

**STATE OF NORTH DAKOTA**  
**BEFORE THE COMMISSIONER OF INSURANCE**

**In the Matter of the Proposed )  
Acquisition of SafeCard Services )  
Insurance Company by Trilegiant )  
Corporation )**

**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER  
FILE NO. CO-01-059**

After due and proper notice, a public hearing on the above-captioned matter was held on November 28, 2001, before the Commissioner of Insurance in the State of North Dakota pursuant to the North Dakota Insurance Holding Company Act, N.D. Cent. Code Chapter 26.1-10. The purpose of the hearing was to receive and consider evidence and to allow all interested parties to be heard regarding the proposed acquisition of control of SafeCard Services Insurance Company ("SafeCard"), a North Dakota domestic company, by Trilegiant Corporation, a Delaware corporation.

The terms and conditions of the proposed acquisition and changes of control are set forth in the Form A Acquisition Statement ("Form A") filed with the Commissioner of Insurance on September 20, 2001. The filing was deemed complete on November 8, 2001.

Attorney Dennis Quinn of the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P., New York, represented the Applicant. Applicant's witnesses included Robert G. Rooney, Executive Vice President and Chief Financial Officer of Trilegiant, and David P. Vanderscoff, Director and Vice President of SafeCard. Appearing on behalf of the Commissioner of Insurance was its General Counsel, Charles E. Johnson, and its Financial Analyst, Timothy Hill. Deputy Commissioner for the State of North Dakota, Doug Holloway, presided at the hearing. Lou

McPhail, Insurance Department Legal Counsel; William Prince, Attorney, LeBoeuf, Lamb, Greene & MacRae, L.L.P.; and Uri Litvak, Attorney, Trilegiant Corporation also appeared at the hearing.

Both documentary evidence and oral testimony were presented at the hearing. All interested persons were given the full opportunity to be heard and examine all witnesses and evidence presented at the hearing. As a result, a full and complete record was developed in this matter.

Doug Holloway, Deputy Commissioner for the State of North Dakota, after reviewing the evidence and testimony presented at the hearing, and after considering and reviewing all the documents, instruments, and materials on file herein hereby makes the following Findings of Fact and Conclusions of Law.

## **FINDINGS OF FACT**

### **I**

Notice of hearing was sent via United States mail, first class postage prepaid, to Applicant on November 8, 2001.

### **II**

The name, home office, and principal business address of Applicant are as follows:

Trilegiant Corporation  
100 Connecticut Avenue  
Norwalk, CT 06850-3561

### **III**

Trilegiant was formed in June 2001 specifically to operate the membership and loyalty businesses that were operated by Cendant Membership Services Holding Subsidiary, Inc. (CMS), an indirect, wholly owned subsidiary of Cendant Corporation, prior to the consummation of the

transaction.

#### IV

SafeCard is a stock property and casualty insurance company that was organized under the laws of North Dakota in 1986. SafeCard is authorized to transact accident and health, burglary and theft, credit card multi-peril, prepaid legal services, fidelity and surety, and inland marine insurance in North Dakota. The only line of insurance that SafeCard underwrites currently is credit card multi-peril. SafeCard's entire book of business consists of four master policies that are issued to its parent company, Trilegiant, as the named insured.

#### V

SafeCard's primary business purpose at this point is to insure Trilegiant with regard to its "Hotline" program. In this regard, SafeCard insures Trilegiant for the liability that Trilegiant may incur on its "Hotline" program for unauthorized charges that have been made to the credit cards or debit cards of Trilegiant subscribers following a loss or theft of the card up to the limits of liability specified in the master policy.

#### VI

Applicant is a Delaware stock general business corporation. Applicant's core business is offering membership and loyalty services to consumers, including individual memberships for shopping, travel, auto, credit reporting, credit card protection, and other membership clubs. Applicant currently provides such services to approximately 23.6 million members and it is the leading provider of membershi-based consumer services in the United States. Applicant derives its revenues principally from membership fees that are paid by new members who subscribe to the programs. The membership programs are marketed primarily through contractual arrangements that are entered into with banks and other financial institutions, retailers, oil

companies, on-line networks, and other organizations with large numbers of individual customers.

## VII

Trilegiant completed its acquisition of SafeCard on July 2, 2001.

## VIII

Cendant is a publicly traded company that is a provider of travel, real estate, vehicle, and financial services in the world. It is the world's largest hotel franchiser, the world's largest vacation ownership organization, and world's second largest general-use car rental agency. In addition, Cendant is the world's largest real estate brokerage franchiser, one of the largest retail mortgage originators in the United States, and the world's largest corporate employee relocation company. As of September 30, 2001, Cendant had approximately \$30.9 billion in total assets and approximately \$5.9 billion in shareholders' equity. In calendar year 2000, Cendant had net revenues of approximately \$3.9 billion and net income of approximately \$602 million.

## IX

Prior to the consummation of the transaction, Cendant indirectly owned 100% of SafeCard through various subsidiaries. As a result of the transaction, Cendant, through its indirect, wholly owned subsidiary, CMS, holds 53.6% of the shares of Trilegiant. Trilegiant, in turn, owns 100% of the issued and outstanding voting securities of SafeCard. Consequently, Cendant is the ultimate controlling person of both Trilegiant and SafeCard for purposes of the North Dakota Insurance Holding Company Systems Act.

## X

The primary impact of the transaction on SafeCard was to interpose a new intermediate controlling person, in the form of Trilegiant, underneath Cendant in the corporate chain of

control with Cendant continuing to operate as the ultimate controlling person of SafeCard. In effect, the transaction represents an internal realignment within the Cendant holding company system rather than a third-party acquisition of SafeCard.

## XI

The transaction will allow Trilegiant to report its income privately rather than as a public subsidiary of Cendant. GAAP accounting guidelines require that the Trilegiant marketing costs necessary to solicit new members and to maintain existing members be paid and recorded as an expense at the time such funds are expended. While this expenditure is usually recovered by the company within six months in the form of membership fees, GAAP accounting rules generally do not permit Trilegiant to recognize the revenue associated with the receipt of these membership fees for a period of time that extends typically to 12 or 15 months from the date when such membership fees are received by the company. Hence, the company's earnings must first decline on a GAAP basis in order for the company to grow the membership business aggressively. The accounting guidelines mean that SafeCard's financial statement will negatively impact Cendant's financial statement if Trilegiant's income and expenses become part of Cendant's financial statement. To eliminate the negative impact on Cendant's financials, Trilegiant was reorganized so that now it is a private company, separate from Cendant for accounting purposes.

## XII

The details of the transaction are set forth in the Form A Information Statement that is on file with the Department. Trilegiant sold approximately 2.4 million shares of its common stock to certain of its management employees for \$1 per share. The shares of Trilegiant common stock owned by the employee investors, in the aggregate, represent approximately 46.4% of the issued and outstanding voting securities of Trilegiant on a fully diluted basis. No individual employee

investors directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of Trilegiant.

### XIII

The transaction will have no impact upon the insurance operations or business of SafeCard. The transaction is in fact an internal reorganization that improved Cendant's accounting position. With regard to the management of SafeCard, Mr. Vanderscoff will remain with SafeCard in his current role as a Director and a Vice President of the company. Moreover, John Chidsey will remain a Director of SafeCard and Robert Peck will continue on as the President of the company. With the exception of Mr. Rooney, all of the new appointees to the director and officer positions of SafeCard were affiliated with the company prior to the transaction. Mr. Vanderscoff will continue to be the primary person with oversight and management responsibility for SafeCard's day-to-day operations on an ongoing basis.

### XIV

On a "cash basis," Trilegiant anticipates "cash" revenues of approximately \$470.5 million in 2002 and "cash based" income of approximately \$2.7 million with those figures projected to increase in 2003 to approximately \$665 million and \$8 million, respectively. In addition, Trilegiant is expected to have cash on hand in the amount of approximately \$46.1 million at the end of calendar year 2002. These figures demonstrate that Trilegiant is expected to have positive earnings on a cash basis.

### XV

All six of the current directors of Trilegiant were officers of Cendant, CMS, or another Cendant subsidiary prior to the transaction. Furthermore, all of the current executive officers of Trilegiant, with the exception of Mr. Rooney, were officers of Cendant, CMS, or another

Cendant subsidiary prior to the transaction. Accordingly, there is a significant degree of continuity in the management team of Trilegiant following the transaction with most of the directors having had a significant role in managing the membership business group.

XVI

As a result of the transaction, Trilegiant, as a non-public company, will have the freedom to pursue new marketing opportunities and to make business decisions based upon long term strategic factors rather than upon short term accounting considerations.

XVII

Witness Tim Hill reviewed the Form A filing and other financial information relating to the Applicant, SafeCard, and Cendant and testified that he found no reason why SafeCard would not be able to satisfy the North Dakota licensing standards on an ongoing basis following the completion of the transaction. He noted that no changes to the business operations of SafeCard are contemplated by the transaction. He testified that SafeCard is adequately capitalized and that SafeCard will be able to satisfy any applicable licensing standards following the transaction.

XVIII

Mr. Hill testified that the transaction will have no impact upon insurance competition in North Dakota.

XIX

Mr. Hill testified that he did not believe the transaction will have any adverse impact on the financial stability of SafeCard or will prejudice the interests of its policyholders.

XX

Mr. Rooney testified that Trilegiant does not contemplate any changes in the business operations or corporate structure of SafeCard going forward and that neither Cendant nor

Trilegiant have any present plans to liquidate SafeCard, to sell its assets, or to consolidate or merge it with any person.

**XXI**

Mr. Hill testified that there is no evidence to show that the competence, experience, and integrity of those persons who would control the operations of SafeCard are such that it would not be in the interest of policyholders of SafeCard and the public to permit the proposed acquisition of control by Trilegiant.

**XXII**

Mr. Hill testified that he did not believe that the acquisition is likely to be hazardous or prejudicial to the insurance buying public.

**XXIII**

Mr. Hill testified that he found the Trilegiant explanation regarding the accounting problems caused by GAAP reporting to be reasonable and valid.

**CONCLUSIONS OF LAW**

1. The Commissioner of Insurance has jurisdiction over the proposed transaction pursuant to N.D. Cent. Code Chapter 26.1-10.
2. Applicant has met the procedural requirements of N.D. Cent. Code Chapter 26.1-10 with regard to seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.
3. Based on the summary of notice contained in the Findings of Fact above, sufficient, due, and proper notice of these proceedings was given to all interested parties.
4. N.D. Cent. Code § 26.1-10-03(4) provides that the Commissioner of Insurance shall approve the acquisition unless he finds any of the grounds for dismissal enumerated in N.D.

Cent. Code § 26.1-01-03(4)(a) through (f) which generally provide that policyholders of the company must be protected and that the acquisition is not likely to be hazardous or prejudicial to the insurance buying public.

5. No evidence has been introduced to establish that after the proposed acquisition of control and changes or control, SafeCard will not be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which they are presently licensed.

6. No evidence has been introduced to establish that after the proposed acquisition of control or changes of control, the effect of such acquisition would be to substantially lessen competition of insurance in this state or would create a monopoly herein.

7. The evidence establishes that the financial condition of the Applicant will not jeopardize the financial stability of SafeCard, or prejudice the interests of SafeCard's policyholders.

8. The acquisition of SafeCard would not injure, impair, or prejudice the interests of policyholders of SafeCard or the insurance buying public.

9. The evidence indicates that the competence, experience, and integrity of the persons who will control the operations of SafeCard are such that it would not be contrary to the interest of the policyholders of the public to permit the acquisition. No evidence or testimony was presented which would suggest that the acquisition is likely to be hazardous or prejudicial to the insurance buying public.

10. The Form A is in compliance with the provisions of the North Dakota Insurance Holding Company Act.

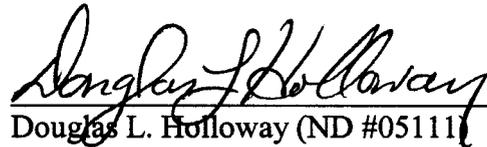
11. Based upon the Findings of Fact, the evidence presented at the public hearing meets the standards for approval of the proposed acquisition pursuant to N.D. Cent. Code § 26.1-

10-03(4) and does not support a finding that grounds exist to disapprove the acquisition of control of SafeCard by Applicant.

**RECOMMENDED ORDER**

It is recommended that the Commissioner enter an Order approving the acquisition of SafeCard Services Insurance Company by Trilegiant Corporation.

DATED this 5<sup>th</sup> day of December, 2001.



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