

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF ARKANSAS**

In the Matter of the Proposed )  
Acquisition of the Control of )  
FIRST DEPOSIT LIFE INSURANCE )  
COMPANY )

By )  
NEW AMERICAN CAPITAL, INC. )  
(A Wholly-owned Subsidiary of )  
Washington Mutual, Inc. )

Docket No. A.I.D. NO. 2005-055

**ORDER APPROVING ACQUISITION**

NOW on this 30<sup>th</sup> day of September, 2005, the above matter comes before the Commissioner of Insurance of the State of Arkansas upon the filing of a pre-acquisition notice (Form E) pursuant to Ark. Code Ann. § 23-63-506(b)(1) on August 2, 2005 and a Form A Statement Regarding the Proposed Acquisition of Control ("Form A Statement") by Washington Mutual, Inc. ("WMI"). On September 14, 2005, WMI advised the Commission that the acquisition would be made by New American Capital, Inc. ("NACI"), its wholly-owned subsidiary. WMI and NACI are sometimes collectively referred to as the "Applicant." The Form A Statement relates to the proposed acquisition of control of First Deposit Life Insurance Company ("First Deposit"), an Arkansas stock life insurance company, by the Applicant. Applicant is represented by its attorneys, Cynthia Holbrook, First Vice President and Counsel of WMI, and Herbert C. Rule III, Rose Law Firm, a Professional Association. The Arkansas Insurance Department is

represented by its General Counsel, Jay Morgan, and Booth Rand, Associate Counsel. Also appearing for the Arkansas Insurance Department are Mel A. Anderson, CPA, Deputy Commissioner for Financial Regulation/Audit, and Leo Liu, CPA, Manager of Financial Analysis.

Applicant wishes to resolve this matter without formal adjudicative proceedings by entering into this consent order.

### FINDINGS OF PUBLIC INTEREST AND POLICY

The following declarations of public interest and policy are made by the Commissioner pursuant to Ark. Code Ann. §§ 23-63-501—530.

The Commissioner finds and declares that it is consistent with the public interest, Ark. Code Ann. § 23-63-502 and the interest of policyholders to permit insurers:

- (a) to engage in activities which would enable insurers to make better use of management skills and facilities;
- (b) to diversify into new lines of business through acquisition or organization of subsidiaries;
- (c) to have free access to capital markets which could provide funds for insurers to use in diversification programs;
- (d) to implement sound tax-planning conclusions; and
- (e) to serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

The Commissioner further declares that policies and purposes in Ark. Code Ann. § 23-63-501, et seq., are to promote the public interest by:

- (a) facilitating the achievement of the objectives enumerated in Ark. Code Ann. § 23-63-501, et seq.;
- (b) requiring disclosure of pertinent information relating to changes in control of an insurer;
- (c) requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends paid by the insurer; and
- (d) providing standards governing material transactions between an insurer and its affiliates.

The Commissioner further finds and declares that no evidence has been presented that, as provided in Ark. Code Ann. § 23-63-510(a)(1)—(6):

- (1) After change of control, First Deposit would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;
- (3) The financial condition of NACI is such as might jeopardize the financial stability of First Deposit or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;
- (4) The terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 are unfair and unreasonable to the security holders of First Deposit;
- (5) NACI or WMI have any plans or proposals to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or

management that are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

- (6) The competence, experience, and integrity of those persons who would control the operation of First Deposit are such that it would not be in the interest of policyholders of First Deposit and of the public to permit the merger or other acquisition of control.

The findings and conclusions stated herein are based upon the statements made by the Applicant in the Form A Statement and accompanying documents filed with the Arkansas Insurance Department by the Applicant pursuant to Ark. Code Ann. § 23-63-506—513 and Arkansas Insurance Department Rule 15.

Significant documents have been reviewed by representatives of the Finance and Legal Divisions of the Arkansas Insurance Department, and the Commissioner has had the benefit of their technical expertise and advice as provided in Ark. Code Ann. § 23-61-104.

The purpose of the filing of the Form A Statement is to seek authority from the Arkansas Insurance Department for the proposed acquisition of control of First Deposit by the Applicant. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed with the Commissioner of Insurance dated August 5, 2005, pursuant to the Arkansas Insurance Holding Company Regulatory Act, Ark. Code Ann. § 23-63-501, et seq.

The Applicant has submitted Exhibits to the Form A Statement, including, but not limited to, the S-4 filed with the Securities & Exchange Commission,

financial statements, a business plan, biographic information on its principal officers and financial and financial information on First Deposit. WMI is subject to regulation by the Office of Thrift Supervision, which has approved the acquisition.

The staff of the Arkansas Insurance Department has inspected and reviewed the contents of Form E and of the Form A Statement and Exhibits attached thereto, to the extent necessary, and found that the filing of Form E and of the Form A Statement and Exhibits thereto are in accordance with Ark. Code Ann. § 23-63-506—513, and that the Form A Statement and Exhibits attached thereto have provided the information required under Arkansas statutes to enable the Commissioner to render a decision on the application.

The Department has reviewed the materials and statements from the applicant and has found no objection or concerns over the proposed transaction and filings, the statements, form filings and all materials accompanying them are found to supply and satisfy the standards set forth in § 23-63-510(a)(1) without the necessary of a public hearing as required under § 23-63-510(a).

The Commissioner finds that a public hearing is not necessary because the acquiring party and holding company is involved in the banking industry and entitled to expedited review requirements under GLBA. In addition, in light of the financial strength of the acquiring party; the inactive status of the present operating condition of the domestic insurer; and the plans of the applicant to seek the Department's approval in the future with regard to sales of policies, the

Commissioner finds a hearing under Ark. Code Ann. § 23-63-510(a) is not necessary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. First Deposit, an Arkansas insurer, was organized under the laws of Arkansas on November 4, 1961, and became authorized to transact business on that date.
2. Providian Financial Corporation, a Delaware corporation ("Providian"), owns 100% of the stock of First Deposit.
3. NACI, a Washington corporation, is a subsidiary of WMI.
4. Providian is considered to be the ultimate controlling parent of First Deposit.
5. NACI will merge with Providian and, as a result, acquire all the issued and outstanding stock of First Deposit.
6. After the merger, First Deposit will become a wholly owned subsidiary of NACI.
7. The Applicant filed a duly certified copy of the Form A Statement with the Arkansas Insurance Department dated August 5, 2005.
8. The content of the Acquisition Statements and Filings, Form and Form E, satisfy the standards required in Ark. Code Ann. § 23-63-508.
9. Review of evidence establishes that, after the acquisition of control as proposed in the Form A Statement, the Applicant will be able to satisfy the

requirements necessary for maintaining the business of First Deposit to the satisfaction of its four (4) annuity contract holders.

10. Evidence establishes, and this Order is expressly conditioned on the requirement that, after the acquisition of control as proposed in the Form A Statement, NACI will not permit First Deposit to further sell or offer for sale any insurance or annuity contracts without advance notice to, and approval by, the Arkansas Insurance Department upon submission of such financial and biographical information and its business plan as may be required. Evidence establishes that after the acquisition of control, First Deposit will continue to satisfy the requirements for its present license to write the line or lines of business for which it is presently licensed.

11. No evidence has been introduced to establish that the financial condition of the Applicant will jeopardize the financial stability of First Deposit or prejudice the interest of the annuity or policyholders.

12. Evidence has been introduced which shows that the Applicant has no current plans or proposals to liquidate First Deposit, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management which would be unfair and unreasonable to the annuity or policyholders of First Deposit and not be in the public interest; and that currently NACI and WMI are not directly, or through affiliates, primarily engaged in the business of underwriting insurance.

13. Evidence has been introduced to establish that the competence, experience and integrity of those persons who will control the operation of First Deposit after the merger are such that will be in the interest of the policyholders of First Deposit and of the public interest to permit the merger.

14. Evidence has been introduced to establish that the merger will not be hazardous or prejudicial to the insurance-buying public, and that First Deposit is an Arkansas insurer not qualified to do business in any other state.

15. The Form A Statement is in compliance with the provisions of the Arkansas Insurance Holding Company Regulatory Act.

16. The evidence submitted supports approval of the proposed acquisition of control of First Deposit by the Applicant.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:**

1. The application by NACI to acquire control of First Deposit in the manner set forth in the Form A Statement and Exhibits attached thereto is hereby approved pursuant to Ark. Code Ann. § 23-63-501, et seq., provided the acquisition is effected within sixty (60) days of the date of this Order, and on the conditions stated in the foregoing Finding of Facts and Conclusions of Law.

2. The Commissioner of Insurance retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

**Notice of Rights**

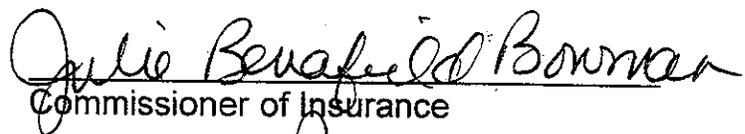
WMI and NACI are entitled to a hearing pursuant to law. If Applicant desires a hearing, it must file a written request for a hearing with:

Jay Morgan, General Counsel  
Arkansas Insurance Department  
1200 West Third Street  
Little Rock, Arkansas 72201

This request must be filed within fifteen (15) days from the date of service of this Order. If WMI or NACI request a hearing, the Arkansas Insurance Department will notify the companies of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, or if WMI and NACI file a waiver of hearing, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, or the date a waiver of hearing is filed.

IT IS SO ORDERED THIS 30<sup>th</sup> DAY OF SEPTEMBER, 2005, IN THE CITY OF LITTLE ROCK, COUNTY OF PULASKI, STATE OF ARKANSAS.

  
\_\_\_\_\_  
Commissioner of Insurance

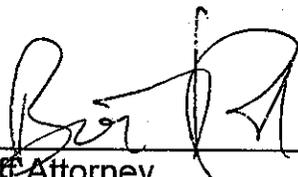
  
\_\_\_\_\_  
Associate General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the 30<sup>th</sup> day of September, 2005 to:

Cynthia Holbrook  
First Vice President and Counsel  
Washington Mutual Bank  
1201 Third Ave.  
M/S WMT 1706  
Seattle, WA 98101

Herbert C. Rule III  
Rose Law Firm,  
a Professional Association  
120 East Fourth Street  
Little Rock, AR 72201

  
\_\_\_\_\_  
Staff Attorney

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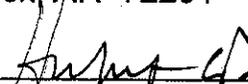
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**WAIVER OF HEARING**

COME Herbert C. Rule III, Rose Law Firm, a Professional Association, and  
Cynthia Holbrook, Counsel, Washington Mutual Bank, attorneys for Applicant, New  
American Capital, Inc., and Washington Mutual, Inc., and hereby waive, on their behalf,  
their right to hearing on the Order Approving Acquisition in this matter.

Cynthia Holbrook  
First Vice President and Counsel  
Washington Mutual Bank  
1201 Third Ave.  
M/S WMT 1706  
Seattle, WA 98101

Rose Law Firm,  
a Professional Association  
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By:   
Herbert C. Rule III, Ark. Bar No. 64037

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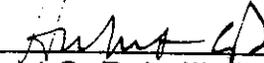
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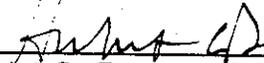
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