Haynes, Lanea

From: Gillis, Diana L.
Sent: Tuesday, April 04, 2017 10:03 AM
To: [redacted]
Cc: Walsh, Kathryn E.; Whitehead, Nora; Berg, Karen E.; Shaffer, Kristin; Storm, Evan; Carson, Timothy
Subject: RE: Insurance company exemption

[redacted],

You've got it right, with one minor correction – the threshold is $80.8MM.

-Diana

-------- Original Message --------
From: [redacted]
Date: Mon, April 03, 2017 3:38 PM -0400
To: "Walsh, Kathryn E." <kwalsh@ftc.gov>
Subject: Insurance company exemption

Kathryn

May I please ask you for guidance on a proposed transaction.

This transaction involves the acquisition of an entire insurance company. After the sale, the seller will remain in the insurance business, but as a reinsurer. I assume this is considered to be the same business (just as residential leasing/commercial leasing are considered to be the same as in Interpretation 99).

I understand that, under 1412009, acquisitions of insurance portfolios are treated like other portfolios of financial instruments, and would be exempt under 7A(c)(1) of the statute. These are considered ordinary course transactions as long as the seller remains in the same general business someplace in the world.

However, as 1606006 makes clear, the statutory exemption does not extend to acquisitions of the company itself (as opposed to portfolios of financial instruments like insurance policies), and the regulatory exemptions in 802.1 don't apply.

Instead, the only available exemption that would cover the acquisition of a company would be the use of 802.4, which requires an analysis of the specific assets held by the target insurance company. This analysis would ask whether the underlying assets are exempt assets. (Here, I understand that the portfolio of policies and other exempt assets, like cash or financial instruments, would qualify.) If I understand correct, no filing is required as long as the remaining non-exempt assets don't exceed $80.2MM.

Finally, is it also correct that if you use 802.4, the seller must still remain in the business because, if it doesn't, then the acquisition of the financial portfolio would not qualify as an exempt asset under 7A(c)(1)?

Please forgive these elementary questions.

Best wishes