

March 6, 2000

By Facsimile

Ms. Alice Villavicencio  
Federal Trade Commission  
Bureau of Competition  
Premerger Notification Office  
Room 303  
6th St and Pennsylvania Ave, N.W.  
Washington, DC 20580

2000 MAR 06 10:13:02

Dear Ms. Villavicencio:

This letter is to follow up on our telephone conversation on Thursday, March 2. I described to you the following proposed transaction:

*bonafide debt*

Lender (together with certain of its subsidiaries) holds Senior Notes of Debtor, which were issued in a financing transaction in the ordinary course of Lender's business. (Lender is an insurance company and it and its subsidiaries regularly engage in financing transactions of this sort for their general accounts and for separate accounts and other funds which they administer.) The Debtor is in default under the Senior Notes, as well as certain debt owed to others. The parties have proposed a work-out as part of which Lender would agree to exchange the Senior Notes for shares of various series of Debtor's preferred stock and promissory notes which are convertible into additional shares of preferred stock.

The preferred stock to be issued to Lender will have the present right to vote (together with preferred stock to be issued to certain other creditors) for the election of one of the Debtor's seven directors. (Under certain future circumstances, which are not within Lender's control, the preferred stock would be entitled to participate in the election of five of the seven directors. Although I am not sure that it is germane to my question, I understand that in such event, the preferred stock to be acquired by Lender would represent only 50% of the preferred entitled to participate in such election.) The preferred stock is also convertible into the Debtor's common stock.

*1 director out of 7 directors*

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The promissory notes to be issued to Lender in the work-out will be automatically converted into additional shares of the preferred stock once the Debtor's certificate of incorporation is amended to increase the amount of its authorized stock. (The notes are included in the work-out because the Debtor does not have a sufficient amount of authorized and unissued stock and the parties desire to consummate the work-out more promptly than the Debtor may pursue the necessary corporate action to authorize the amendment of its certificate of incorporation. As part of the arrangements, the Debtor will undertake to immediately take action to amend its certificate, but it is a public company and the process to obtain the requisite shareholder approval will take some time.)

In our conversations on Thursday, I believe that you concurred with me that the original exchange of the Senior Notes for preferred stock and convertible notes would be exempt from premerger notification pursuant to the exemption stated in 16 CFR § 802.63(a). I also had asked whether the automatic conversion of the convertible notes into preferred stock upon the amendment of the certificate could be considered to be part of the same bona fide debt work-out and, therefore, also exempt under 802.63(g). You indicated that you were inclined to view it in that fashion, but wanted to confer with others in the Premerger Notification Office. Since we spoke, I have been asked whether a subsequent conversion of the preferred stock into common stock would be exempt from notification (under 802.63(a) or otherwise). I think that some of our discussion on Thursday touched on matters relevant to this analysis, but I would like to confirm your view.

Please call me at [REDACTED] after you have followed up with your colleagues.

Very truly yours,  
[REDACTED]

Called writer on 3/9/2000.  
AMY

*As long as the stock is part of the bona fide debt work-out, and the lender will not be getting control of the debtor, the exemption pursuant to Rule 802.63 applies.*

*P.S. concurs*