

802.30
802.35

January 9, 2006

Via Electronic Mail

James Ferkingstad, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580

Re: Premerger Notification Exemptions

Dear Mr. Ferkingstad:

Thank you for taking the time to speak with me last Friday regarding a proposed transaction and whether it is a reportable under the Hart-Scott-Rodino Act. As we discussed, the structure of this proposed transaction is as follows:

Company is a privately held corporation with a majority of its voting securities held by two trusts controlled by Company's Chairman. The remaining voting securities are held by an Employee Stock Ownership Plan ("ESOP"), an employee trust that meets the qualifications of section 401 of the Internal Revenue Code and is controlled by a person that employs the beneficiaries. Pursuant to a redemption agreement, Company will redeem and cancel all of Chairman's voting securities. As a result, the ESOP will hold 100% of the voting securities of Company although it will not¹ acquire any voting securities from any security holder of the Company as a result of the transaction. Chairman will substantially separate from Company, although he will remain an employee of Company in some capacity and will retain a seat on

¹ In connection with the redemption, the Company intends to issue and the ESOP intends to purchase approximately \$5 million in newly issued voting securities from the Company.

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the board of directors as a non-officer chairman. The transaction would otherwise meet the size thresholds for reporting.

Under an interpretation of section 802.30 of the Exemption Rules, "Intra-Person Transactions," 16 CFR § 802.30, in the Statement of Basis and Purpose (at p. 100), redemptions and retirements of shares are exempt from the filing requirements of the Act, except under certain circumstances not presented here, because the acquiring and acquired persons are the same under section 801.2(b). Additionally, under section 802.35 of the Exemption Rules, 16 CFR § 802.35, an acquisition by a qualified ESOP that is controlled by a person that employs its beneficiaries is also exempt.

The transaction described above should be exempt under section 802.30 and, although the ESOP is not thereby making an acquisition of voting securities from any holder of voting securities, the transaction has the same effect as a transaction exempt under section 802.35. The purchase of Company securities by the ESOP directly from the Company is also not reportable. You advised that the transaction, as described above, is exempt from the filing requirements of the Hart-Scott-Rodino Act. Please call me at [REDACTED] or email me at [REDACTED] if this is not correct. Thank you very much.

Very truly yours,

[REDACTED]

[REDACTED]

01/12/06

Agree.

NOVICA concurs

JF