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802.9

March 7, 2000

FEDERAL EXPRESS

Michael Verne, Esq.
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Ave., NW
Washington, DC 20580

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FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Dear Mike:

Thanks again for taking the time yesterday to discuss the analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") of the set of facts that I provided. This letter is to confirm that you concur that this set of facts, summarized herein, does not give rise to a reporting requirement under the HSR Act.

By way of background, Public Company ("Public") is acquiring Private Company ("Private") through a stock-for-stock merger. Public's acquisition of Private's voting securities is not reportable because Private is its own ultimate parent entity and is not a \$10 million party.

Analyzing potential "reciprocal" acquisitions of Public stock by the shareholders of Private, under 16 CFR §801.2(e), each of these acquisitions is also non-reportable, either because the \$15 million size-of-transaction threshold is not met or because an exemption applies. Specifically, we confirmed that for one particular shareholder of Private, a venture capital entity structured as a limited partnership ("LP"), LP's acquisition of Public's voting securities is exempt pursuant to the "passive investment" exemption of 16 CFR §802.9.

As I mentioned, LP is its own ultimate parent entity because none of its partnership interest holders has either the right to 50% or more of its profits or 50% or more of its assets on dissolution; in fact, its largest partnership interest holder is the general partner ("GP") which holds about a 20% interest. Also, LP will hold considerably less than 10% of the outstanding voting stock of Public following the transaction. And GP, if considered as a separate entity, will not receive \$15 million worth of stock of Public.

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LP is entitled to the §802.9 exemption even though one individual person ("Individual") who serves as one of several of the "managing members" of GP, but who does not control it, is also a preexisting member of the Board of Directors of Public (not resulting from this transaction). You indicated that the §802.9 exemption remains applicable in such circumstances so long-- as is the case here -- as Individual does not by himself/herself control GP and/or LP.

Please do not hesitate to contact me should you have any questions regarding this analysis.

Regards,

[REDACTED]

[REDACTED]

cc:

[REDACTED]

AGREE THIS IS EXEMPT UNDER 802.9.
T. HANCOCK CONCURS.

Michael Verne
3/9/00

[REDACTED]