802.10
802.51

Verne, B. Michael

From: [redacted]
Sent: Tuesday, August 28, 2012 6:52 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Request for HSR Guidance

Hi Mike.

I hope all is well. [redacted] and I are looking at a somewhat unusual fact pattern, and hope to obtain your valued guidance. I represent "Y" and [redacted] represents "X."

X and Y intend to engage in a merger (the "Merger") whereby a merger sub of X will merge with and into Y, with Y surviving as an indirect wholly owned subsidiary of X.

X is a foreign-domiciled entity, engaged, through a subsidiary, in the reinsurance business with no presence in the US. All of its contracts are written outside of the US with non-US counterparties (although some of the underlying insured risks may be located in the US).

X currently has an ultimate parent ("P"). However, immediately prior to the Merger, P will sell 100% of its interest in X to certain third party investors (the "Third Party Investors") in a cash transaction, or transactions. No Third Party Investor will hold a majority of X at the time of the Merger.

Y is a Delaware corporation and is also in the insurance sector. Its business includes offices in the US from which it writes policies. Y is its own ultimate parent.

The Merger consideration payable to the current Y shareholders will be comprised primarily of voting securities of X. As a result of the Merger, the current X shareholders will, in the aggregate, hold approximately 79% of the voting securities of X (with the largest shareholder holding less than 10% of X), and the Third Party Investors will hold the remaining approximately 21% of X voting securities. No current shareholder of Y will hold a greater percentage interest in X than it currently holds in Y.

In our view, the foregoing fact pattern should not trigger any reportable event under the HSR Act. When Third Party Investors invest in X immediately prior to the Merger, any such acquisition, regardless of value, would be exempt pursuant to 16 CFR 802.51, since X does not have assets in the US with a fair market value in excess of $68.2 million, and has not generated sales in or into the US of more than $68.2 million (as we understand that the PNO does not view reinsurance contracts written outside of the US with non-US counterparties as a US sale, even if the underlying risk is in the US).

The Merger is essentially a reorganization of Y into X (given the close similarity of the shareholders of Y and post-Merger X) , that we believe should be exempt pursuant to 16 CFR 802.10. While it is true that assets have been added to Y (ie, X's existing business), that business has no nexus to US commerce, and thus such assets of X's existing business should be disregarded for purposes of the exemption.

Alternatively, while technically structured as an acquisition by X of Y, from a practical standpoint, the transaction is an acquisition by Y's shareholders of X. Since any acquisition by Y's shareholders of voting securities of X would be exempt pursuant to 16 C.F.R. 802.51 (indeed, an acquisition by Y of X would be similarly exempt), that same reasoning should apply here, notwithstanding the technical structure being utilized.

We look forward to your views. If you would like to discuss the matter in more detail, Robin and I are available on Wednesday, August 29th, either prior to 11:30 am, or after 3 pm.

Thanks in advance and kind regards,

[redacted]

[redacted]

AGREE WITH ALL BUT THE ANALYSIS OF THE MERGER. NOT EXEMPT UNDER 802.10 THIS IS AN ACQUISITION OF 100% OF Y BY X WITH EXEMPT BACKSIDE ACQUISITIONS OF X STOCK BY Y SHAREHOLDERS

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8/29/12

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