

July 27, 2005

**By Email**

B. Michael Verne  
Premerger Notification Office  
Federal Trade Commission  
Room 303  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Hart-Scott-Rodino Reporting Obligations


Dear Mike:

We wanted to follow up with you on the recent telephone conversation that we had regarding the treatment of a transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act").

The Transaction

As we discussed, parties are entering into a transaction whereby a purchaser is acquiring the individual and group annuity business and individual life business of an insurance company (the "Business"). The transaction will be effected through several agreements, including an Asset Purchase Agreement and an Indemnity Reinsurance Agreement.

Under the Asset Purchase Agreement, the purchaser will acquire certain assets relating to the Business, namely, certain contracts (but not insurance contracts), books and records (such as administrative records, claim records, marketing compliance records, policy files, sales records, filed and records relating to regulatory matters, reinsurance records, underwriting records and accounting records), intangible assets (such as telephone numbers), permitted investments (reflecting reserves underlying the obligations undertaken under the Reinsurance Agreement), proprietary intellectual property and proprietary computer programs. The purchaser will also assume certain liabilities relating to the transferred assets. The value of the investments reflecting the reserves being transferred is approximately \$1.7 billion, the value



B. Michael Verne  
July 27, 2005  
Page 2

of which does not exceed the expected value of the obligations being undertaken pursuant to the Reinsurance Agreement.

As consideration for entering into the transaction, under the Asset Purchase Agreement, the purchaser will be obligated to pay the seller in cash an amount for the transferred assets, reimbursement of commissions relating to certain policies that are the subject to the Reinsurance Agreement, the discounted present value of the expected profit streams of the Business, and an interest rate adjustment to reflect interest rate variations effecting the discounted present value of the expected profit streams of the Business. The amount is to be determined by a formula set forth in the Asset Purchase Agreement.

#### Analysis

We understand that the Premerger Notification Office has historically taken the view that indemnity reinsurance transactions are not reportable events under the HSR Act because such transactions are neither the purchase nor sale of assets, voting securities or non-corporate interests. Accordingly, in this case, consideration allocated to entering into the Reinsurance Agreement (if any) would not be included in determining whether the size-of-transaction test is met.

We also understand that the transfer of investments reflecting reserves in connection with a transaction of this nature is not a reportable event under the HSR Act unless the investments reflecting the reserves are comprised of the types of assets (or voting securities) that would otherwise be separately reportable under the HSR Act. For example, investments reflecting reserves that constitute cash, mortgages and bonds would not be subject to the reporting obligations of the HSR Act; investments reflecting reserves that constitute voting securities would be subject to the reporting requirements of the HSR Act if the size-of-person and size-of-transaction tests were met and no exemption was otherwise available.

In this case, the parties will need to determine whether any of the investments reflecting the reserves could be subject to the HSR Act's reporting obligations most likely as a secondary acquisition. In addition, since the value of the non-exempt assets of the Business being acquired pursuant to the Asset Purchase Agreement is undetermined, the HSR Act's regulations require that the fair market value of the assets (and assumed liabilities) be determined in good faith by the board of directors of the ultimate parent entity of the purchaser or by an entity delegated that function by such board. The determination would need to be made within 60 calendar days prior to the closing (if no HSR filing is required) or within 60 calendar days prior to the date of filing of an HSR filing if one is required.

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B. Michael Verne  
July 27, 2005  
Page 3

We believe that this letter accurately reflects our prior conversation. Should you have any questions or require any additional information, please contact us. As always, we appreciate your assistance.

Sincerely,

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[REDACTED]

AGREE-  
B. Michael Verne  
7/27/05