

September 22, 2003

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WRITER'S DIRECT LINE [REDACTED]  
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CLIENT/MATTER NUMBER [REDACTED]  
PREMERGER NOTIFICATION OFFICE  
FEDERAL TRADE COMMISSION

Ms. Nancy Ovuka  
Federal Trade Commission  
Premerger Notification Office  
6th Street & Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Size of Transaction for Merger of Mutual Insurance Companies

Dear Ms. Ovuka:

This is to confirm our recent conversations concerning how the size of the transaction is to be determined in the merger of two mutual insurance companies.

In the anticipated transaction, A and B are two mutual insurance companies, neither of which has voting securities. Under the proposed plan of merger, B would merge into A with the result that the current policyholders of B would become policyholders (and members) of A. No purchase price would be paid in connection with this transaction.

You indicated that the merger of two mutual insurance companies would be treated as an acquisition of assets for purposes of premerger notification. Since no acquisition price will be paid, for HSR purposes the value of the assets to be acquired will be the fair market value of the assets. 16 C.F.R. § 801.10(b). For purposes of valuing the assets, and consistent with § 121 in the recently issued *Premerger Notification Practice Manual* (3<sup>rd</sup> Ed.), the value of the life insurance policies being transferred from B to A consists of the excess value (if any) between the actuarially determined present value of the obligations to pay death benefits under the policies (*i.e.*, the present value of the obligations assumed by A) and the statutory reserves transferred by B to A to cover those obligations.

Recognizing that you are not informed of the actual valuations, outlined below is the methodology that we understand that A should apply in determining the value of the transaction for this matter. The values, while accurate, are included merely for ease of explaining the valuation methodology.

1. As of June 30, the present value of B's future obligations to pay death benefits on its life insurance portfolio plus its other insurance liabilities is approximately \$199 million. B holds assets of approximately \$208 million, including approximately \$12 million in cash, \$176 million in bonds, \$7 million in policy loans, \$1 million in common stocks, and \$4 million in mortgage loans. These \$208 million of total assets are split between (1) approximately \$199 million of assets held pursuant to statutory regulations to support the insurance liabilities

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Ms. Nancy Ovuka  
September 22, 2003  
Page 2

(the "Cash Reserves") and (2) additional assets ("Remaining Assets") that have a reported value of \$9 million but a fair market value of \$11 million. As part of the merger of A and B, all of these assets of B will be transferred to A along with the death benefit payment obligations and other insurance obligations of B.

2. As a first step in valuing the transaction, A looks at the insurance policies and Cash Reserves being transferred consistent with § 121 of the *Premerger Notification Practice Manual* (3<sup>rd</sup> Ed.). In this case, B has approximately \$199 million of statutory liabilities (the present value of the future payment obligations) related to the insurance policies. If the Cash Reserves for these statutory liabilities are valued at book value, the Cash Reserves would equal the approximately \$199 million in statutory insurance liabilities. If, by contrast, the assets forming B's Cash Reserves are valued at market value, the Cash Reserves exceed the present value of the future benefit payment obligations by approximately \$8 million. Thus, the maximum value for the insurance policies transferred is \$8 million (and the value is zero if book value is used to value the Cash Reserves).
3. Next, A would need to determine the fair market value for the Remaining Assets of B. In this context, the reported value of the remaining assets is approximately \$9 million, but the fair market value of those assets is approximately \$11 million. Thus, A would use the \$11 million valuation for the remaining assets.

The total of the excess value on insurance policies would be no more than \$8 million. That value, plus the fair market value of the Remaining Assets transferred from B to A (\$11 million using the numbers above), would constitute the fair market value of B for purposes of determining the size of the transaction. Thus, using the numbers above, the size of transaction would be no more than \$19 million. We understand that A and B should be using this methodology for determining the size of the transaction for HSR reporting purposes for this proposed merger. Provided that total fair market value of B's assets is less than \$50 million under this methodology, no HSR premerger notification would be required.

Would you please contact me if this letter misstates the appropriate analysis to be applied in this situation. Thank you for your assistance in this matter.

Very truly yours,  
[REDACTED]

cc: [REDACTED]

9/30  
Advised writer by  
phone that I agree w/  
the methodology. Nmo  
M. Verne concurs