

801.11 Ca.  
802.20(c)

[REDACTED]

July 9, 1992

VIA HAND DELIVERY

Mr. Patrick Sharpe  
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Federal Trade Commission  
Pre-Merger Notification Office  
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Washington, D.C. 20580

JUL 9 4 41 PM '92  
FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Dear Patrick:

A few months ago we discussed briefly the reportability of an insurance related transaction wherein determination of whether the transaction comported with the minimum dollar value exemption contained at 16 C.F.R. § 802.20 was at issue.<sup>1</sup> I now have the information you requested and, based on this information, would like to obtain your views regarding reportability of the transaction.

Company A proposes acquiring 100% of the voting securities of [REDACTED] for total consideration of [REDACTED]. In 1990, [REDACTED] and its parent, [REDACTED], adopted a plan of liquidation as more fully set forth in the attached Internal Revenue Service Letter Ruling. Pursuant to this plan of liquidation, [REDACTED] distributed all assets (other than certain retained assets) and all liabilities to [REDACTED] on [REDACTED] 1992. [REDACTED] retained only its corporate charter, state insurance licenses, and sufficient assets to meet the state law minimum capital and surplus requirements. The sole reason these assets were retained was to isolate the value of [REDACTED] charter for resale to a third party. While the state insurance licenses have value, they do not, by themselves, generate, nor are they capable of generating, income for [REDACTED]. In order for [REDACTED] to generate

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<sup>1</sup>For purposes of this letter, we will assume that the parties satisfy the size of the person thresholds.

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sales, it would need, among other things, additional working capital, approved products to sell, personnel to manage the operations, etc. [redacted] lacks all of these essential elements for generating sales as an insurance company. The licenses alone do not (and can not) produce any revenue.

Prior to the liquidation, [redacted] was in the life and health insurance business. There is no dispute that the total assets of [redacted] are below \$25 million. According to Annotation 156 of the ABA's Premerger Notification Practice Manual, life insurance companies should refer to the "total net premiums - written" portion of the last regularly prepared annual report on NAIC Form 1 to determine the annual net sales of the company. Based on these reports, the net premiums for year ending December 31, 1991 exceeded \$25 million per year. This amount, however, reflects the earnings of [redacted] the day before the liquidation. As indicated on the last regularly prepared quarterly statement for [redacted] since the liquidation [redacted] net premiums for the first quarter was only [redacted].<sup>2</sup> A copy of this quarterly statement is attached for your review. It is not expected that the net premiums for [redacted] in subsequent quarters will exceed those of the first quarter. Thus, based on the financial reports subsequent to the liquidation of ALIC, the annual net sales of [redacted] would be well below the \$25 million threshold. *see 801.116 SBP*

Accordingly, it would appear that [redacted] should be able to avail itself of the minimum dollar value exemption. Please let me know if you concur with this conclusion. I can be reached at [redacted].

Thank you for your assistance in this matter. Best regards.

Sincerely,  
[redacted]

*called [redacted] 7-5-92  
I disagree - Not exempt  
under 802.20(b) - You live  
or die by your last annual  
income statement.*

*(PS) - RS concurs*

<sup>2</sup>The reason there was any premium volume at all was that [redacted] was using [redacted] forms to write insurance in the handful of states that had not yet approved [redacted] forms.