

801.1
802.30
802.35**Verne, B. Michael**

From: [REDACTED]
Sent: Tuesday, October 23, 2007 4:34 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: FW: ESOP and 401(k) Merger

Mike

I was reviewing my e-mail below and wanted to clarify one point. The Company's current plan, which is described in the second paragraph of my e-mail, is an Employee Stock Ownership Plan, and not an Employee Stock Purchase Plan. As such, all references to "ESPP" should instead be "ESOP." I apologize for any confusion.

Thank you,

[REDACTED]

From: [REDACTED]
Sent: Tuesday, October 23, 2007 2:42 PM
To: mverne@ftc.gov
Cc: [REDACTED]
Subject: ESOP and 401(k) Merger

Mike

Thank you for taking the time to speak with us today. As discussed, we seek confirmation that the proposed transaction, as further described below, is exempt from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), by virtue of Premerger Notification Rules 801.1, 802.30 and 802.35.

Our client (the "Company") currently maintains an Employee Stock Purchase Plan (the "ESPP"). The ESPP meets all of the requirements of Rule 802.35, which provides an exemption to the Act's notification requirements for the acquisition of stock by employee trusts. Specifically, the ESPP is a trust qualified under Section 401 of the Internal Revenue Code and the Company, as the employer of the ESPP's beneficiaries, controls the ESPP by virtue of its contractual power to appoint 50% or more of the ESPP's trustees pursuant to Rule 801.1(b)(2). Therefore, any acquisition of the Company's stock by the ESPP is exempt from the Act's notification and reporting requirements.

When the ESPP acquires Company stock, such stock is then allocated to individual participant accounts. The individual participant may then direct the voting of the Company shares allocated to his or her account. However, the participant is not deemed to hold the shares of such stock based on Rules 801.1(c)(3)-(5), because the ESPP trust is not revocable. Informal FTC Staff Opinion 52 further provides that a trust, not an individual employee, is deemed the beneficial owner of voting securities held in an employee savings or profit sharing trust, despite the employee's ability to direct the vote of securities allocated to such employee's account.

The Company intends to merge the ESPP with and into its 401(k) Plan (the "Plan"). All Company stock transferred by the merger will be allocated to individual participant accounts in the Plan. Under the Plan, the Company will also retain its contractual power to appoint 50% or more of the Plan's trustees. Based on this contractual power, the Company will be deemed to control the Plan under Rule 801.1(b)(2). Due to its control of the applicable trusts, the Company is the ultimate parent entity of both the ESPP and the Plan; therefore, any transfer of Company stock by the ESPP to the Plan would be exempt under Rule 802.30 as an intraperson transaction. If any of the above is inconsistent with our conversation, please advise.

AGREE -
 [Signature]
 10/24/07

10/24/2007