801.21
802.20
801.10(c)
7A(a)(3)

[redacted]

October 15, 1991

[redacted]

VIA FEDERAL EXPRESS

Mr. Patrick Sharp
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Re: Premerger Notification Rule 801.21

Dear Mr. Sharp:

This letter is to confirm my understanding, based on our telephone conversation of October 11, 1991, that the Commission's staff would apply Premerger Notification Rule 801.21 (16 C.F.R. § 801.21) in the manner described below to the transaction described below. It is my understanding that Rule 801.21 would apply as described below for the purpose of determining whether the value of the assets to be acquired exceed the $15 million premerger notification threshold set forth in § 7A(a)(3) of the Hart-Scott-Rodino Act (the "Act") (15 U.S.C. § 18a(a)(3)) and Rule 802.20 (16 C.F.R. § 802.20).

Our client, an insurance holding company ("Buyer"), is considering acquiring certain assets of a failing insurance company ("Seller"). Buyer has total assets in excess of $100 million, and Seller has total assets in excess of $10 million. The assets to be acquired consist of Seller's rights under a specified package of insurance policies (the "Policies"), cash equivalent outstanding loans to policyholders totalling $1.8 million (the "Policy Loans") and municipal bonds and other marketable securities having a value on Seller's books of $39.2 million (the "Securities"). The purchase price consists of $4.5 million in cash and the assumption of all liabilities under the Policies. The Seller has reserved $41 million on its books for the liabilities associated with the Policies.

Under the basic minimum size-of-transaction test established by § 7A(a)(3) of the Act, read in conjunction with Rule 802.20, notification is required if, as a result of the acquisition, the acquiring person would hold assets of the acquired person valued at more than $15 million. However, Rule 801.21 provides that the

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assets of the acquired person do not include, among other things, voting or nonvoting securities or bonds owned by the acquired person and issued by a third party.

According to Rule 801.10(b) and (c)(3), the value of the acquired assets is equal to the greater of the "fair market value" (determined by the board of directors of the ultimate parent entity of the acquiring person within 60 days of the filing under the Act) or the "acquisition price". As discussed above, the acquired assets consist of the Policies and the Policy Loans. The Buyer has advised us that it believes $6.3 million is the fair market value of these assets.

municipal bonds and other marketable securities

Under Rule 801.10(c)(2), the acquisition price is equal to the value of all consideration for the assets to be acquired. Since the sum of the values of the Policy Loans ($1.8 million) and the Securities ($39.2 million) exactly equals the amount that Seller has reserved for the liabilities to be assumed by the Buyer, it appears that the remaining consideration, $4.5 million in cash, should be considered the value of the Policies. The value of the Policy Loans appears to be $1.8 million. In other words, although the total consideration equals $45.5 million (cash plus assumed liabilities), only $6.3 million appears properly allocable to the acquired assets other than the Securities. agreed

Therefore, the proposed transaction is not subject to the notification requirements of the Act because the Buyer will hold assets of the Seller (the Policies and the Policy Loans) valued at only $6.3 million as a result of the transaction.

Please contact me as soon as possible at the direct-dial number listed above if this letter does not accurately reflect our conversation. Thank you for your valuable assistance in this matter.

Sincerely,

[redacted]

[redacted]

See #139 new PM Practice Manual
Agree that you can offset cash equivalent securities
called [redacted]
PS
RS — concurs
HR — concurs