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Corporate & Financial Regulation

MAR 2 7 2012

Pennsylvania Insurance Department

Edward A. Bittner, Jr.

March 27, 2012

Stephen J. Johnson, CPA
Deputy Insurance Commissioner
Office of Corporate Financial Regulation
Pennsylvania Insurance Department
1335 Strawberry Square
Harrisburg, PA 17120

Re: March 13, 2012 letter regarding UPE Responses relating to the

Application of UPE for Approval of Acquisition of Control of Highmark Inc.

and its Pennsylvania Domiciled Insurance Subsidiaries

#### Dear Mr. Johnson:

We are writing in response to your March 13, 2012 letter requesting certain supplemental information with respect to responses filed by UPE to various Information Requests from the Pennsylvania Insurance Department ("Department") as follows:

Request 2.1.4: (C): A supplemental filing will be made by UPE shortly

after the filing of this letter addressing the issue raised in the

March 13 letter.

Request 2.1.5: (B)(4) and (D): A supplemental confidential filing will be

made by UPE shortly after the filing of this letter addressing

the issues raised in the March 13 letter.

Request 2.2.1: (C): A supplemental filing will be made by UPE shortly

after the filing of this letter addressing the issues raised in the

March 13 letter.

Request 2.3.1: (B)(1): A supplemental filing will be made by UPE shortly

after the filing of this letter providing copies of documentation for the Allegheny County Hospital Development Authority Health Facilities Revenue Notes, Series A and Series B of

2006 (West Penn Allegheny Foundation, LLC Project).

(B)(2-4): UPE anticipates that a supplemental filing which may be confidential will be made subsequently concerning WPAHS's response to the issues.

#### Request 2.4.3.8:

(C): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE as to UPE and Highmark.

#### Request 3.2-3.2.5: (B):

A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification concerning the responses to Requests 3.2 and 3.3, indicating that it is with respect to all "material" governmental, regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction. The use of the word "material" is utilized to avoid any misstatement with respect to any non-material or minor notification requirement not affecting the Transaction in any material fashion. In addition, because certain information requested by 3.2 and 3.3 consists of ongoing information, the certification will indicate that the requested information has been provided to the date of the most recent submission with respect to Requests 3.2 and 3.3. UPE will continue to make supplemental responses as additional information becomes available.

# <u>Request 3.4.1</u>:

UPE's previous response includes the complete analysis of whether the Transaction requires the filing of a Notification and Report form under the Hart-Scott-Rodino Antitrust Act of 1976 ("HSR Act"), 18 U.S.C. Section 18a. The analysis set forth in Ms. Dermody's correspondence with Michael Verne of the Federal Trade Commission's Premerger Notification Office ("PNO") fully describes the application to the Transaction of the Section 802.4 exemption, 16 C.F.R. Section 802.4, which compels the conclusion that no filing is necessary. Mr. Verne promptly concurred in the analysis, finalizing the matter. Such communications between parties to a transaction and the PNO are common practice among antitrust practitioners, and the PNO staff regularly provides such advice regarding the FTC's position. Once the analysis was complete, and the agency with regulatory oversight had concurred in that analysis, no further work was necessary.

- (1) With respect to the timing of the analysis and confirmatory correspondence, no changes have occurred either in the Hart-Scott-Rodino regulatory requirements or the Transaction that would affect this analysis in any way.
- (2) Ms. Dermody's analysis (attached hereto as Exhibit A) states: "Each of the existing entities will consolidate their entire operations into the newly-created nonprofit." It does not use the plural "nonprofits," as noted in the question. The statement refers solely to UPE.
  - (a) The analysis of the filing requirements under the HSR Act is separate from the Form A filing and has no impact on that filing. The term "consolidation" when used in the HSR context includes a combination that is not a statutory merger but results in each of the entities losing its preacquisition identity or becoming a wholly-owned subsidiary of a newly formed entity. The term "affiliation" is not used in the HSR regulatory scheme. See 16 C.F.R. Section 801.2(d). The use of the HSR regulatory term "consolidation" in this analysis has no implications outside the HSR context.
  - (b) Highmark does not view this as a consolidation; it is an affiliation that will not affect liability with respect to the tax-exempt bonds. Only WPAHS entities will be liable with respect to the tax-exempt bonds.
- (3) (a) Ms. Dermody was referring to the initial appointment of the board of UPE.
  - (b) As described in Ms. Dermody's analysis, the control of the UPE board by independent directors, its reserve powers and its self-perpetuating nature are facts supporting the application of the HSR exemption to the Transaction. The changes in the WPAHS entity boards and the reserve powers of UPE Provider Sub do not affect this analysis.
  - (c) The UPE response did in fact include a copy of the HSR analysis, as described above and in the Form A. After completing the analysis and securing

concurrence of the PNO, the applicable regulatory body, there was no further analysis to be performed. A certification of completeness was not previously requested, but UPE hereby certifies that no other written analysis, opinion or other document exists.

### Request 3.6:

(C): A supplemental confidential filing will be made by UPE shortly after the filing of this letter providing a certification as to notices, filings, consents and/or approvals needed by or from BCBSA or other Blue Cross licensing body. The certification relates to documentation necessary for transfer of the licenses which are required for consummation of the Transaction.

### Request 4.1.4 (listed out of numerical order in the March 13 letter):

(C): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE.

## Request 4.1.4.1 (listed out of numerical order in the March 13 letter):

A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE.

Request 4.3.13.1: (C): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE as to Highmark. A filing prepared by WPAHS will provide information requested by Request 4.3.13.1 and will be made contemporaneous with or shortly after the filing of this letter.

#### Request 4.3.15:

No other Highmark Entity has obtained or anticipates obtaining any other tax opinion in connection with the transaction. A supplemental filing prepared by WPAHS will be made contemporaneous with or shortly after the filing of this letter.

The reasonable assurance contemplated is the receipt of (C)(2): the determination letters from the Internal Revenue Service to the effect that UPE and UPE Provider Sub are exempt organizations described in section 501(c)(3) of the Internal Revenue Code of 1986. The letters, dated March 3, 2012, were attached to UPE's supplemental response to Request 5.1.1.8. The receipt of these determination letters provides assurance that UPE and UPE

Provider Sub are tax-exempt and that the transaction will not adversely affect the tax-exempt status of the WPAHS parties. Additional copies of the Determination Letters are attached as Exhibit B.

- <u>Request 4.4.1</u>:
- (B): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE.
- Request 4.6.2:
- (C)(1), (2): UPE believes that its response is a complete response. It does not believe that there are disadvantages of the Transaction. The March 13 letter apparently misapprehends Request 4.6.2 to the extent that the letter refers to "risks" as being synonymous with "disadvantages". UPE will respond to the question of risks and benefits in its response to Request 2.1.1 which will be filed when it is completed. Such benefits and risks are reflected in other filings relating to the Form A.
- Request 4.6.14:

A supplement filing will be made by UPE shortly after the filing of this letter providing a response to the requested certification.

Request 5.1.1.1:

(B): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification as to Highmark Affiliates directly affected by the Transaction.

A filing prepared by WPAHS will provide information requested by Request 5.1.1.1 and will be made contemporaneous with or shortly after the filing of this letter.

Request 5.1.1.9:

(B): A supplemental filing will be made by UPE shortly after the filing of this letter providing the requested certification from UPE as to Highmark Affiliates directly affected by the Transaction.

A filing prepared by WPAHS will provide information requested by Request 5.1.1.9 and will be made contemporaneous with or shortly after the filing of this letter.

## Responses with respect to UPE or Highmark:

Counsel for UPE have repeatedly advised counsel for the Department that, in order to facilitate prompt filing of materials with the Department, such materials will be provided on a rolling basis. In this regard, responses with respect to UPE and/or Highmark which were ready for submission to the Department have been made to date and will continue to be made as they are finalized. Supplemental filings with respect to various Requests seeking information for WPAHS have been and will continue to be prepared by WPAHS and will be filed as they are prepared. Substantial filings prepared by WPAHS will be made contemporaneous with or shortly after the filing of this letter.

UPE will continue to make filings relating to the various Requests as information becomes available and ready for filing with the Department.

Very truly yours.

Edward A. Bittner, Jr.

Enclosure