

Gillis, Diana L.

Subject: FW: Request for Guidance on Applicability of 15 USC 18a(c)(1) and 16 CFR 802.1 [ED-01.FID3414100]

From: Verne, B. Michael

Sent: Monday, December 29, 2014 2:23 PM

To: [REDACTED]

Cc: [REDACTED]; Walsh, Kathryn E.

Subject: RE: Request for Guidance on Applicability of 15 USC 18a(c)(1) and 16 CFR 802.1 [ED-01.FID3414100]

We agree – this is exempt under 7A(c)(1) – but not § 802.1. When § 802.1 was rewritten in the rulemaking that was finalized in 1996, it became limited to specific categories of goods (e.g., new goods, used durable goods, current supplies), where previously it mirrored the language of the statutory exemption in 7A(c)(1). That is why we continue to use 7A(c)(1), primarily to exempt portfolios of financial instruments, which are not specifically exempted under any of the subsections of § 802.1.

The confusion probably comes about because the 1996 drafters of the rule did not change the title or the preamble to § 802.1, but added on additional language in subsections (a) – (d).

From: [REDACTED]

Sent: Monday, December 29, 2014 1:22 PM

To: Verne, B. Michael

Cc: [REDACTED]

Subject: Request for Guidance on Applicability of 15 USC 18a(c)(1) and 16 CFR 802.1 [ED-01.FID3414100]

Dear Mike

I hope that you are enjoying the Holidays. I (counsel to the Seller) write jointly along with [REDACTED] to confirm the applicability of 15 USC 18a(c)(1) and 16 CFR 802.1 to a proposed transaction. Please assume solely for purposes of this analysis that the size-of-person thresholds and lower size-of-transaction threshold are all met. As always, thank you in advance for your time and attention to our inquiry. The facts and our analysis are as follows:

FACTS

Buyer will buy all of the outstanding voting securities of one of Seller's U.S.-based subsidiaries ("Target"). Target itself has five subsidiaries (the "Target Subs"). For context, the Target Subs collectively represent less than 10% of the Seller's total U.S. gross written premium. As part of the transaction, Seller will enter into a non-compete that restricts its ability to compete specifically with the Target Subs for a period of time post-closing.

Four of the five Target Subs provide insurance agency and underwriting services, and serve as managing agent for risk that is insured by other subsidiaries of Seller (the "Agency Subs"). None of the Agency Subs insure any risk. The Agency Subs are analogous to a "distributor" of insurance products. The fifth of the Target Subs provides claims administration services for certain of the policies originated by the Agency Subs (the "Claims Administration Sub").

As regards the four Agency Subs, Seller will remain heavily involved in the insurance business and industry, continue to insure numerous categories of risk, and continue to administer claims through its numerous other subsidiaries. Specifically, Seller will continue to insure the risk that it currently insures for customers originated for Seller by the Agency Subs even after the closing. It will not, however, be directly involved in agency or underwriting efforts. Instead, it will rely upon Buyer (through the Agency Subs, which Buyer will own post-closing) and other agents and brokers independent of Seller to originate new customers for Seller's insurance products post-closing. There is one

exception: Seller will continue to broker and underwrite certain insurance policies for businesses different from the businesses for which the Agency Subs underwrite insurance policies. Affiliates of seller may also continue to offer agency, brokerage, and underwriting services outside of the U.S. post-closing.

As regards the Claims Administration Sub, Seller will continue to offer claims administration services post-closing through other already-existing subsidiaries of Seller.

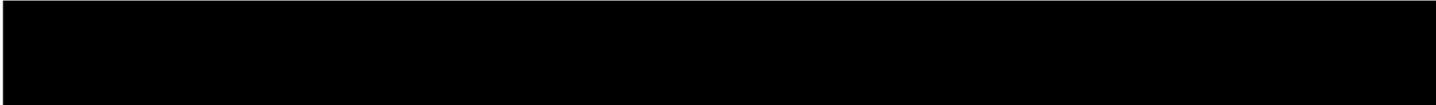
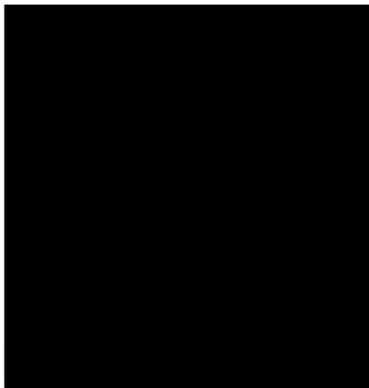
ANALYSIS

We have concluded that the described transaction is exempt from the HSR Act's filing requirement because it qualifies as a transaction in the "ordinary course of business" under 15 USC 18a(c)(1) and 16 CFR 802.1. Numerous FTC Informal Staff Interpretations concerning the applicability of 15 USC 18a(c)(1) and 16 CFR 802.1 memorialize the PNO's position that a transaction is considered in the "ordinary course of business" when the Seller will, post-closing, remain in the same "business" or "industry" that it was in pre-closing despite the loss of the specific entity(ies) or asset(s) being sold to the buyer. See, e.g., Informal Staff Interpretation 0807013 (seller to remain in insurance business), 0904010 (same); 0806013 (seller to remain in financial and brokerage services industry), 0511009 (seller to remain in the equipment rental and leasing business), 0404005 (same), 0901004 (seller to remain in mortgage servicing business), 9602009 (seller to remain in the lending business). We also understand that, under circumstances such as those presented here where Seller owns multiple subsidiaries in the same business, the sale of multiple subsidiaries would not be considered a sale of "operating units" that would prevent the application of 16 CFR 802.1.

In sum, Seller is in the insurance business or industry pre-closing, and will remain in the insurance business or industry post-closing, despite the loss of the five subsidiaries described above. Therefore, we conclude that the entire transaction (including the transfer of both the Agency Subs and the Claims Administration Sub to the Buyer) is exempt from the HSR Act's filing requirement and no filing is necessary.

Please advise if you agree with the analysis set forth above. We are available to talk at your convenience if you have any questions. Again, thank you for your time and consideration of this matter. Finally, best wishes for a happy and healthy retirement.

Sincerely,



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