אין ניין עם אורין ניין ניין







December 2, 1991

BY PAX

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

under the facts outlined below.

FACTS

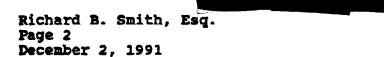
Company "A", a wholly-owned subsidiary of Company "B", is a State "Y" cornoration and engages in the business of

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 Company A's business of Company A's books, records, property, assets, and all other indicia of ownership and to conduct, as

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



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

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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 liom to a state of 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 corneration 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 <u>directly</u> from the Conservator, <u>i.e.</u>, 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

Righard R. Smith, Fee

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Conservator. The agreement will not be signed by any officer or agent of Company A. Indeed, even were Company A, acting as a corporation, inclined to sell the Company A assets, it would be enjoined from doing so by the order of the Court. As an elected State X official, the Commissioner is clearly part of the "State" and, therefore, not an "entity" within § 801.1(a)(2).

Vpland I discussed a latter dated amoil on loss in

acting as Conservator for an insolvent insurance company. Although the public version of that letter does not reveal the Staff's position, you informed me that the letter indicates that the Staff found the acquisition reportable. Whatever the reasoning employed by the Staff in 1985, that position cannot be reconciled with the Staff's more recent position on RTC transactions and thus should not control here. The Staff's position with respect to the RTC is fully consistent with the (c)(4) exemption and fully consistent with finding this transaction exempt.

The rationale for the (c)(4) exemption and definition of entity as explained in the SRD is also fully consistent with

invariably ongoined in commercial activities error shick courts

A is a wholly-owned subsidiary of Company B. Title to the assets of Company A were, however, transferred to the State by court order pursuant to state statute. Thus, the fact that Company A

This also makes inannosite the situations was and I discussed

In addition, pursuant to court order, no other court has jurisdiction over the assets held by the Conservator. The

matter of a corporation engaged in commerce.



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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.



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the aute of the vinance company (but not including reportable amounts of noting stock in other sources) and The exempt from reporting words 7A (c)(4) as a "state" or worder 801. 1(a)(2) as a "state agency."

801. 1(a)(2) as a "state agency."

