

§ 801.11
2 regularly prepared
bal. sheets covering
the same period.

[REDACTED]

Handwritten scribble

[REDACTED]

[REDACTED]

RECEIVED
OCT 22 1991
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

October 1, 1991

VIA FEDERAL EXPRESS

PERSONAL & CONFIDENTIAL

Premier Notification Office
Bureau of Competition
Room 303

Director of Operations
Antitrust Division
Department of Justice

Re: Interpretation Under 16 C.F.R. §801.11

[REDACTED]

On behalf of [REDACTED]

[REDACTED] are collectively referred to herein as the [REDACTED], pursuant to 8003.30 of 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 of the Federal Trade Commission and Department of Justice to confirm the method of calculation and reporting of annual net sales and total assets under 16 C.F.R. 801.11 for a United States property and casualty insurance company.

Topic for which Confirmation is Sought

What is the proper method of calculating and reporting "annual net sales" and "total assets" under 16 C.F.R. 801.11?

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, [REDACTED] entered into a stock purchase agreement by which the [REDACTED] agreed to purchase all of the capital stock of [REDACTED] a property and casualty insurer domiciled in the State of [REDACTED]

satisfaction of all required regulatory approvals. [REDACTED] is a regulated (i.e., fully admitted)

[REDACTED]

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

[REDACTED] and the ultimate parent entity of the [REDACTED] (as defined in

year basis and quarterly statements on a calendar quarter basis, with the [REDACTED] Insurance 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 [REDACTED]. Such reports are filed on standardized National Association of Insurance Commissioners ("NAIC") forms.

Period	Statutory Convention Standards	GAAP
1/1/90 - 12/31/90	[REDACTED] (latest Annual Statement)	[REDACTED] (end of calendar year)

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

[REDACTED] "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	[REDACTED] (latest Annual Statement)	[REDACTED] (end of calendar year)

Statutory Convention Standards applicable to [REDACTED] require that annual net sales be determined on a calendar

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 Statutory Convention Standards. We have included annual net sales on a fiscal year basis to provide additional information.

[REDACTED]

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The last regularly prepared balance sheets for [REDACTED] 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 "regularly prepared".

The transaction between [REDACTED] and the [REDACTED] 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

must first determine how to calculate and report annual net sales and total assets under §801.11.

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 "Letter"), 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.

[REDACTED]

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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, [REDACTED] 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 GAAP. The Letter also indicates that as an alternative title insurers "... may simply use their last regularly prepared balance sheet, prepared in accordance with GAAP". The Letter does not appear to mandate the use of balance sheets

discretionary alternative source for reporting. The Letter also does not expressly delineate for a property and casualty insurance company (as opposed to a title insurance company)

Convention Standards in lieu of a regularly prepared GAAP statement prepared at the same time.

Conclusion

On behalf of [REDACTED] we believe that based on 16 C.F.R. §801.11 and the Letter, the annual net sales of [REDACTED] as computed and sworn to in accordance with Statutory Convention Standards and as stated on [REDACTED] last regularly prepared Annual Statement of income would be the appropriate method for calculating annual net sales under §801.11. We believe that when statements are contemporaneously and regularly prepared in

Similarly, we believe that based on 16 C.F.R. §802.20(b) and the Letter, the total assets of [REDACTED] as computed and sworn to in accordance with Statutory Convention Standards and as stated

[REDACTED]

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Therefore, in summary, we believe that the determinations under §801.11 with

[REDACTED] should be based on (a) that [REDACTED]

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 contemplated transaction and that annual net sales and total assets as most recently [REDACTED] 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

It is the desire of [REDACTED] and the undersigned that this

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,
[REDACTED]

Enclosure

[REDACTED]

prepared balance sheets in
[REDACTED]
covering same period, both
must be used to determine
[REDACTED]
would meet the [REDACTED]

EXHIBIT A



Applicable subsection of the rules: § 801.11(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?

Investigation and discussion: Many insurance companies report their

Life insurance companies that in their last regularly prepared annual report 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).

Title insurance companies that report annual operations on "NAIC An-

report on "NAIC Annual Statement Blank for Life and Casualty Insurance (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 their last reported asset balance sheet prepared in accordance with

Documents pertaining to this issue: Memorandum to the Honorable

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