

Item 4(c)

[Redacted]

Attorneys at Law

[Redacted]

[Redacted]

February 15, 2002

VIA FACSIMILE AND E-MAIL

Mr. Michael B. Verne  
Compliance Specialist  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580

Re: Item 4(c) - Investment Banker Book

Dear Mr. Verne:

I very much appreciate your time and assistance during the January 17<sup>th</sup> phone conversation you had with [Redacted] colleague, [Redacted], and me concerning Item 4(c). As you will recall, the specific Item 4(c) issue raised on that call concerned whether a filing need include a draft of an investment banker book regarding the possible sale of a company which draft updated a prior version of the investment banker book when the prior version had been circulated and was going to be filed with the HSR filing. This letter confirms the substance of that conversation and your answer to that question -- which answer was that the draft would not need to be filed.

Background

In order to comply with the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), Item 4(c) of the Notification and Report Form (the "Form") requires that the Form include copies of any study, survey, analysis or report which was prepared by or for any officer or director for the purpose of evaluating or analyzing the acquisition with respect to market share, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets ("Competitive Analysis").

[Redacted]

LS

[Redacted]

[Redacted]

[Redacted]

February 15, 2002

Facts

We discussed the following facts:

A corporation (the "Company") retained an investment bank (the "Investment Bank") to assist it and its stockholders in connection with a possible sale of the Company. The Investment Bank prepared three books (January, October and November 2001) to facilitate a possible sale. The three books discussed the Company and the likely acquirors, as well as the anticipated financial effect on each of the likely acquirors of the acquisition of the Company, based on publicly available information. Each successive book updated the prior version of the book.

In November 2001, the Company and one of the likely acquirors (the "Acquiror") began serious discussions about a possible acquisition of the Company. Upon commencement of those discussions, the [REDACTED] began revising the November 2001 version of the book based on additional public information that became available regarding the Acquiror (the "Draft Book"). The Draft Book was never completed because discussions between the Company and the Acquiror proceeded quickly and the Draft Book became unnecessary. The Draft Book was never disseminated to any person outside of the Investment Bank.

Issue

You were kind enough to answer the following question concerning the above statement of facts.

*Does the Draft Book constitute Competitive Analysis which must be submitted pursuant to Item 4(c) of the Form for purposes of complying with the HSR Act?*

No. The Draft Book does not constitute Competitive Analysis which must be submitted pursuant to Item 4(c) of the Form for purposes of complying with the HSR Act because it was never completed and incomplete drafts need not be filed.

We also understood that the Draft Book would not need to be submitted pursuant to Item 4(c) even had no prior books existed because it had not been circulated to any officer or director and never made it into the files of any officer or director.

[REDACTED]

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I hope that this letter accurately summarizes the advice we discussed with you. If I am incorrect in my summary of our conversation, please let me know.

Thank you for your time and help.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
cc: [REDACTED]

AGREE -  
B. Michael Verne  
2/19/02

[REDACTED]  
[REDACTED]