

Gillis, Diana L.

Subject: FW: Ordinary Course Transaction

From: Whitehead, Nora
Sent: Tuesday, May 26, 2015 2:52 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Gillis, Diana L.
Subject: RE: Ordinary Course Transaction

We have given this a lot of thought, and we will not extend the 7Ac1 exemption to cover the acquisition of non-financial instruments. Based on the information you have provided us below, it appears that the target is engaged in the buying and selling of the underlying crude oil and petroleum products, as opposed to only financial instruments associated with them (e.g., options, futures, etc.). As a result, the 7Ac1 exemption is not available.

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Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Thursday, May 21, 2015 3:50 PM
To: 'kwalsh (kwalsh@ftc.gov)'; Gillis, Diana L.
Cc: [REDACTED]
Subject: Ordinary Course Transaction

Dear Kate and Diana:

I am writing, and copying [REDACTED] who also is working on this transaction, concerning the applicability of the ordinary course exemption under 802.1 and/or 7A(c)(1) to a proposed transaction.

In this transaction, a global financial services firm ("Seller") is selling its Global Oil Merchancing business to a global commodities trading firm. The target business is involved in crude oil and petroleum product merchancing activities for its own account. As part of those activities, the target business acquires and resells supplies of crude oil and petroleum products and also, to a limited extent, buys and sells derivative financial instruments, such as oil futures and swaps. The target business also leases storage facilities, maintains inventories of crude oil and petroleum products and charters vessels.

Following the sale, Seller will continue to buy and sell crude oil and petroleum products for the benefit of its clients, including swap dealing and market-making activity involving crude oil and oil products transactions, and inventory financing and similar activities that involve credit intermediation and facilitation. Although the continued activity is likely primarily to be financial, there will continue to be physical activity in connection with the buying, selling and financing activities described above. A typical example is where a refinery asks Seller to provide working capital financing which may involve Seller taking title to crude oil at the refinery's tank-farm, which Seller would resell to the refinery as the crude oil leaves the tank and enters the refinery. Seller also will continue to engage in the purchase and sale on its own behalf of a variety of other commodities, including electricity, natural gas and base and precious metals.

In this context, given the fact that Seller will continue to engage in related commodities activity on its own behalf and in physical purchase and sale of crude oil and petroleum commodities for the benefit of its clients, would you agree that the transaction is exempt from the filing requirements of the HSR Act?

Thank you for your consideration.



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