

801.10 (c)(2)

[REDACTED]

November 13, 1992

VIA TELEFAX (202) 326-2050

Ms. Nancy Ovuka  
Compliance Analyst  
Federal Trade Commission  
Washington, D.C. 20580

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FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

Dear Ms. Ovuka:

Pursuant to our conversation of Tuesday, November 10, in relation to whether a proposed bulk reinsurance qualifies as a reportable acquisition under the Hart-Scott-Rodino Act, I have set forth below the details of the transaction for your review.

RECORDED  
SERIALIZED  
INDEXED

A stock insurer with total admitted assets of approximately \$1,000,000,000 and over \$100,000,000 of total direct written premiums (the "Parent Company") owns all the issued and outstanding capital stock of various other insurers, including a [REDACTED] with total admitted assets in excess of \$140,000,000 and \$19,500,000 of total direct written premiums (the [REDACTED]). In the proposed transaction the [REDACTED] will bulk reinsure, on an assumption basis, all the in-force business and other insurance liabilities of a certain mutual [REDACTED] with approximately \$33,000,000 of total admitted assets and \$22,000,000 of total direct written premiums (the [REDACTED]). As a result of the reinsurance the [REDACTED] will assume liabilities of the [REDACTED] in the aggregate approximate amount of \$40,000,000 and will become primarily liable under the insurance policies written by the [REDACTED]. In addition, the [REDACTED] will deliver to the [REDACTED] a reinsurance premium payable for such assumption, consisting of all assets of the [REDACTED] less the amount of assets needed to pay the principal and interest owed by the [REDACTED] under certain surplus notes. It is expected that the amount of the reinsurance premium will be approximately \$22,000,000 and that \$18,000,000 thereof will be paid with liquid assets, with the balance being comprised of non-admitted assets. This transaction

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\$40 mm  
-22 mm  
\$18 mm of liabilities  
not covered by  
fund

is subject to approval by the [redacted] Department of [redacted] and is being undertaken in consultation with the Department in order to alleviate capital problems being experienced by the mutual insurance company as a result of [redacted]

It had initially appeared to us that the [redacted] may not have to file under the Hart-Scott-Rodino Act because the total acquisition will be less than \$15,000,000, since cash is not counted for purposes of determining the value of the assets, and that would leave an effective transfer of only \$4,000,000 of non-admitted assets plus the assumption of liabilities by the [redacted]. However, if the liabilities assumed are counted as the acquisition price, then the transaction would likely exceed the \$15,000,000 mark.

If the transaction were determined to meet the threshold \$15,000,000 size, we believe the bulk reinsurance transaction contemplated should be exempt from the federal antitrust laws by operation of the McCarran-Ferguson Act. There is ample case law to support that when an insurer is engaged in a transaction that is "the business of insurance" which is regulated by the states, and does not involve boycott or other practice in restraint of trade, then it is exempted by the McCarran-Ferguson Act. Reinsurance has been recognized as part of the "business of insurance" and is contemplated as such by the McCarran-Ferguson Act's own legislative history. The [redacted] is actively involved in regulating this transaction as noted above.

NO  
see  
Dix  
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If you should need any further details on the above transaction, please do not hesitate to contact me at [redacted]. I greatly appreciate your kind cooperation with this matter.

Sincerely,

[redacted signature]

[redacted address]

11/16/92

Called [redacted]. It appears that \$18mm in assumed liabilities will remain after covering written premiums, and, therefore, is acquisition price. R5 X P3 covers.

801.1(c)(1); 801.1(a)(2); 801.1(b)(2)

HYPOTHETICAL FOR THE FTC STAFF

X will receive approximately 14% of the voting common stock (value approximately \$20 million) of a bank's stock in a restructuring proceeding approved by the Office of Thrift Supervision. The stock will represent part of a total of 79% of the voting securities of the bank that will be received by several of our clients and others (including X) in exchange for a class of 6 1/2% convertible debentures of the bank's holding company pursuant to the OTS approved plan.

X is an institutional investor (a broker-dealer) who will hold the voting securities for ten accounts, none of which individually exceed 7%, or \$10.3 million worth of the voting stock of the bank. X is not the beneficial owner of the stock. X purchases and sells investments and securities for the benefit of its clients, including the ten account holders that currently hold the subject bank's debentures, and vote such stock or securities pursuant to the direction of its clients, failing which direction, X votes the stock or securities in accordance with its own discretion.

There is an existing standard agreement by which X purchases and sells shares in each of the ten accounts. The beneficial owners hold the shares directly in their own name or in street names.

Pursuant to the restructuring (designed to infuse capital into the bank to meet anticipated regulatory requirements) four new director positions at the bank will be created to be occupied by persons identified and nominated by an unofficial steering committee of the debenture holders. X is a member of the unofficial steering committee.

Is X required to file a premerger report?

11/17/92 - called [redacted] advised that letter # 81 in ABA book states

IN Office view that broker-dealer does not hold voting stock but rather client holds stock. Confirmed that client could revoke X's authority to vote stock, should client not vote it, any time. As to FF 4, a "committee" is not an entity. Contractual power to appoint four of fourteen directors is not an acquisition and will not result in control of the bank. X is one of 7 committee members and does not appear, by itself, to have contractual power to appoint any directors. X need not file a premerger report for all transactions. PAB/mell