

[REDACTED]

October 19, 1999

VIA FACSIMILE (202) 326-2624

Mr. James Farkingstad,  
Premerger Notification Office  
Federal Trade Commission  
6<sup>th</sup> & Pennsylvania Avenues, N.W.  
Washington, D.C. 20580

**Re: Acquisition from State Insurance Commissioner Acting as Receiver**

Dear Mr. Farkingstad:

We are writing this letter to confirm oral advice you provided to the undersigned in a telephone conversation on October 14, 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 assumption basis, certain life insurance policies and annuity and supplementary contracts issued by a second insurance company (the "Ceding Company"). The Reinsuring Company will also be purchasing certain tangible assets related to the insurance policies and contracts being reinsured.

The Ceding Company is currently in receivership. The Insurance Commissioner of the Ceding Company's state of domicile, an elected official (the "Commissioner"), filed an application to a state district court (the "Court"), which issued an order (the "Order") which, among other things, (i) appointed the Commissioner receiver of the Ceding Company, (ii) vested in the Commissioner title to all property of the Ceding Company, (iii) prohibited payment of the Ceding Company's debts, obligations or claims without the approval of the Commissioner, (iv) prohibited the transfer or sale of any property of the Ceding Company without further order of the Court, (v) required the Ceding Company, its directors, officers and employees, at the request of the Commissioner, to assign, transfer and deliver to the Commissioner all property, including books and records, of the Ceding Company, and (vi) directed the Commissioner to take such action as he deems necessary to rehabilitate the Ceding Company.

The Reinsuring Company and the Commissioner are negotiating a contract for the assumption reinsurance by the Reinsuring Company of certain obligations of the Ceding Company

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and the transfer to the Reinsuring Company of certain assets of the Ceding Company. Pursuant to the Order, any transaction must be approved by the Court.

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. Although the unusual nature of the transaction makes it difficult to calculate the total consideration to be paid for the insurance policies, contracts and assets, we presently believe that the total consideration (calculated in accordance with Interpretation 139 of the ABA Premerger Notification Practice Manual) exceeds \$15 million.

Based upon our conversation, it is our understanding that the present transaction is exempt from the reporting requirements of the Act because the Commissioner qualifies as a State under Section 7A(c)(4) of the Act or a state agency under 16 C.F.R. § 801.1(a)(2). Pursuant to Section 7A(c)(4) of the Act transfers to or from a State or political subdivision thereof are exempt from the reporting requirements of the Act. Moreover, 16 C.F.R. § 801.1(a)(2) excludes state agencies from the definition of an entity, making the Act inapplicable to state agencies.

As we discussed in our telephone conversation, we believe that the Federal Trade Commission staff's informal position is that transfers to or from state insurance commissioners acting in their capacity of receiver are exempt under Section 7A(c)(4) of the Act. Although we understand that such informal advice is not binding on the Federal Trade Commission, we briefly discussed the Letter to Richard B. Smith dated December 2, 1991, and Mr. Smith's annotations thereto, which indicate that a state insurance commissioner acting as a receiver of an insurance company may sell assets or securities of the insurance company and be exempt under Section 7(A)(c)(4) of the Act from the reporting requirements of the Act. A copy of the foregoing letter has been obtained by [REDACTED] through a Freedom of Information Act request and is available on the internet at [REDACTED]

If you believe the analysis set forth herein does not accurately reflect the advice you provided in our earlier telephone conversation, please call me immediately. [REDACTED] Thank you for your assistance with this matter.

Very truly yours,

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