

78 (C)(7), 801.1 (C)(7)

[REDACTED]

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December 2, 1991

**BY FAX**

Richard B. Smith, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Informal Hart-Scott-Rodino Opinion Letter

Dear Mr. Smith:

As you suggested, I am writing to obtain the Staff's position on the applicability of the statutory (a)(1) exemption

under the facts outlined below.

**FACTS**

Company "A", a wholly-owned subsidiary of Company "B", is a State "X" corporation and engages in the business of

Under authority granted to him by a State X statute, the Commissioner of Insurance ("Commissioner") an elected state

which issued an order (1) appointing the Commissioner Conservator of Company A; (2) vesting title to all of the Company A assets in the Commissioner (and his successors in office) in his official

possession of all Company A's books, records, property, assets, and all other indicia of ownership and to conduct, as Conservator, any business of Company A; (4) appointing Company A

employees from transacting any business or disposing of any property on behalf of Company A; and (5) assuming and exercising sole and exclusive jurisdiction over all property of Company A to

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the exclusion of any other court or tribunal so as to protect the safety of the public and the Company A policyholders.

~~The Commissioner's statutory powers as Conservator of~~

permission of the Court.

Our client, Company C, wishes to purchase certain assets of Company A directly from the Commissioner. The definitive agreement, which is currently being negotiated, will be signed by the Commissioner in his official capacity as Conservator, and will require Court approval. The proposed transaction satisfies the size-of-person and size-of-transaction tests.

ANALYSIS

We have concluded that the transfer of assets from the Conservator to our client would be exempt under (c)(4) and because the Conservator is the State or a State agency and not an "entity." Section 7A(c)(4) of the Act exempts "transfers to or from... a state or political subdivision thereof" from the Act's filing requirement. In addition, the Act only applies to an "entity," which is defined to exclude "the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce)." 16

the Resolution Trust Corporation ("RTC") is fully consistent with

The Staff has repeatedly concluded that an acquisition from the RTC as Conservator is exempt; the same logic and conclusion apply here.

As with an RTC transaction, Company C would be acquiring the Company A assets directly from the Conservator, i.e., the Insurance Commissioner of State X in his official

Company A. The assets would be transferred pursuant to a written agreement signed by the Commissioner in his capacity as

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In sum, it is our view that Company C would purchase the Company A assets from the State as Conservator, and not from Company A or any corporation engaged in commerce. Therefore, we believe this transaction is consistent with the "to or from a State" exemption.

We would appreciate learning from you as soon as practicable the Staff's position on this matter. We would, of course, be pleased to answer any questions or discuss this matter further.

Sincerely,

[Redacted signature]

12/2/91 [Redacted] and advised that

official becomes the receiver or conservator of an insurance

company pursuant to the assets of the insurance company (but not including reportable amounts of voting stock in other issuers) and be exempt from reporting under 7A (c)(4) as a "state" or under 801.1(a)(2) as a "state agency."  
RBSmith

[Redacted]