

801.10(c)(7)

[REDACTED]

[REDACTED]

[REDACTED]

June 18, 1999

VIA FACSIMILE (202) 326-2624

Mr. Richard Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenues, N.W.
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION
JUN 18 1999 1:26 PM

Re: Indemnity Reinsurance Transaction

Dear Mr. Smith:

We are writing this letter to confirm oral advice you provided to the undersigned in a telephone conversation on June 17, 1999 regarding the applicability to the following transaction of the notification requirements under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the Federal Trade Commission's implementing regulations (collectively, the "Act").

An insurance company (the "Reinsuring Company"), will reinsure on an indemnity basis, all insurance liabilities arising from a group of single premium and flexible premium deferred annuities (the "Annuities") issued by a second insurance company (the "Ceding Company").

The Reinsuring Company has total assets in excess of \$100 million and the Ceding Company has total assets in excess of \$10 million. Both companies are engaged in interstate commerce. The Ceding Company will transfer to the Reinsuring Company reserves of over two hundred million dollars allocated to the Annuities and will pay to the Reinsuring Company a ceding fee in excess of \$15 million. The ceding fee represents the Reinsuring Company and Ceding Company's negotiated estimate of the difference between the present value of the reserves and the present value of the payment obligations of the Annuities. As we discussed, pursuant to Interpretation 139 of the ABA's Premerger Notification Practice Manual (1991), under the present circumstances, the ceding fee would represent the value of assets acquired if the transaction were determined to be subject to the filing requirements of the Act.

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The present transaction is purely an indemnity reinsurance transaction between two insurance carriers. The Ceding Company will continue to administer the Annuities, providing all underwriting, collection, claims and policyholder services. The Reinsuring Company's sole involvement in the administration of the Annuities will result from its right to instruct the Ceding Company to set or charge non-guaranteed elements (i.e., credited interest rates, administrative expense charges, variable premium rates, etc.) for the Annuities.

Based upon our conversation, it is our understanding that the present indemnity reinsurance transaction does not amount to an acquisition of assets or qualifies as a transaction occurring in the ordinary course of business exempted under Section 7A(c)(1) of the Act. Since our telephone conversation, we have learned of prior informal advice rendered by the Federal Trade Commission Staff that supports this position. Although we understand that such informal advice is not binding on the Federal Trade Commission, we direct your attention to the Letter to Thomas Hancock dated July 25, 1997 re: indemnity reinsurance transaction and the Letter to Victor Cohen dated November 23, 1992, copies of which have been obtained by [redacted] through Freedom of Information Act requests and are available on the internet at [redacted].

Please confirm to us that the analysis set forth herein accurately reflects the advice you provided in our earlier telephone conversation. We look forward to receiving your reply shortly and would appreciate a written response if at all possible. Should you have any questions or require any information, please call me at [redacted]. Thank you for your assistance with this matter.

Very truly yours,

[redacted signature block]

6/21/99 - Since acquiring person paying no consideration, transaction reportable under ABA 139 only if it is assuming more than \$10MM in liabilities. Cash payment referred to in last sentence on pg 1 is not the acquisition price but a sum to cover any out-of-pocket liabilities not covered by the more than \$100MM in reserves coming over. Size of transaction is not met. TH agrees. RBSmith