

FEDERAL RESERVE SYSTEM

Order Determining that Certain Activities Are Complementary to the Financial Activity of Underwriting and Selling Health Insurance

The Federal Deposit Insurance Corporation (“FDIC”) has asked the Board to determine whether the disease management and mail-order pharmacy activities described below and conducted by WellPoint, Inc. (“WellPoint”), Indianapolis, Indiana, are permissible for a financial holding company (“FHC”) under the Bank Holding Company Act (“BHC Act”), as amended by the Gramm-Leach-Bliley Act (“GLB Act”). WellPoint has filed an application with the FDIC to obtain deposit insurance for a proposed de novo industrial loan company (“ILC”), ARCUS Financial Bank, Salt Lake City, Utah (“Bank”).¹ The FDIC has imposed a temporary moratorium on acting on applications for deposit insurance by ILCs controlled by companies that are engaged in any nonbanking activity that is not permissible for an FHC under section 4 of the BHC Act² or for all savings and loan holding companies under the Home Owners’ Loan Act.³

Section 4(k) of the BHC Act permits a bank holding company that qualifies to be an FHC to engage in a broad range of activities that are defined by

¹ Because of the special exception from the definition of “bank” in the BHC Act for ILCs chartered in certain states (12 U.S.C. § 1841(c)(2)(H)), WellPoint would not become a bank holding company on acquisition of Bank. This order addresses only the issue of whether the disease management and mail-order pharmacy activities described below are permissible for FHCs. This order does not address any other issues raised by the deposit insurance application filed by WellPoint with the FDIC or the special ILC exception in the BHC Act.

² 12 U.S.C. § 1843.

³ See Moratorium on Certain Industrial Bank Applications and Notices, 72 Federal Register 5290 (Feb. 5, 2007). The FDIC’s moratorium is scheduled to expire on January 31, 2008.

statute to be financial in nature.⁴ The BHC Act also permits FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.⁵

In addition, the BHC Act permits an FHC to engage in any activity that the Board (in its sole discretion) determines, by regulation or order, is “complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.”⁶ This statutory provision was intended to allow the Board to permit an FHC to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature when the activity is meaningfully connected to a financial activity such that it complements the financial activity.⁷ This limited authority was designed to allow FHCs to remain competitive with other providers of financial services and to better provide financial services to their customers in a developing marketplace. Although WellPoint is not a bank holding company, the FDIC has requested that the Board determine the permissibility of WellPoint’s disease management and mail-order pharmacy activities under the BHC Act, as amended by the GLB Act.

WellPoint is principally engaged in underwriting and selling health insurance. Underwriting and selling health insurance as principal, agent, or broker

⁴ See 12 U.S.C. § 1843(k)(4).

⁵ Id. at § 1843(k)(1)(A) and (2).

⁶ Id. at § 1843(k)(1)(B).

⁷ See 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) (“It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.”).

are activities deemed by Congress in the GLB Act to be financial in nature.⁸

WellPoint is one of the largest health insurance companies in the United States, with total revenues of \$57 billion for the year ending December 31, 2006, and total assets of \$51.8 billion as of December 31, 2006. WellPoint, through its regulated insurance company subsidiaries, provides health insurance in 21 states, is the Blue Cross/Blue Shield licensee in 14 states, and provides health insurance to more than 34 million members. WellPoint's insurance offerings include preferred provider, health maintenance, point of service, Medicare and Medicaid health plans; vision, dental, pharmacy benefit, life, disability, and long-term care insurance products; and consumer-directed, high-deductible, and limited-service health insurance products. WellPoint also engages in a variety of related activities, including claims processing.

In addition, WellPoint provides disease management and mail-order pharmacy services to persons who obtain health insurance from WellPoint or another insurance company. These activities are conducted through subsidiaries that are not themselves insurance companies. Through its disease management services, WellPoint provides insurance plan members with access to a variety of tools and resources designed to help them maintain healthy lifestyles and properly manage their medical conditions. For example, WellPoint uses data analysis software to identify plan members that have, or are at high risk of developing, chronic or complex health conditions, such as diabetes or kidney or heart disease. WellPoint employees then contact and work with the plan member (and his or her physician, as appropriate) to provide information on treatment options and ways of managing the member's care in an appropriate and cost-effective manner and to

⁸ 12 U.S.C. § 1843(k)(4)(B).

help coordinate the member's access to and use of health services and related insurance coverages.

Other disease management services provided by WellPoint to plan members include flu vaccinations; health screenings and assessments (e.g., for cholesterol or blood pressure); a toll-free "Nurse Line" to respond to questions about injuries or conditions; access to online and audiotape libraries with information on a wide variety of health topics; and assistance in developing personalized plans for achieving a variety of health-related goals, such as tobacco-use cessation, weight and stress management, and proper diet and nutrition. These disease management services typically are provided by, or under the direction of, licensed health care professionals (including doctors and nurses) employed by WellPoint.

The WellPoint subsidiaries engaged in providing mail-order pharmacy services fill prescriptions for customers who have pharmacy benefit insurance coverage from WellPoint or another insurance company, provide drug-related information to customers, and track potential issues with customer prescriptions, such as drug interactions. WellPoint's mail-order pharmacy subsidiaries are state-licensed and employ state-licensed pharmacists. WellPoint has indicated that most customers who use mail-order pharmacy services are persons with chronic health conditions or "maintenance" medication requirements.⁹

⁹ WellPoint offers these mail-order pharmacy services as part of a broader "pharmacy benefit management" program offered by its subsidiaries. Pharmacy benefit managers ("PBMs") provide employers a variety of services to improve the pharmacy benefit coverages for employees, including arranging a network of retail pharmacies where plan members can fill prescriptions under the plan and assisting plan sponsors in developing and managing the list of drugs and their costs that the plan will cover. See Federal Trade Commission, Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies at p. ii (August 2005) ("FTC Report").

WellPoint's disease management and mail-order pharmacy activities are not within the scope of activities that, to date, have been determined to be financial in nature, incidental to a financial activity, or complementary to a financial activity under the BHC Act. The activities do not themselves involve the provision of insurance, are not regulated as insurance by state insurance authorities, and are not provided by an affiliate that is licensed as an insurance company or as an insurance agent or broker. Both activities also involve the provision of health care services that, while related to insurance underwriting activities, are themselves nonfinancial activities. The Board concludes, however, for the reasons set forth below, that there is a reasonable basis for construing these activities as complementary to a financial activity within the meaning of the GLB Act.

Both disease management and mail-order pharmacy activities help employers that obtain health insurance from an insurance company to manage and reduce the risks and costs of providing health insurance to employees. WellPoint has indicated that many of its customers request or demand that health insurers include disease management services or mail-order pharmacy services in the health insurance program designed for the customer and its employees. WellPoint has indicated that employers do so because the services help employers better manage and reduce their health insurance costs (i) in the case of disease management services, by promoting healthy lifestyle choices, reducing unnecessary doctor or hospital visits, and assisting customers with chronic conditions in developing and pursuing available treatment options to manage properly their condition; and (ii) in the case of mail-order pharmacy services, by providing employers and employees (particularly those with chronic conditions) access to a low-cost provider of prescriptions.

WellPoint also has provided data demonstrating that many of the largest health insurers in the United States provide disease management and mail-order pharmacy services both to their own insurance customers and to customers of other health insurance companies. These data indicate, for example, that of the ten largest health insurers in the United States in terms of the dollar value of direct premiums written in 2006, six provide disease management services and five provide mail-order pharmacy services.¹⁰ These data also indicate that for both services all but one of these large insurance companies currently provide the service to customers who obtain health insurance from the insurance company or another insurance company. The Federal Trade Commission also has found that many large insurers provide “in-house” PBM services and that many PBMs own their own mail-order pharmacies.¹¹

Based on the foregoing and other facts of record, the Board concludes that disease management and mail-order pharmacy activities complement the financial activity of underwriting and selling health insurance.

As noted above, section 4(k)(1)(B) of the BHC Act requires that the Board determine that any proposed complementary activity does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.¹² Moreover, the Board previously has stated that complementary

¹⁰ These data are based on a 2006 National Association of Insurance Commissioners report of market share by direct premiums written by all accident and health insurance carriers and have been adjusted to exclude certain large insurance carriers that engage exclusively or predominantly in underwriting nonhealth accident insurance.

¹¹ See FTC Report at p. i and v.

¹² 12 U.S.C. § 1843(k)(1)(B).

activities should be limited in size and scope relative to the financial activities that they complement.¹³

WellPoint's disease management and mail-order pharmacy activities in the aggregate currently account for less than 1 percent of WellPoint's consolidated total assets and less than 4 percent of WellPoint's consolidated total annual revenues. The total assets of WellPoint's subsidiaries engaged in disease management and mail-order pharmacy activities also constitute less than 4 percent of the total capital (calculated in accordance with applicable statutory accounting principles) of all regulated insurance company subsidiaries and health plans of WellPoint. To limit the potential size and safety and soundness risks of the proposed activities, the Board has conditioned its determination in this order that the disease management and mail-order pharmacy activities conducted by WellPoint are complementary to a financial activity on the requirement that these activities in the aggregate must not account for more than 2 percent of WellPoint's consolidated total assets or 5 percent of its consolidated total annual revenues. In addition, the total assets of WellPoint's subsidiaries engaged in disease management or mail-order pharmacy activities in the aggregate may not exceed 5 percent of the total capital (calculated in accordance with applicable statutory accounting principles) of all regulated insurance company subsidiaries and health plans of WellPoint.

The Board also has considered the types of risks to which WellPoint is exposed by conducting disease management and mail-order pharmacy activities and confidential information provided by WellPoint concerning how it manages and addresses those risks. WellPoint has indicated, for example, that it maintains

¹³ See 68 Federal Register 68493, 68497 (Dec. 9, 2003).

liability insurance and provides extensive training to the employees engaged in these activities to ensure compliance with applicable laws and regulations, including relevant privacy laws and regulations. The Board notes, moreover, that WellPoint's mail-order pharmacy units and the pharmacists they employ, as well as the doctors and nurses employed by the subsidiaries engaged in disease management services, are licensed and regulated by appropriate state licensing boards.

WellPoint also has indicated that it does not expect that Bank will make loans to, engage in cross-marketing activities with, or have other direct business relationships with the WellPoint subsidiaries that provide disease management or mail-order pharmacy services. Any future extensions of credit by Bank to, or other covered transactions by Bank with, these or other affiliates, including any covered transaction with an unaffiliated person the proceeds of which are transferred to or used for the benefit of an affiliate, must comply with sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W.¹⁴

For these reasons, the Board concludes that the proposed activities do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally.¹⁵

¹⁴ 12 U.S.C. 371c, 371c-1; 12 CFR Part 223.

¹⁵ Because this order is issued in response to a request from the FDIC, the Board has not determined whether WellPoint's conduct of the proposed activities "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." See 12 U.S.C. § 1843(j)(2). For the same reason, the Board has not reviewed the financial and managerial resources of WellPoint and the other factors set forth in section 225.26(b) of the Board's Regulation Y (12 CFR § 225.26(b)).

The Board's decision is based on all the facts of record, including the representations made to the Board in connection with this order. The Board's decision is subject to, and is specifically conditioned on compliance with, the terms and conditions set forth in this order.

By order of the Board of Governors,¹⁶ effective September 7, 2007.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁶ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.