

801.11(e)

September 14, 2005

VIA FACSIMILE

Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 303
Washington, DC 20580

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE
2005 SEP 14 PM 4:28

Re: Reportability of Proposed Transaction

Dear Mr. Verne:

This letter will confirm the discussion you had with [redacted] and me this morning.

In connection with the acquisition by a shell corporation of a publicly-traded company, we asked whether funds used to cash out options in a merger should be included in total deal consideration for the purposes of determining the size of the transaction. You indicated that those funds should not be so included.

We also asked whether the acquiring person must include certain items in its pro forma balance sheet for purposes of calculating whether it meets the size of person test under 16 CFR 801.11(e). The items identified were (i) the payment to cash out options mentioned in the paragraph above; and (ii) a payment to employees made on closing to fund a retirement plan obligation of the target company that becomes payable on change of control. You indicated that neither of these payments should be included on the pro forma balance sheet and that, in fact, "anything exhausted at the time of acquisition, you do not put on the balance sheet." We further understand that these payments would not be included in total deal consideration for purposes of determining the size of the transaction.

Please let us know as soon as possible if this letter does not accurately reflect our conversation. Many thanks for taking the time to speak with me and [redacted] this morning.

Very truly yours,

[redacted signature block]

cc: [redacted]

AGREE -
B. [redacted]
9/14/05