

August 13, 1984

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EXPRESS MAIL

Patricia Foster, Esq.  
Federal Trade Commission  
Premerger Office  
Room 301  
Sixth Street and Pennsylvania  
Avenue, N.W.  
Washington, D.C. 20004

Re: Interpretation of the Premerger  
Notification Requirement of the  
Hart-Scott-Rodino Antitrust  
Improvements Act of 1976

Dear Ms. Foster:

I am writing to confirm your advice today by telephone as to the applicability of the Premerger Notification requirement of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, with regard to the following scenario:

Company A intends to acquire in private transactions from shareholders X% (X being between 15 and 50) but less than \$15 million of the outstanding voting securities of Company B. Company A has sales or assets in excess of \$100 million and Company B has sales or assets in excess of \$25 million. The

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FEDERAL TRADE COMMISSION  
NOTIFICATION OFFICE

[REDACTED]

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stock purchase contract provides that, at closing, the present directors of Company B will resign in favor of persons designated by Company A. Thereafter, Company A will have no contractual power to designate a majority of the directors of Company B.

You informed me that, upon consideration of the Act, the Premerger Notification Rules, the Commission's Statement of Basis and Purpose to the Rules, and my letter to you dated August 9, 1984, the Staff has concluded that 16 C.F.R. §802.20(b) applies to exempt the transaction from Premerger Notification.

Please let me know immediately if this letter does not accord with your understanding of our discussion.

We appreciate very much the time and consideration which you have given us in this matter.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

Upon later review it appears that the voting security acquisition is exempt under § 802.20 as indicated. And, though there is a contract to appoint the majority of the board, ~~not~~ entering into such a contract is not a reportable event. However, having the power to appoint the majority of the board by contract means that the entity is within the person of the one having the power. WEF 3/9/87