

Re: Interpretation Under 16 C.F.R. \$801.11

are conectively referred to herein as the pursuant to sous. The Code of Federal Regulations promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), this letter shall serve as a formal request the control and reporting of annual net sales and total assets under to office the United States property and casualty insurance company.

Convention Standards) and regularly prepared annual statements of income and balance sheets prepared in accordance with Generally Accepted Accounting Principles ("GAAP") which differ, which computations and which periods should be used for reporting "annual net sales" and "total assets" under 16 C.F.R. \$801.11?

# Material Facts; Transaction Pending Closing

On August 22, 1991, agreed to purchase all of the capital stock of a property and casualty insurer domiciled in the State of



insurance company and a wholly-owned subsidiary of Its fiscal year is July 1st through June 30th.

and the ultimate parent extitues the

year basis and Quarterly Statements on a calendar quarter basis, with the transference Department, both of which are required by law, prepared in accordance with Statutory Convention Standards, and sworn to be true and correct by an officer of Such reports are filed on standardized National Association of Insurance Commissioners ("NAIC") forms.

1/1/90 - 12/31/90 (latest Annual Statement) (end of calendar year)

All above annual statements of income were "regularly prepared".

"total assets" as of the date indicated below as computed in accordance with Statutory Convention Standards and as computed in accordance with GAAP are as follows:

Date Statutory Convention Standards GAAP
6/30/91

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(end or carendar hear)

quarterly period. These statutorily required reports are called "Quarterly Statements". Both Annual Statements and Quarterly Statements are sworn as true and correct and both are prepared in accordance with

Convention Standards applicable to the require that applied not cales he determined an a calendar

Statements and Quarterly Statements are sworn as true and correct and both are prepared in accordance with Statutory Convention Standards. We have included annual net sales on a fiscal year basis to provide additional information.



The last regularly prepared balance sheets for were prepared as of June 30, 1991 and consisted of both a Quarterly Statement balance sheet required under Statutory Convention Standards and a balance sheet computed in accordance with GAAP. Both balance sheets were "required prepared".

The transaction between and the second is expected to close on or about October 30, 1991, pending confirmation by the FTC and Department of Justice of the matters set forth herein with the attendant result that no filings are required by the parties under the Act or, alternatively, the expiration of the waiting period under the Act if the parties are so required to report.

# Analysis Under the Act and Basis for Exemption

Section 802.20 of Part 16 of the Code of Federal Regulations provides that:

"An acquisition which would be subject to the requirements of the act and

- (a) Assets of the acquired person valued at more than \$15 million; or
- (b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of \$25 million or more."

Subparagraph (a) of \$802.20 would not apply to the transaction in question

8801.11.

### Annual Net Sales

Section 801.11(c) provides that the "annual net sales" of a person shall be as stated on the last regularly prepared annual statement of income and expense of that person and that the "total assets" of a person shall be as stated on the last regularly prepared balance sheet of that person (and, therefore, not necessarily annual). Because of the nuances surrounding what annual net sales and total assets of an insurance company would be proper for inclusion in "annual net sales" and "total assets" under \$801.11, the FTC Staff has heretofore issued an interpretation of \$801.11 contained in letter #96, dated June 21, 1978 (the "Latter") set forth on page 69 in that certain Premerger Notification Manual prepared by the Premerger Notification Subcommittee, the Section 7 (Clayton Act) Committee and the Section of Antitrust Law of the American Bar Association (copyright dated 1985). A copy of the Letter is attached hereto as Exhibit A for your reference.



Pursuant to the Letter, the "annual net sales" of casualty (and property — as the category "property and casualty insurer" is normally indivisible) insurers that report on NAIC Annual Statement Blank for Fire and Casualty Insurance (Form 2) should use "net premiums written" for calculation of their "annual net sales". Therefore, pursuant to the FTC's interpretation as set forth in the Letter, would not have \$25 million or more in annual net sales and, assuming it did not meet the "total assets" threshold, would be exempt from the filing requirements of the Act by reason of \$802.20(b).

### Total Assets

The Letter does not indicate the Staff's position on the proper method to calculate "total assets" for a property and casualty insurance company, although it does

calculated in accordance with GAAr. The Letter also indicates that as an alternative title insurers "... may simply use their last regularly prepared balance sheet, prepared in

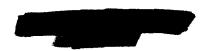
discretionary alternative source for reporting. The Letter also does not expressly defineate

Convention Standards in neu of a regularly prepared GAAr statement prepared at the same

### Conclusion

On behalf of the state of the s

as computed and sworn to in accordance with Statutory Convention Standards and as stated



Based on the provisions of \$801.11 and the Letter, as well as the foregoing analysis, it is our belief that no filings under the Act are required in connection with the government of the annual net cales and and season of the analysis and an accordingly and at your earliest convenience. Pursuant to conversations with Staff  It is the desire of the analysis and an accordingly and at your earliest convenience. Pursuant to conversations with Staff  We would appreciate your acknowledging the receipt of this letter by stamping the enclosed extra copy of this letter and returning it to the undersigned in the self-addressed enclosed envelope.  Very truly yours.  Purposed balance whells:  Activity and as the destruction of the activities and the activi		Therefore, in summary, we believe that the determinations under \$801.11 with
analysis, it is our belief that no filings under the Act are required in connection with the proximal transaction and that annual net select and total essate as most recently company should be those utilized for determinations made under \$801.11.  If the Staff reaches a contrary conclusion in this regard, please notify us accordingly and at your earliest convenience. Pursuant to conversations with Staff  We would appreciate your acknowledging the receipt of this letter by stamping the enclosed extra copy of this letter and returning it to the undersigned in the self-addressed enclosed envelope.  Very truly yours,  Coursel a same plead, both self-action of the self-actio		paraget 12.
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#### EXHIBIT A

Applicable subsection of the fules: § 001.11(c).

Brief statement of the question or problem: How do insurance companies determine annual net sales and total assets for purposes of the size-of-person test?

of operations used the format of the NAIC "Annual Statement Blank for Life and Accident and Health Insurance (Form 1)" should refer to "total net premiums written" as their "annual net sales" within the meaning of § 801.11(c)(1).

(Form 2)" should use "net premiums written" for their "annual net sales."

Title insurers that file asset balance sheets under the format of the "NAIC Annual Statement Blank for Title Insurance (Form 9)" may use "admitted value" on their most recent Form 9 for their "total assets" under § 801.11(c)(2), whether or not those figures are calculated in accordance with generally accepted accounting principles (GAAP). Alternatively, they may simply use

(Subject: Size of assets and sales by insurance companies for purposes of the