

February 16, 2000

VIA FACSIMILE: ORIGINAL TO BE MAILED

E. Michael Verne, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
6th Street and Pennsylvania Avenue N.W.
Washington, DC 20508

RE: Last regularly prepared balance sheet

Dear Mike:

This letter summarizes the conversation yesterday afternoon between you, me, and [redacted] concerning which balance sheet should be used by [redacted] client in determining whether it meets the size-of-the-person test under the HSR Act and Rules. As Mr. [redacted] stated, his client ("Company") has in the past prepared two types of balance sheets. Each month prior to September 1999, it prepared monthly balance sheets for use by management only. These balance sheets were not prepared in accordance with GAAP, and were always prepared on a "cash basis," omitting accounts receivable from the asset total. The last balance sheet of this type was prepared at the end of September, 1999. The total assets reflected by this balance sheet are below the size-of-the-person threshold. No balance sheets have been prepared since that date.

In addition, at the request of certain outside parties such as investment banks or lenders, Company, on at least three occasions over the last two years, has prepared an audited set of financial statements in accordance with GAAP. These balance sheets were prepared on an "accrual basis," and reflected all assets held by Company at the time, including accounts receivable. The most recent balance sheet of this type is dated as of June 30, 1999, and reflects the company's total assets on that date. The total assets reflected by this balance sheet meet the size-of-the-person threshold.

You concluded that the accrual basis balance sheets were not "regularly prepared" and therefore should not be used to determine Company's total assets for purposes of 15 USC §

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18a(a)(2). In addition, you agreed that, even if the accrual balance sheets were "regularly prepared," the balance sheet dated June 30, 1999 was not the *most recent* regularly prepared balance sheet. Rather, the September, 1999 balance sheet was the most recent regularly prepared balance sheet, and should be used to determine the size of the person.

That the September, 1999 balance sheet was prepared on a cash basis and omitted accounts receivable was immaterial, you agreed. Because Company consistently followed the practice of preparing its monthly balance sheets on a cash basis, that balance sheet satisfied the requirement of 16 CFR § 801.11(b)(2), that it be prepared "in accordance with the accounting principles normally used by [the] person . . ." Accordingly, you concluded that Company was entitled to rely on the September, 1999 cash basis balance sheet in determining whether it meets the size-of-the-person test.

Please call me at your earliest convenience to confirm that this description of our conversation accords with your records and recollection. Thank you very much for your attention to this matter.

Sincerely,



cc: 

Agree.

B. Michael Verne

2/22/00

