

**Sheinberg, Samuel I.**

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**From:** [REDACTED]  
**Sent:** Tuesday, October 09, 2018 2:35 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora  
**Subject:** FW: Question re sales "in or into the US"

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**From:** Carson, Timothy  
**Sent:** Tuesday, October 9, 2018 2:35:23 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Question re sales "in or into the US"

[REDACTED] [The provision of coverage that you have described to US-based insureds does not constitute sales in or into the United States.](#)

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**From:** [REDACTED]  
**Sent:** Tuesday, October 09, 2018 2:28 PM  
**To:** Carson, Timothy <[tcarson@ftc.gov](mailto:tcarson@ftc.gov)>  
**Cc:** [REDACTED]  
**Subject:** RE: Question re sales "in or into the US"

Ty,

The policies are written outside the US.

Thanks,

[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Carson, Timothy <[tcarson@ftc.gov](mailto:tcarson@ftc.gov)>  
**Sent:** Tuesday, October 09, 2018 10:10 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Question re sales "in or into the US"

[REDACTED] [where are the policies at issue written?](#)

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**From:** [REDACTED]  
**Sent:** Tuesday, October 9, 2018 8:04:21 AM (UTC-05:00) Eastern Time (US & Canada)

To: [REDACTED]

Subject: Question re sales "in or into the US"

All,

We have a narrow question about whether certain insurance-related activities would be deemed to constitute sales "in or into the US" by an insurance company for purposes of Sections 802.50 and 802.51.

Over the years, the staff has advised that merely providing insurance or reinsurance to US-based policyholders, without more, does not constitute sales in or into the US by a foreign insurer or reinsurer, and that some meaningful activity on the part of the insurer or reinsurer in the US is required in order for sales in or into the US to be deemed to have been made. In Informal Staff Opinion No. 9605014, for example, the staff advised that a foreign reinsurer did not make sales in or into the US where its reinsurance agreements were entered into outside the US. In No. 9903004, the staff advised that an insurer did not make sales in or into the US where it did not report the premiums received from US customers as US income for tax purposes, did not maintain offices in the US, and wrote the relevant policies outside the US. In No. 0305008, the staff advised that a reinsurer did not make sales in or into the US where it was not registered or licensed to provide reinsurance in the US, conducted all of its business outside the US, did not maintain an office or conduct or solicit business in the US, and did not engage in any in-person communications in the US regarding the reinsurance arrangements in question.

More generally and more recently, in No. 1601001, the staff has advised that, in determining what might constitute sales in or into the US in the context of a service business, one should take into account where the target's contracts to provide the services are entered into and where the services themselves are provided.

In the situation we are assessing, the target is an insurance company that underwrites coverage to US-based policyholders but does not have any US-based personnel, offices, or agents involved either in providing such coverage or in negotiating or executing contracts to provide such coverage. Rather, the only US-based intermediaries who are involved in the process of arranging the coverage that the insurance company provides to US insureds are brokers who act on behalf of those insureds, not on behalf of the insurance company. The specific point we would like to confirm is simply that the activities of these brokers should not be attributed to the target and accordingly that its provision of coverage to US-based insureds does not constitute sales in or into the US.

Thank you for your consideration. As always, please let us know if you have any questions or need any additional information.

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

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