

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
DIVISION OF FINANCIAL REGULATION**

BEFORE THE DIRECTOR  
OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of the Proposed Plan of	)	Findings of Fact, Conclusions of
Acquisition of Control of Moda	)	Law and Order
Health Plan, Inc. by Delta Dental of	)	
California	)	Case No. INS-FR 19-2-008

INTRODUCTION

Delta Dental of California, a California Knox Keene Act licensed specialized health care service plan regulated by the California Department of Managed Health Care (“DDC” or “Applicant”), as required by ORS 732.517 through 732.546, filed with the Oregon Department of Consumer and Business Services, Division of Financial Regulation (the “DFR”), a Statement regarding the Acquisition of Control of or Merger with a Domestic Insurer dated August 31, 2018 (as amended, the “Form A”), to acquire fifty percent (50%) of Moda Partners, Inc. (“Moda”), a Delaware for-profit business corporation and the successor-in-interest to Moda, Inc. (“Moda, Inc.”), an Oregon for-profit business corporation, which is presently the holding company that owns one hundred percent (100%) of the voting interests in the Domestic Insurer, Moda Health Plan, Inc. (“MHP”). On November 26, 2018 the parties to the transaction entered into an Amended and Restated Stock Purchase Agreement to change the percentage of Moda stock that DDC would acquire to forty-nine and one half percent (49.5%) of Moda. DDC would also have the option to purchase up to an additional 200 shares, or one half percent (0.5%) of Moda’s equity based on the contemplated capital structure. On February 8, 2019, the parties to the transaction entered into a Second Amended and Restated Stock Purchase Agreement that addressed the issuance of certain

Series A Preferred Stock of Moda. The Applicant filed an amended Form A reflecting amendments to the Class B Common Stock Purchase Agreement dated August 31, 2018 on February 8, 2019. The filing fee required under OAR 836-099-0007(12) was received by the DFR on September 4, 2018. The acquisition described in the Form A (the “activity” or the “Proposed Acquisition”) is an activity described in ORS 732.521(1). The Proposed Acquisition is a consequence of a Class B Common Stock Purchase Agreement dated August 31, 2018 (as amended by the Amended and Restated Stock Purchase Agreement dated November 26, 2018 and as further amended by the Second Amended and Restated Common Stock Purchase Agreement dated February 8, 2019, the “Stock Purchase Agreement”) by and among DDC, Moda, Moda Holdings Group, Inc. (“Moda Holdings”) and Oregon Dental Service (“ODS”), an Oregon health care service contractor that, immediately prior to the closing of the Proposed Acquisition (the “Closing”), will own all of the voting stock in Moda.

The Director of the Department of Consumer and Business Services (“Director”), acting in accordance with the procedures set forth in Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750, and the administrative rules issued thereunder (“Insurance Code”), and specifically ORS 732.517 through 732.546 (applicable to the Proposed Acquisition via ORS 750.055), has reviewed the Form A. Upon the filing of the Form A, the DFR engaged Risk & Regulatory Consulting (“RRC”) as a financial adviser and Morgan, Lewis & Bockius LLP (“MLB”) as legal advisers. Each of RRC and MLB provided written and verbal advice to the DFR in connection with the Proposed Acquisition. Notice of a public hearing on the Form A was issued on October 5, 2018 and the public hearing was held on October 29, 2018. A public comments period was open until November 12, 2018. The Form A and the presentation at the public hearing by the Applicant were posted on the DFR’s website.

Because DDC is a California Knox Keene Act licensed specialized health care service plan, consummation of the proposed transaction is subject to the oversight of the California Department of Managed Health Care. On February 21, 2019, the California Department of Managed Health Care granted its approval of DDC's purchase of an interest in Moda.

Now, therefore, upon due consideration of the circumstances, including the said Form A, documentation filed in support of Form A, any testimony at public hearing or public comment, and the reports and other advice provided by RRC and MLB, the Director enters the following Findings of Facts, Conclusions of Law and Order.

#### FINDINGS OF FACT

The Director FINDS that:

(1) MHP is presently owned by Moda, Inc., a member of an insurance holding company system whose ultimate controlling person is the Oregon Dental Association ("ODA"). ODA is the ultimate controlling person of a health care system that primarily operates in the states of Oregon and Alaska.

(2) MHP, a for-profit corporation organized under the laws of Oregon, is licensed as a health care service contractor in the State of Oregon. MHP is a wholly owned subsidiary of Moda, Inc., which is a wholly owned subsidiary of ODS, a non-profit corporation organized under the laws of Oregon. ODA controls ODS through ODA's right to appoint the ODS Board of Directors.

(3) Moda, Inc. has "control", as that term is defined by ORS 732.548(2), of ODS as a result of the Management Agreement, dated January 1, 1995, by and between Moda, Inc. and ODS as amended (the "Management Agreement").

(4) Immediately before the Closing, Moda, Inc. will be converted and redomesticated into a Delaware for-profit corporation and renamed "Moda Partners, Inc." As part of the conversion, Moda will issue to ODS 1,000 shares of Series A Preferred Stock and 10,100 shares of Common Stock. The Common Stock of Moda issued and outstanding at any time after the conversion is referred to as "Moda Common Stock."

(5) DDC is a California Knox Keene Act licensed specialized health care service plan regulated by the California Department of Managed Health Care. DDC serves as the ultimate controlling person of an enterprise insurance holding company system with a total of twenty-five companies.

(6) DDC proposes to acquire from Moda at the Closing forty-nine and one half percent (49.5%) of the Moda Common Stock. Immediately after the Closing, ODS will assign all of the shares of Moda Common Stock it owns to Moda Holdings. Consequently, after the Closing and the assignment by ODS of Moda Common Stock to Moda Holdings, the Moda Common Stock will be owned forty-nine and one half percent (49.5%) by DDC and fifty and one half percent (50.5%) by Moda Holdings. DDC will also receive an option to purchase up to 200 additional shares of Moda Common Stock at a price equal to the per share price paid by DDC at the Closing. If DDC were to exercise its option to purchase all 200 shares, DDC and Moda Holdings would each own fifty percent (50%) of the outstanding Moda Common Stock.

(7) In connection with the Transaction, DDC will obtain a redemption right to cause Moda to repurchase shares of its stock held by DDC that may be exercised upon the earlier of (i) the later of (A) the termination of the Company's current Chief Executive Officer and (B) three years and one day following the filing of the certificate of incorporation of Moda Partners, Inc. and (ii) the five-year anniversary of the filing of the certificate of incorporation of Moda Partners, Inc.

(8) MHP issued a Surplus Note, dated December 15, 2014 to Oregon Health & Science University with a principal amount of \$50 million (the “Surplus Note”).

(9) MHP has recorded a receivable of approximately \$250 million related to its participation in the Affordable Care Act Risk Corridor Program which is the subject of litigation as of the date of this Order (the “ACA Receivable”).

(10) The basis and terms of the Stock Purchase Agreement, including the nature and amount of consideration, were determined through arms’ length negotiations among the representatives of DDC, on the one hand, and representatives of ODS, Moda and MHP, on the other hand, and their respective legal and other advisors. In negotiating at arm’s length the terms of the Stock Purchase Agreement, a national consulting firm with a leading valuations practice was engaged to conduct a financial due diligence and determine a valuation of Moda and subsidiaries, including MHP.

(11) The Proposed Acquisition was approved by the Board of Directors of DDC, the Board of Directors of ODS, the Board of Directors of Moda and the Board of Directors of MHP.

(12) The Applicant intends for Moda to use the proceeds of the Proposed Acquisition to pay the outstanding “Parent, Subsidiary and Affiliate Receivable” which Moda, Inc. owes to MHP and has no present plans or proposals to cause MHP to declare an extraordinary dividend, liquidate MHP, sell any of MHP’s assets (other than in the ordinary course of business), merge MHP with any other person or persons or make any other material changes in its corporate structure, business operations or management.

(13) The Applicant intends to continue the business of MHP without any material modification to MHP’s existing plan of operations including business or capital structure, its leadership, employees, contracts or affiliation agreements, other than as described in the Form A. MHP will continue to operate as it has historically, acting as a licensed health care service contractor. As

opportunities arise and consistent with MHP's financial capacity to support growth, the only plans are to potentially undertake measured growth and expansion of the existing businesses in the Moda holding company system, and for DDC to partner with MHP in geographies where the bundling of MHP medical plans and DDC dental plans can present a competitive alternative to consumers. Any such expansion will be undertaken methodically, in compliance with state specific insurance regulations, appropriate network adequacy, sound underwriting and actuarial rating, and fair and compliant market conduct practices. DDC and Moda Holdings will continue to evaluate the quality and effectiveness of the ongoing operations of MHP. If at some point, following Closing, changes requiring regulatory approval are desirable, MHP will file any required filing with the DFR.

#### CONCLUSIONS OF LAW

The Director CONCLUDES that:

(1) The Form A is properly supported by the required documents and meets the requirements of the Oregon Insurance Code for approval with respect to the acquisitions and mergers pursuant to ORS 732.517 to 732.546.

(2) The Director finds that there is no evidence that:

(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

The acquisition of control of MHP by the Applicant is permitted by ORS 732.517 to 732.546.

(b) The activity is inequitable or unfair to the policyholders or shareholder of any insurer involved in, or to any other person affected by, the proposed activity.

MHP is the insurer involved in the Proposed Acquisition. The basis and terms of the Stock Purchase Agreement, including the nature and amount of consideration, were determined through arms' length negotiations among the representatives of DDC, on the one hand, and representatives of ODS,

Moda and MHP, on the other hand, and their respective legal and other advisors.

The Proposed Acquisition will be effectuated pursuant to the terms of the Stock Purchase Agreement. The Stock Purchase Agreement effectuates the purchase of 49.5% of Moda from ODS, and provides DDC an option to purchase an additional .5% of Moda stock.

The Applicant does not anticipate any changes to the business plans of MHP, except for measured growth consistent with MHP's financial capacity. Rather, the Applicant intends for MHP to continue to operate as it has historically, acting as licensed health care service contractor in the State of Oregon, and elsewhere, where it is licensed. Accordingly, the policyholders of MHP should receive the same level of service as prior to the Proposed Acquisition because no material changes are anticipated with respect to the products or services that they receive from MHP.

- (c) The activity would substantially reduce the security of and the service to be rendered to policyholders of any domestic insurer involved in the proposed activity, or would otherwise prejudice the interests of such policyholders in the state or elsewhere.

The activity will not substantially reduce the security of or the service to be rendered to policyholders of MHP or otherwise prejudice the interest of such policyholders in this state or elsewhere. DDC is a California Knox Keene Act licensed specialized health care service plan regulated by the California Department of Managed Health Care. It is the ultimate controlling person of an enterprise insurance holding company system with a total of twenty-five (25) companies, many of which are licensed providers of health insurance. The financial information submitted at Exhibits F-1 through F-5 of the Form A demonstrates that DDC is adequately capitalized and the description of its business activities in the Form A suggests that DDC is prudently managed.

- (d) The activity provides for a foreign or alien insurer to be an acquiring party, and the insurer cannot satisfy the requirements of this state for transacting an insurance business involving classes of insurance affected by the activity.

The Proposed Acquisition does not provide for a foreign insurer to be an acquiring party. DDC is a Knox Keene Act licensed specialized health care service plan, and the Department has not permitted such Knox Keene plans to obtain an Oregon certificate of authority as a health care service contractor. Therefore, DDC is not considered an insurer. MHP currently meets the requirements for transacting business as a health care service contractor in Oregon. No evidence indicates that MHP after Closing would become unable to satisfy the requirements for transacting business as a

licensed health care service contractor in Oregon as a result of the Proposed Acquisition.

- (e) The activity or its consummation would substantially diminish competition in insurance in this state or tend to create a monopoly.

The Applicant has no medical health insurance business currently in Oregon. Accordingly, the Proposed Acquisition will not substantially diminish competition of insurance in this state or tend to create a monopoly.

- (f) After the change of control or ownership, the domestic insurer to which the activity applies will not be able to satisfy the requirements for the issuance of a certificate of authority to transact the line or lines of insurance for which the insurer is currently authorized.

The Applicant has no plans to change the business or capital structure of MHP. Consequently, MHP's ability to satisfy the requirements for receiving a certificate of authority will not be impacted by the Proposed Acquisition.

- (g) The financial condition of any acquiring party might jeopardize the financial stability of the insurer.

The Proposed Acquisition will not jeopardize the financial stability of MHP. The financial information submitted at Exhibits F-1 through F-5 of the Form A demonstrates that the Applicant is adequately capitalized.

- (h) The plan or proposals that 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 the insurer's business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

Following the Proposed Acquisition, the Applicant does not plan any changes to MHP's business plans, except for measured growth consistent with MHP's financial capacity, and the Applicant has no plans or proposals to liquidate MHP, sell its assets, merge it with another person, or make any material changes in its corporate structure or management. The Applicant does plan to dividend or otherwise distribute a portion of funds received related to the ACA Receivable but, as noted in the attached Order, the dividend or other distribution of such funds will be subject to DFR approval.

- (i) 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 activity or its consummation.



There is nothing in the DFR's investigation or the biographical information provided regarding the persons that will control the operation of MHP that suggests that the competence, experience and integrity of those persons who will control the operations of MHP will be contrary to the interest of the policyholders of MHP or the public.

- (j) The activity or its consummation is likely to be hazardous or prejudicial to the insurance-buying public.

There is nothing to suggest that the Proposed Acquisition will be hazardous or prejudicial to the insurance-buying public.

- (k) The activity is subject to other material and reasonable objections.

After considering all relevant information provided to the DFR, the DFR finds that there are no material or reasonable objections to the Proposed Acquisition.

- (3) Upon Closing, the Surplus Note, will not, by its terms and the representations of MHP, be immediately redeemable by Oregon Health & Science University.

## ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

- (1) The acquisition of control of MHP by the Applicant is hereby approved upon the basis of the information contained in the Form A to date;
- (2) The Applicant shall provide the DFR with a definitive set of final closing documents within thirty days of the Closing;
- (3) The Applicant shall provide notice of any decision by the Applicant to relocate the headquarters of MHP at least three business days prior to the announcement of such decision;

- (4) The Applicant shall advise the DFR if the Proposed Acquisition does not occur within ninety (90) days of the date hereof, and the DFR reserves the right to modify or revoke this Order;
- (5) The Applicant shall cause to be paid the fees of any actuaries, accountants, attorneys, financial advisors and other experts not otherwise a part of the DFR's staff that the DFR contracted with in connection with the Proposed Acquisition;
- (6) Within thirty days of the Closing, MHP shall file an amended holding company act statement;
- (7) MHP shall submit an enterprise risk report under ORS 732.569 each year during which the Applicant controls MHP and an acknowledgement that MHP and any affiliates that are within the Applicant's control will provide, at the Director's request, information the Director needs to evaluate enterprise risk to MHP;
- (8) Moda shall use the proceeds of the Proposed Acquisition to pay the outstanding "Parent, Subsidiary and Affiliate Receivable" of MHP and the corresponding payable of Moda and shall provide evidence of such to DFR; and
- (9) The Applicant shall be exempt from the requirements of ORS 732.521(1) with respect to its acquisition of control of ODS as a result of the Management Agreement; and
- (10) The effective date of this transaction may be any time subsequent to the approval of this order pursuant to ORS 732.528(6) (subject to paragraph (4) above).
- (11) This Order shall be conditioned upon and subject to the following:
  - a. The payment of the "Parent, Subsidiary and Affiliate Receivable" shall be completed upon the Closing;

- b. Following the Closing, any of DDC, MHP or Moda will submit or cause to be submitted to the DFR an amended Management Agreement between Moda and ODS, which shall provide for greater clarity of duties and obligations of Moda and specified duties by ODS in the manner described in the letter dated the date of this Order from the Department to Moda and otherwise satisfactory to the Director;
- c. Within 5 days of the date of the termination of the current CEO of Moda, any of DDC, MHP or Moda will notify the DFR of such termination;
- d. Any future dividend or other distribution by MHP of funds related to the ACA Receivable, as defined in the Voting Agreement submitted as Exhibit A-7 of the Form A, will be subject to the prior approval of the Director; and
- e. The use of any funds of MHP to redeem any shares of Moda stock held by DDC will be subject to the prior approval of the Director, and the exercise of remedies by DDC under any promissory note issued in connection with the redemption of its shares of Moda stock will be subject to any applicable laws or regulations.

Dated this 27th day of February, 2019



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Andrew Stolfi  
Administrator, Division of Financial Regulation  
Department of Consumer and Business Services

#### NOTICE

Pursuant to ORS 732.528(7), any insurer or other Party to the proposed activity, including the insurer subject to the acquisition, within sixty days after receipt of the notice of approval or disapproval, may appeal the final order of the Director as provided in ORS 183.310 to 183.550.

For purposes of the judicial review, the specifications required to be set forth in the written notice from the Director will be deemed the findings of fact and conclusions of law of the DFR.