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Verne, B. Michael

From: [REDACTED]
Sent: Monday, September 22, 2008 3:33 PM
To: Verne, B. Michael
Subject: HSR Inquiry

Dear Mike:

Company A ("Buyer") is a reinsurance company and company B ("Seller") is an intermediate holding company for the insurance and reinsurance subsidiaries of a financial services company. The parties meet the size-of-the-parties test.

Buyer and Seller are contemplating a transaction whereby Buyer will acquire Seller's reinsurance brokerage business including 100% of Seller's reinsurance brokerage company ("Company") and from Seller's affiliates certain systems, equipment, fixtures, licenses, software, and furniture required to support the reinsurance business. The affiliate assets to be acquired and the tangible assets of the Company (the "Purchased Assets") have aggregate fair market values well under the \$63.1M size-of-the-transaction threshold.

Simultaneous with the acquisition of the Company, Buyer and Seller will also enter into a Renewal Rights Agreement pursuant to which two insurance company subsidiaries of Seller will agree that Buyer will have the exclusive right to offer new and/or renewal policies and reinsurance coverages to the insurers' policyholders and reinsuring cedents upon expiration of their policies or reinsurance agreements (the "Renewal Rights"). The Company also has an interest in these same Renewal Rights as it was responsible for placing this business with the insurers.

We note that there is no assurance that the policyholders or reinsuring cedents will renew their policies or reinsurance arrangements with the Buyer.

Finally, in order to transfer to the Buyer the future economic risks and benefits associated with the Seller subsidiary insurers' in-force business that was produced by the reinsurance brokerage, the Buyer and the insurers will enter into indemnity reinsurance agreements pursuant to which Buyer will reinsure the in-force policies and reinsurance agreements written by the reinsurance brokerage on behalf of the insurers and the insurers will transfer to Buyer assets equal to the corresponding loss reserves and the unearned premium reserves relating to the business.

If the consideration paid for the Renewal Rights is aggregated with the purchase price for the Purchased Assets, then the total will exceed \$63.1M. It is our understanding, however, that "renewal rights" are generally not considered "assets" for purposes of the HSR Act because there is no guarantee that the policyholders or reinsuring cedents would in fact renew the policies. We note that there are two informal opinions on the issue -- 0802002 and 051000717 -- which prompt us to seek your confirmation that "renewal rights" would not be considered an asset in the context of the transaction described herein.

If, on the other hand, "renewal rights" are considered "assets" for purposes of the HSR Act, please confirm our understanding that the acquisition of renewal rights are exempt under the ordinary course of business exemption pursuant to 15 U.S.C. § 18a(c)(1) and 16 C.F.R. §802.1. As the size of the transaction is below \$63.1 million with the exclusion of the value attributable to renewal rights, please also confirm our understanding that the overall transaction is not reportable under the HSR Act.


Please also confirm our understanding that indemnification reinsurance agreements are not subject to the Act even if 100% of the premiums and reserves are ceded to the Buyer.

Thanks very much for your help.

[REDACTED]

9/22/2008

I agree that renewal rights are not considered assets for HSR purposes. Indemnification reinsurance agreements are not subject to the Act.


9/23/08