



September 12, 2023

Board of Directors of Louisiana Health Service & Indemnity Company,  
d/b/a Blue Cross and Blue Shield of Louisiana ("BCBSLA")  
5525 Reitz Avenue  
Baton Rouge, Louisiana 70809

Re: BCBSLA Plan of Reorganization Regarding the Conversion from a Mutual Insurance Company to a Stock Insurance Company dated January 23, 2023 ("Plan of Reorganization")

Ladies and Gentleman:

In connection with its Plan of Reorganization, BCBSLA retained Chaffe & Associates, Inc. ("Chaffe") for the exclusive purpose of rendering the investment banking opinion required by Section 236.3(A)(2) of the Louisiana Insurance Code that the provision of consideration to BCBSLA's Eligible Members<sup>1</sup> upon the extinguishment of their membership interests pursuant to the Plan of Reorganization is fair to the Eligible Members, as a group, from a financial point of view. Chaffe rendered that opinion on January 12, 2023 ("Chaffe Opinion"). In accordance with Section 236.3(A)(2), the Chaffe Opinion was limited to the fairness, from a financial point of view, of the methodology under which the aggregate amount of consideration to be paid to the Eligible Members as a group was determined.

The Louisiana Department of Insurance retained Hause Actuarial Solutions, Inc. ("HAS") to, among other things, review the Chaffe Opinion to assess its appropriateness and compliance with Section 236.3(A)(2). HAS delivered a report entitled "Actuarial Review of Proposed Sponsored Demutualization of Blue Cross/Blue Shield of Louisiana" dated August 15, 2023 (the "Hause Report") in which the author states he "do[es] not concur" with the Chaffe Opinion. BCBSLA has now retained Chaffe to review the Hause Report and comment on the sections relevant to the Chaffe Opinion.

We feel it is important to highlight at the outset that Section 236.3(A)(2) specifies that the required opinion be rendered by a "qualified investment banker" and that the subject of the opinion is the "provision of the consideration" to the eligible members. Section 236.3(B)(2) requires the reorganizing mutual to obtain a separate opinion from an actuary concerning the allocation of

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<sup>1</sup> The term "Eligible Member" has the same meaning as in the Plan of Reorganization.

consideration *among* the eligible members. Thus, despite the statement in the Hause Report on page 18 that “[i]t is unusual to have an amount of allocation opinion between the valuation opinion and the actuarial allocation opinion,” the Chaffe Opinion and its limited scope were designed to address the specific requirements of the Louisiana Insurance Code. In this transaction, Cain Brothers, a division of KeyBanc Capital Markets Inc., rendered an opinion to BCBSLA’s board of directors concerning the fairness of the base purchase price to be paid by Elevance Health, Inc. (“Elevance”) to acquire BCBSLA, but to our knowledge, that opinion is not required by the statute.

As part of its investment banking business, Chaffe is regularly engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, financings, and fairness opinions for corporate and various other purposes. Chaffe is not an actuary. In rendering the Chaffe Opinion, Chaffe made no analysis of, and expressed no opinion as to, the adequacy of policy reserves, future policy benefits, other policyholder funds, other related actuarial items, or the allocation among the Eligible Members of the aggregate consideration.

In developing the Chaffe Opinion, Chaffe used the necessary and appropriate professional care and diligence of investment bankers in its review of material provided to it or developed by it and in its consideration of the factors there presented. Chaffe’s opinion was based upon a review and analysis of the consideration to be paid to the Eligible Members as a group consistent with the standards of the investment banking industry. While not applicable to non-public company transactions, Chaffe was also informed by FINRA Rule 5150 regarding fairness opinions.

In addition, to the extent it deemed relevant in accordance with the standards of the investment banking industry, Chaffe considered other factors in rendering its opinion, including but not limited to the views of the Louisiana Commissioner of Insurance, the limited rights associated with a membership interest in BCBSLA, and other factors customarily considered in a transaction of the type proposed in the Plan of Reorganization.

Chaffe is not qualified to provide legal opinions and in that regard it made no legal conclusions in rendering the Chaffe Opinion. Chaffe instead relied on the legal expertise and conclusions of BCBSLA’s attorneys. For example, Chaffe relied on the conclusion of BCBSLA’s attorneys that while BCBSLA members have voting rights pursuant to BCBSLA’s articles of incorporation, BCBSLA’s governing documents do not give its members rights to BCBSLA’s surplus or the proceeds of its liquidation. In addition, Chaffe took note of Section 236(9) of the Louisiana Insurance Code, which defines “membership interest” to mean:

. . . with respect to a mutual insurer, all rights and interests of a policyholder as a member arising under the mutual insurer’s articles of incorporation and bylaws, by law or otherwise, which rights include but are not limited to the right, if any, to vote and the right, *if any*, with regard to the surplus of the mutual insurer not apportioned or declared by the board of directors for policyholder dividends (emphasis added).

As explained by BCBSLA’s legal counsel, the words “if any” in Section 236(9) contemplate that a membership interest does not always include the right to surplus.

The Hause Report states on page 3 that: “This report is a statement of actuarial opinion. It is not a legal opinion and should not be considered as such.” Nevertheless, the Hause Report appears to

dispute the underlying legal conclusion of BCBSLA's legal counsel that BCBSLA members only possess voting rights, but *not* rights to future dividends or net proceeds upon liquidation or sale. Additionally, the Hause Report cites the Louisiana Nonprofit Corporation Law and provisions of the Internal Revenue Code that, according to our understanding from BCBSLA legal counsel, do not apply to the determination of the rights of members in a Louisiana non-profit mutual insurance company.

Moreover, the Hause Report does not analyze or even mention the methodology under which the aggregate amount of consideration to be paid to the Eligible Members as a group was determined, which was the subject of the Chaffe Opinion. As explained in the Plan of Reorganization and the Chaffe Opinion, the methodology is to allocate a portion of the consideration to the Eligible Member group according to a percentage obtained by dividing the total number of "member months" that an Eligible Member was covered by a BCBSLA policy by the total number of "member months" of all members covered by a BCBSLA policy since its formation in 1975 (with certain adjustments and exclusions explained in the Plan of Reorganization). The resulting percentage is to be multiplied by the "Transaction Valuation," which is defined in Exhibit E to the Plan of Reorganization as "the aggregate of the Base Purchase Price under the [Elevance] Acquisition Agreement plus the estimated Closing Surplus plus the estimated Approved Excess Surplus." This will result in the Eligible Members, as a group, receiving consideration that is fair, from a financial point of view, upon the extinguishment of their membership interests pursuant to the Plan of Reorganization.

The Hause Report further states on page 18:

The Chaffee [sic] opinion does not conform with the general practice of paying members of a mutual company 100% of the proceeds from a sponsored demutualization less capital raised for the acquisition. . . .

As authority for this statement, the Hause Report appears to rely on a list of 19 historical for-profit demutualization transactions listed in Appendix II to the report. However, of these 19 transactions, 18 involved for-profit life insurance company demutualizations, which, in Chaffe's view, are not comparable transactions suitable for assessing the demutualization of a non-profit health insurer. Further, unlike BCBSLA, these life insurance companies did not have a stated public purpose.

Moreover, the Hause Report notes that it reviewed past Blue Cross Blue Shield ("BCBS") transactions (page 10), and also notes that "several similar demutualizations funded foundations" (page 4). Yet, inexplicably absent from the Hause Report's list of historical transactions is a discussion and analysis of past BCBS conversion and sale transactions. A review of past BCBS transactions reflects that it is entirely common for all or a portion of the proceeds to be set aside to fund one or more foundations for the benefit of the public. Indeed, in a number of past BCBS transactions all of the consideration was set aside to fund one or more foundations.<sup>2</sup> The funding of a foundation in connection with the demutualization of a non-profit health insurer, like BCBSLA, is consistent with the Hause Report's recognition that "similar demutualizations funded

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<sup>2</sup> BCBS transactions in California, Wisconsin, and Colorado each set aside all of the transaction funds to fund foundations.

foundations,” and also consistent with the BCBSLA Plan of Reorganization and the BCBSLA Articles of Incorporation.

Indeed, Article II of BCBSLA’s articles of incorporation states that among the purposes of BCBSLA are “[t]o promote the welfare of . . . the general public.” Therefore, the statement on page 18 of the Hause Report quoted above and the statement on page 13 of the report that “The total amount to be distributed to policyholders is generally 100 percent of the market value of the company . . . .” may generally be true for for-profit life insurance companies, but they are entirely false and misleading in the context of the conversion of a nonprofit BCBS health insurance company.

Furthermore, the Hause Report relies on the following assumptions which are inaccurate according to the Plan of Reorganization.

For BCBSLA, a non-profit mutual insurer, to be sold, it must first be reorganized as a for-profit stock company; therefore, I have assumed BCBSLA converts to a for-profit company and demutualizes concurrently. I assume it is then sold after the reorganization, when the prohibitions against issuing stock and paying dividends have been removed.<sup>3</sup>

According to the Plan of Reorganization and the Elevance Acquisition Agreement, Eligible Members never receive stock or become shareholders in the converted, for-profit stock company. Chaffe also understands from BCBSLA legal counsel that the prohibitions against paying dividends are not removed in any interim transaction step of the demutualization or sale.

Based on investment banking standards and the inputs we relied on in rendering the Chaffe Opinion, we do not agree with HAS’s analysis and conclusion relative to the Chaffe Opinion because its reasoning is based on what we understand are faulty legal conclusions and inappropriate assumptions.

We also note that under the standards of the investment banking industry applicable to fairness opinions, each transaction must be considered based on the facts and circumstances specific to the transaction and the subject company, including its organizational documents and applicable state law. The fairness of a transaction cannot be judged by “general” or “typical” practices alone, especially given that HAS is relying on practices pertaining to a different segment of the insurance industry. In our view, HAS’s decision to rely on what it considers the general practice in for-profit life insurance company demutualizations is inappropriate, particularly given that it ignored customary practices applied to the conversion of BCBS entities.

Very truly yours,

  
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Vanessa B. Claiborne  
President & CEO

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<sup>3</sup> Hause Report pp. 10-11.