

From: [Whitehead, Nora](#)
To: [REDACTED]
Cc: [REDACTED]; [Walsh, Kathryn E.](#); [Berg, Karen E.](#); [Gillis, Diana L.](#)
Subject: RE: 7A(c)(1)/802.1 HSR reportability question
Date: Thursday, June 16, 2016 4:43:00 PM

Our approach to acquisitions in the insurance industry under 7Ac1 has always been to analyze the financial instruments being acquired (usually insurance policies) in the context of 802.4. See Interp. 99 in the premerger practice manual. 7Ac1 exempts “acquisitions of *goods or realty* transferred in the ordinary course of business” – not entire companies or business units. As a result, you are correct that you have to overlay an 802.4 analysis if you are looking at an acquisition of an insurance company or business unit, as opposed to an acquisition of a portfolio of insurance policies (in which case 7Ac1 would be applicable on its own).

Interp. 99 outlines the approach to applying 7Ac1 to acquisitions of financial instruments, like insurance policies (but *not* acquisitions in the insurance industry generally). As noted in Interp. 99, in such an asset acquisition (or in a voting securities or non-corporate interest acquisition analyzed under a combination of 7Ac1 and 802.4), there are additional requirements – namely, the acquired person cannot be selling all of its assets and it cannot be exiting the business at issue. In the past, the questions that we have received on the 7Ac1 exemption have generally been about those other requirements (e.g., what it means to be “exiting the business”). Because the informal interpretations that result do not focus on the 7Ac1/802.4 dynamic, the questioners often fail to explicitly mention 802.4, even though it is clearly necessary if you are dealing with anything other than an asset acquisition. As a result, some of the older published informal interpretations can be misleading, which is one of the reasons why we have noted that they (including two of the three cited by [REDACTED]) are no longer the position of the PNO.

In short, your description of our approach as one that requires the parties to identify what assets of the target business may be exempt under the Rules or the Act and then overlaying a Rule 802.4 analysis is accurate. I would encourage you to re-read Interp. 99 as well.

Nora Whitehead
(202) 326-3262
Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Thursday, June 16, 2016 3:11 PM
To: Whitehead, Nora; Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.
Cc: [REDACTED]
Subject: RE: 7A(c)(1)/802.1 HSR reportability question

Hi Nora.

It sounds like you have abandoned the prior approach, reflected in, among other interpretations, the examples cited by [REDACTED], that accorded an “ordinary course of business” exemption under 7A(c)(1) and/or Rule 802.1 to an acquisition in the insurance industry, so long as the seller would remain in the insurance business after the sale, in favor of an approach that simply requires the parties to

identify what assets of the target business may be exempt under the Rules or the Act (for instance, portfolios of insurance policies are deemed to be exempt under 7A(c)(1)), and then overlaying a Rule 802.4 analysis. Does that correctly state the PNO's analytical approach for transactions involving insurance businesses, whether the sale of a carrier or an agency?

As always, we are grateful for your guidance.

Best,

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From: Whitehead, Nora [<mailto:nwhitehead@ftc.gov>]

Sent: Thursday, June 16, 2016 1:48 PM

To: █

Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Gillis, Diana L. <dgillis@ftc.gov>

Subject: RE: 7A(c)(1)/802.1 HSR reportability question

What assets owned by C would be exempt under 7Ac1 and/or 802.1?

Nora Whitehead

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From: █

Sent: Thursday, June 16, 2016 1:46 PM

To: Whitehead, Nora; █; Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.

Subject: RE: 7A(c)(1)/802.1 HSR reportability question

It does not.

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From: Whitehead, Nora [<mailto:nwhitehead@ftc.gov>]

Sent: Thursday, June 16, 2016 1:45 PM

To: [REDACTED] Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Gillis, Diana L. <dgillis@ftc.gov>

Cc: [REDACTED]

Subject: RE: 7A(c)(1)/802.1 HSR reportability question

Does C own (directly or indirectly) any insurance policies?

Nora Whitehead

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Check out the [PNO Blog!](#)

From: [REDACTED]

Sent: Thursday, June 16, 2016 1:41 PM

To: Walsh, Kathryn E.; Whitehead, Nora; Berg, Karen E.; Gillis, Diana L.

Cc: [REDACTED]

Subject: 7A(c)(1)/802.1 HSR reportability question

Hi all,

Sounds like we can look forward to some good weather this weekend (I hope)! In the interim, [REDACTED] and I have a reportability question.

1. A, is the UPE of the Target, C. A is a multinational insurance corporation that underwrites a broad range of property/casualty and life insurance.
2. C is the holding company for a group of managing general agents and program administrators that sell insurance policies written by others including A's insurance subsidiaries. C's subsidiaries do not write the insurance policies but rather sell policies written by others including A. C principally derives revenues from the commission payments it receives from its insurer customers. On behalf of A, C places less than 1% of A's total US gross written premium.
3. A will remain in the insurance business post-closing. It will continue to insure the numerous categories of risk that it currently insures. In addition, A will continue to own and operate other entities that are engaged as managing general agents and program administrators.

7A(c)(1) and 802.1 exempt acquisitions of goods in the ordinary course of business. There are have been a number of informal interpretations memorializing the PNO's view that the exemption applies to transactions involving the insurance industry where the seller is selling certain entities involved in the insurance industry but certain insurance companies businesses as long as the seller will remain in the insurance business. See, e.g., informal interpretations 1412009, 0904010, and 0807013 (seller to remain in insurance business). We understand that 1412009 "no longer reflects the position of the PNO" but haven't seen any interpretation that directly deals with this set of facts - where a seller will sell certain entities engaged in the managing general agent and plan administrator business, but will remain in the industry business as a carrier, managing general agent, and administrator.

Please advise whether A's sale of C is exempt from the HSR Act's filing requirements.

Many thanks as always for your guidance.

[REDACTED]

[REDACTED]

[REDACTED]