[redacted]

801.40
7A c(10)
801.90

March 19, 1999

VIA FACSIMILE 202/326-2624
and FIRST CLASS MAIL

Mr. Michael Verne
Premerger Notification Office
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington DC 20580

Dear Mike:

This letter is to confirm your interpretation of the applicable law and regulations that you expressed in our telephone discussion on March 12, 1999. If I have misstated or misunderstood your interpretation, please advise me right away.

I described the facts relating to the transaction in question as follows.

By agreement dated June 18, 1998, the [redacted] the [redacted] and the [redacted] formed [redacted] Acquisition Company, a [redacted] to purchase a life and health insurance company with multiple state licenses. [redacted] and [redacted] Original Shareholders") contributed $200,000 each and took back [redacted] voting securities giving them each the ability to elect one-third of [redacted] directors. While the Original Shareholders contemplated that additional capitalization of [redacted] would be needed to acquire an insurance company, there was no agreement by them to contribute additional assets, or to extend or guarantee credit to [redacted] In fact, each of them could terminate their participation and avoid future obligations for any reason upon notice to the others at any time. [redacted] subsequently identified [redacted] wholly-owned subsidiary corporation of the [redacted]), as the insurance company it wished to purchase, [redacted] and [redacted] signed a letter of intent dated January 8, 1999, providing for [redacted]'s acquisition of [redacted] Life. The transaction described in the letter of intent provides for [redacted] acquiring 100% of the outstanding voting securities of [redacted] Life, and [redacted] acquiring a 25% stake in [redacted] For tax reasons, and prior to consideration of HSR requirements, the acquisition was structured as a sale by [redacted] to each of the Original Shareholders of 52,000 shares of [redacted] for $5.4 million in cash, to be followed immediately by the contribution from each of the Original Shareholders to [redacted] of $4.4 million in cash plus the 52,000 shares of [redacted] just acquired, and the contribution to [redacted] by [redacted] of the remaining 94,000 shares of [redacted] life plus $200,000 in cash, in return for voting securities of [redacted] giving [redacted] and the Original Shareholders each the right to elect one-fourth of [redacted] directors. Each of the four shareholders of [redacted] will also be obligated as a result of the transaction to contribute additional capital to [redacted] to make a capital contribution to [redacted] to maintain [redacted] year-end [redacted] to at 300%. At the conclusion of the transactions described above, each of the four shareholders will have contributed to [redacted] cash and stock of [redacted] having a total value of $10 million. [redacted] and [redacted] each have revenues and assets in excess of $100

[redacted]

million. Each is completely independent of the others, owning no voting securities in the others and having no right to appoint or vote for directors of the others. [redacted] has assets of $38 million and annual net revenues of less than $50 million.

Your analysis of these facts was substantially as follows.

The transaction under consideration involves several acquisitions of voting securities, each potentially subject to the Act. These include the acquisitions by [redacted] and [redacted] of [redacted] voting securities when [redacted] was formed in 1998 ("Acquisitions 1-3"); the acquisitions from [redacted] by [redacted] of the voting securities of [redacted] ("Acquisitions 4-6"); the acquisitions by [redacted] and [redacted] of the voting securities of [redacted] ("Acquisitions 7-10"); and finally, the acquisition by [redacted] of the voting securities of [redacted] from [redacted] four ultimate shareholders ("Acquisitions 11-14").

1. The commerce test. This test is satisfied for all of the acquisitions involved because the parties are engaged in interstate commerce.

2. Size-of-transaction test. The size-of-transaction test is satisfied for all of the acquisitions involved, either because the acquisition exceeds 15% of the voting securities of the issuer, or because the acquisition is of voting securities having a value of more than $15 million, or both.

3. Size-of-parties test. For Acquisitions 1-3, the size-of-parties test is not satisfied. Rule 801.40 governs the size-of-parties test where a new corporation is formed. [redacted] and [redacted] each contributed $200,000 to [redacted] on its formation. There were no other agreements or obligations at that time to contribute additional capital or to make or guarantee loans for [redacted] Each of the Original Shareholders had a right to avoid any further obligations by terminating its participation prior to [redacted] acquiring an insurance company. As a result, [redacted] had less than $10 million in assets under Rule 801.40, and no HSR filing will be required for these acquisitions because the size-of-parties test is not satisfied.

The size-of-parties test is satisfied for Acquisitions 4-6 because each of the parties involved has over $100 million in assets and revenues, and will be assumed to be satisfied for Acquisitions 7-10. (An exemption exists for Acquisitions 4-10, as discussed below.)

[redacted] acquisitions of the voting securities of [redacted] Acquisitions 11-14) will meet one part of the size-of-parties test if [redacted] has over $10 million in assets. From its formation, [redacted] has $600,000 in assets. When Acquisitions 11-14 are completed, [redacted] will have assets of approximately $40 million, consisting of cash and [redacted] life voting securities which the parties have valued at approximately $26 million.

If Acquisitions 11-14 are deemed to occur simultaneously, [redacted] will not have assets or revenues in excess of $10 million, and it will not satisfy the size-of-parties test. If they are deemed to occur sequentially, [redacted] will exceed the $10 million threshold based upon its acquisition of cash and [redacted] Life voting securities from any one of its four ultimate shareholders. Each of [redacted] three original shareholders is contributing $4.4 million in cash plus [redacted] voting securities that it acquired for $5.4 million, for a total of $9.8 million. This figure, when coupled with the $600,000 in assets from [redacted]'s formation, results in a total asset figure of just over $10 million. [redacted] is contributing $9.8 million worth of [redacted] Life voting securities plus $200,000 in cash to bring its total contribution up to $10 million, to equal the total contributions made by each of the original

[redacted]

shareholders of [redacted]. The FTC will evaluate the acquisitions as occurring sequentially, and not as simultaneous. Thus [redacted] will satisfy the $10 million part of the size-of-parties test for one or more of its acquisitions of [redacted] life voting securities.

There will not, however, be an acquired person having assets or net sales of $100 million or more, with the result that Acquisitions 11-14 do not satisfy the size-of-parties test. [redacted] together with all entities it controls, does not have assets or annual net sales of $100 million or more. When [redacted] sells over 60% of [redacted]'s voting securities in Acquisitions 4-6, it ends its control of [redacted] life, and [redacted] becomes its own ultimate parent entity. When [redacted] acquires [redacted] Life's voting securities, [redacted] is the acquired person, and does not satisfy the $100 million part of the size-of-parties test.

Based on the foregoing, the threshold jurisdictional tests are satisfied or assumed satisfied for Acquisitions 4-10, but are not satisfied for Acquisitions 1-3, or 11-14.

4. Exemptions. The minimum dollar value exemption under Rule 802.20 is available for Acquisitions 4-10. This exemption provides that where the size-of-transaction test is satisfied by the acquisition of more than 15% of the voting securities of the issuer, having a value of less than $15 million, and the acquiring person does not acquire control (i.e., holding 50% or more of the issuer's voting securities, or having a contractual right to appoint a majority of the issuer's directors) of the issuer having a certain size, the transaction will be exempt. Acquisitions 4-10 satisfy the criteria for the exemption because there is no acquisition of control of the issuer in any of these acquisitions.

In summary, each of the acquisitions either fails to satisfy the size-of-parties test, or qualifies for the minimum dollar value exemption under Rule 802.20, with the result that none is reportable.

RULE 801.90

The analysis above, concluding that no filing is required, brings into question whether Rule 801.90 applies. Rule 801.90 provides that any transaction or other device entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the Act shall be disregarded, and the obligation to comply shall be determined by applying the Act and these Rules to the substance of the transaction. Rule 801.90 does not apply here, however, because tax considerations, and not a desire to avoid an HSR filing, have given rise to this particular transaction structure. In fact, the parties structured the transaction for tax reasons before analyzing HSR requirements, and while under the assumption that an HSR filing would be required for the transaction. Therefore, the transaction structure was not created "for the purpose of avoiding" HSR requirements, and Rule 801.90 does not apply under these circumstances.

[redacted]

Thank you again for your assistance. Please advise if this letter misstates your interpretation in any way.

Very truly yours,

[redacted]

[redacted]

(1) [redacted] 6/18/98 FORMATION - EACH CONTRIBUTE $200,000 NO ADDITIONAL COMMITMENTS [redacted] IS NOT A $100MM PERSON

(2) [redacted] EACH ACQUIRES 20.6% OF AAA LLC FOR $5.4 MM $100 MM [redacted] 100% [redacted] SIZE OF TRANSACTION TEST IS NOT SATISFIED.

(3) [redacted] ACQUIRES [redacted] FROM [redacted] + CASH. [redacted] 36.7% [redacted] THERE IS NO ENTITY A $100 MM PERSON CONTAINING [redacted] IS NOT A $100MM PERSON

(4) [redacted] REDUCE THEIR HOLDINGS IN [redacted] TO 25% - EXEMPT UNDER c(16).

(5) [redacted] ACQUIRES 25% OF THE VIS OF [redacted] VALUED AT $10 MM. - DOES NOT SATISFY THE SIZE OF [redacted] TRANSACTION TEST.

NO FILING REQ'D - [redacted] 3/24/99 (RBS CONCURS)