

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7A(C)(1)

[REDACTED]

April 27, 2009

**By Email**

Mr. Michael Verne  
Premerger Notification Office  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Avenue, N.W.  
Room 303  
Washington, D.C. 20580

Re: Ordinary Course Exemption

Dear Mike:

I am writing to confirm the substance of our telephone conversation from April 16, 2009, among you, me, and [REDACTED], concerning the potential reportability under the Hart-Scott-Rodino Act of the Proposed Transaction and the Secondary Transaction, as they are described and defined below.<sup>1</sup> As you will recall, given the facts of the Proposed Transaction and the Secondary Transaction, we concluded that the filing of a Premerger Notification and Report Form is not required by the acquiring or the acquired person for either transaction.

In sum, we understand that an acquisition of assets or voting securities of an insurance company will be considered exempt under 16 C.F.R. § 802.1 as a transfer in the ordinary course of business unless the acquisition is of substantially the entire insurance business operated by the acquired person. Accordingly, even though the acquired person may arguably exit entirely the business of selling a specific line of insurance (e.g. -- personal lines automobile), and the acquiring person conducts business in the specific line of insurance that is being acquired in competition with the acquired person, the transaction will be considered in the ordinary course, so long as the acquired person continues in the business of writing other lines of insurance (e.g., property/casualty, life).

The Proposed Transaction. The seller, [REDACTED] is one of the largest providers of insurance in the world, providing many types of insurance coverage, including health, life, homeowners, automotive, and other insurance products. [REDACTED]

<sup>1</sup> This letter also supplies certain additional facts concerning the Proposed Transaction and the Secondary Transaction that were not previously discussed.

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intends to sell substantially all of its U.S. personal lines automotive insurance business, which is significant and conducted through a number of wholly-owned subsidiaries, through a stock sale and a sale of related assets, to [REDACTED] an entity controlled by [REDACTED] for purposes of the HSR Act. [REDACTED] will continue to write personal lines automobile insurance inside and outside the United States through its Private Client Group (which primarily targets high net worth individuals), subject to certain limitations based on a non-competition agreement between the parties. [REDACTED] also will retain its personal line automobile insurance business outside the United States and will continue to write commercial automobile insurance world wide, including in the United States. As part of this sale, [REDACTED] also will sell certain assets and subsidiaries that are necessary to the operation of the U.S. personal lines automotive insurance business, including, for example, a subsidiary engaged in marketing on behalf of the personal lines automotive insurance business. [REDACTED], through controlled subsidiaries, is also a provider of many kinds of insurance coverage, including automotive.

The Secondary Transaction. Following, and apart from, the Proposed Transaction, [REDACTED] intends to resell most of the acquired business to [REDACTED] an entity for which FGI (i) is attorney-in-fact, and (ii) provides management services, but is not under common control (as "control" is defined by the rules promulgated pursuant to the HSR Act) (the "Secondary Transaction"). [REDACTED] and [REDACTED] intend to continue selling insurance, including automotive insurance, as well as other lines of insurance, after the Secondary Transaction, through certain of its controlled subsidiaries.

The size-of-person and size-of-transaction tests would be met for both the Proposed Transaction and the Secondary Transaction. Nevertheless, the acquisition is exempt under Sections 802.1 and 7A(c)(1) as a transfer in the ordinary course of business. Though a sale of an "operating unit" would not be exempt, we understand that you agree that the seller in each of the Proposed Transaction and the Secondary Transaction is not selling an operating unit within the meaning of Section 802.1 because each seller will remain in the insurance business -- though AIG, the seller in the Proposed Transaction, will largely exit the U.S. personal lines automotive insurance business -- in that each seller will continue to provide various insurance products, through entities within its person.

The PNO previously acknowledged the application of the "ordinary course" exemption in the insurance industry where an insurance company sells a portion of its insurance coverage (*i.e.*, an entire type of coverage) but continues to offer other types of insurance products. In Informal Interpretation 0807013, you reviewed a transaction, the result of which was the selling entity exiting the life insurance business altogether. The writer stated that "although [seller] will exit the life insurance business through this transaction, we are advised that it will remain in the insurance business through one of its controlled subsidiaries." The writer concluded that, "[u]nder these facts, we believe that the acquisition will qualify as an exempt transaction under Rule 802.1 as an acquisition of goods in the ordinary course of business." You agreed with the

[REDACTED]

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writer's conclusion: "if [the] parent will continue in the insurance business, the acquisition of the life insurance portion could be in the ordinary course." Informal Interpretation 0807013, July 24, 2008.

A similar issue also was addressed in Informal Interpretation 0806013 in which the PNO agreed that a global financial institution's sale of its prime brokerage unit, which provided a bundle of brokerage services specifically to hedge fund clients, was an exempt transfer in the ordinary course. There, the selling entity intended to sell, through a stock sale, substantially all of the assets related to the prime brokerage business, including client relationships, accounts, goodwill, certain intellectual property, and other tangible assets necessary to operate that prime brokerage business. As a result of the that transaction, the buying entity was to take over three regional offices and offer employment to the staff that was dedicated to the prime brokerage business. The PNO agreed that the acquisition of the prime brokerage business was an exempt transfer in the ordinary course -- and not a sale of an operating unit -- because the selling entity was not stepping out of the general securities brokerage business altogether, but would continue to provide securities brokerage and other financial services to an array of clients. Informal Interpretation 0806013, June 13, 2008.

Based on the foregoing, it is our understanding that you agree that each of the Proposed Transaction and the Secondary Transaction is exempt from reportability under the HSR Act. In addition, we ask that you confirm that the "ordinary course" exemption would be applicable to the sale of those [REDACTED] subsidiaries that, while not technically insurance businesses, are engaged in providing supporting services to the insurance business.

Please let us know at your earliest convenience if the foregoing accurately reflects the substance of our telephone conversation and the view of the Premerger Notification Office of the Federal Trade Commission.

Sincerely,

[REDACTED]

cc: [REDACTED]

AG/EE  
BM  
4/22/09

[REDACTED]