the proposed acquisition of control of the HCC is not likely to be hazardous to those buying insurance.

Accordingly, assuming compliance with all of Connecticut's insurance statutes and regulations, it is reasonable to conclude that the proposed acquisition of a controlling interest of the HCC is not likely to be hazardous to those buying insurance.

**IV. DECISION**

Accordingly, based on the foregoing findings of fact and discussion, the written testimony and exhibits submitted, the record of the March 7, 2007 public hearing, and the recommendation of the Insurance Department staff, I conclude that the Applicants have satisfied the statutory criteria as provided in section 38a-132(b) of the Connecticut General Statutes. Accordingly, I find that pursuant to the relevant section 38a-132(b) of the Connecticut General Statutes that after the proposed acquisition of a controlling interest (a) the HCC will be able to meet the requirements for licensing in this state; (b) the effect of the acquisition of the controlling interest will not be to substantially lessen competition in this state or tend to create a

monopoly therein; (c) the financial condition of the Applicants is not such as might jeopardize the financial stability of the HCC, or prejudice the interest of their policyholders; (d) the plans or proposals for the HCC are not unfair and unreasonable to their policyholders, and are in the public interest; (e) the competence, experience and integrity of the Principals of the Applicant is such that it would be in the interest of policyholders of the HCC, and of the public to permit the proposed acquisition of the controlling interest; and (f) the acquisition of the controlling interest of the HCC is not likely to be hazardous or prejudicial to those buying insurance.

Accordingly, I order the following:

1. The Form A Application of the Applicant, in which it seeks approval to acquire a controlling interest of the HCC, is hereby approved.
2. The Applicant shall provide the Chief Examiner of the Financial Analysis Division of the Insurance Department with written confirmation of the consummation of the acquisition of the controlling interest by the end of the month the acquisition of the controlling interest takes place.
3. Within fifteen (15) days following the end of the month in which the proposed acquisition of the controlling interest is consummated, the HCC shall file an amended Insurance Holding Company System Annual Registration Statement pursuant to section 38a-138-10 of the Regulations of Connecticut State Agencies.
3. If the proposed transaction is not consummated within three (3) months of the date of this Order and the Applicant intends to consummate the proposed transaction, the Applicant shall submit to the Commissioner a statement, which shall include (1) the reason for the Applicant's inability to consummate the proposed transaction; (2) any material changes

in the information contained in the Form A Application; and (3) the current financial statements of the Applicant and the HCC.

4. For a period of two (2) years, the HCC shall file semiannually with the Insurance Department, commencing six months from consummation of the transaction, a report under oath of its business operations in Connecticut, including but not limited to, changes to the business of the HCC; employment levels; changes in officers or board members of the HCC; any changes in the statutory location in Connecticut; and, notice of any statutory compliance or regulatory actions taken by other state regulatory authorities against the HCC.
5. The Applicants shall pay expenses incurred by the Insurance Commissioner in connection with the Insurance Department's review of the captioned transaction pursuant to sections 38a-132(a)(3) and 38a-132(c) of the Connecticut General Statutes.

Dated at Hartford, Connecticut, this 19<sup>th</sup> day of March, 2007.

  
\_\_\_\_\_  
Susan F. Cogswell  
Insurance Commissioner