

301.21
902.4
801.10

September 27, 2000

By Fax: 202-326-2624

Patrick Sharp
Federal Trade Commission
Pre-Merger Office
Washington, DC

Dear Patrick:

This letter will recapitulate the facts of a transaction described to you on the phone this afternoon, as to which you agreed that no HSR filings would be necessary because the transaction does not meet the size of the transaction test as described below.

Company A, a charitable organization buying for its endowment, proposes to purchase more than 15% of the voting securities of Mutual Fund B (taking into account its prior holdings of voting securities of B) with an aggregate market value in excess of \$25 million (therefore the institutional investor exemption in 802.64 is not available). Mutual Fund B holds cash, bonds and mortgages of third parties and other non-voting securities and voting securities of third parties.

On the facts presented, where A will have less than 50% of the voting securities of B and thus will not control B, no possible reportable "secondary acquisitions" with respect to the voting securities of other persons held by B are presented. As a practical matter, this would not require HSR filings in any event because Mutual Fund B in each case holds, as a matter of policy, less than 10% of the voting securities of other persons.

Rule 801.21 provides for purposes of 7(A)(a)(3) . . . that

cash is not an asset of Fund B and voting and non-voting securities of other persons shall not be considered assets of Fund B.

Rule 802.4 provides that an acquisition of voting securities of an issuer (Mutual Fund B) whose assets consist of assets whose purchases would be exempt pursuant to 7(A)(c)(2) is exempt if the acquired issuer (Mutual Fund B) and all entities it controls does not hold other non-exempt assets with an aggregate fair market value of more than \$15 million. In this case Mutual Fund B does not hold any assets which are non-exempt assets. In actuality, pursuant to Rule 801.21,

Mutual Fund B holds no assets for HSR purposes of 7(A)(a)(3), except possibly for some falling within 7(A)(c)(2) and therefore its holdings do consist only of those assets whose purchase would be exempt pursuant to 7(A)(c)(2).

While the voting securities of others that are held by Mutual Fund B do not constitute assets for such HSR purposes, they would be the subject of potential reportable secondary acquisitions, if and when A had acquired 50% or more of the voting securities of Mutual Fund B. That is the place where anti-competitive concerns might arise under the HSR Act.

I would appreciate your calling back to confirm the conclusion we reached over the phone today that on these facts no HSR filings would be required.

Thank you for your prompt attention to this matter.

Sincerely,

[Redacted signature]

I concur. (PS)
called [Redacted] 9/26/00