

[REDACTED]

BS

[REDACTED]

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February 25, 1985

Patrick Sharpe,
Compliance Specialist
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Sharpe:

My associate, [REDACTED] spoke with you on February 13 about the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to the establishment of an [REDACTED]

I understand that your initial conclusion was that, while such transactions present no issues of anti-trust significance, under a technical reading of the rules promulgated pursuant to the Act, as well as previous informal interpretations by your office, notification generally is required if the filing criteria are satisfied. We appreciate your invitation to write to you concerning the facts of our specific transaction, because we believe it falls within Rule 802.30, 16 C.F.R. §802.30, exempting intra-person transactions.

not informal interpretation but rather personal opinion

Company X ("X") is privately held by about forty-five shareholders. Under the proposed transaction, X will establish an [REDACTED] which will hold 50.1 percent of X's outstanding stock. The trustees of the [REDACTED] initially will be three officers of X appointed by X's Board of Directors. It is anticipated that the trustees thereafter will be replaced by an institutional trustee, who may be removed and replaced by X's Board of Directors in its discretion as a fiduciary of the [REDACTED]. The trustee's responsibilities regarding the [REDACTED] will be narrowly

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circumscribed. As the [redacted] is intended only to permit employee investment in X, its only substantial assets will be the X stock it holds and, barring the receipt of an offer from a third party to buy the company or a decision by the Board of Directors to sell the company (in either of which events a Hart-Scott-Rodino filing would be required if the normal filing criteria were satisfied), there will be no significant investment decisions to be made.

Shares held by the [redacted] will be allocated to the accounts of participating employees to the extent that the indebtedness incurred in establishing the ESOP is paid, as discussed below. Participating employees may vote shares allocated to their accounts, but all other shares will be voted by an administrative committee appointed by X's Board of Directors. Furthermore, in accordance with allocation requirements established under the Internal Revenue Code and pursuant to the specific allocation provisions of the [redacted], no single participant in the [redacted] may be allocated shares in an amount that would be significant for control purposes. Specifically, it is anticipated that no participant's allocation would exceed 1 percent of the outstanding shares.

In order to fund its purchase of X shares from the current shareholders, the [redacted] will issue to the shareholders \$10,000,000 in notes and will borrow \$30,000,000 from institutional lenders under X's guarantee. X will make cash contributions to the [redacted] over a period of years sufficient to pay interest on and amortize the debt and the notes.

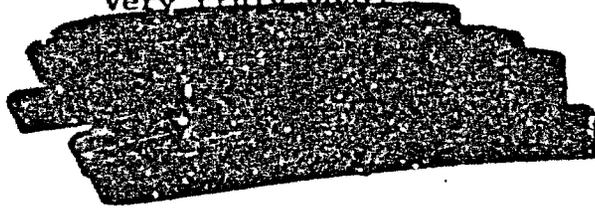
It appears that the transaction described above should be treated the same as a redemption for purposes of the Act. Redemptions, of course, have no antitrust significance and are specifically exempted by Rule 802.30 (see Example 4). We see no reason why different treatment should be accorded here. Because an [redacted] is a device for holding stock as part of the issuer's employee benefit program, for purposes of the Act control of such stock is in the hands of the company just as if the stock had been redeemed and contributed to the ESOP (a closely-related way of establishing an [redacted]). The differences between contributory and leveraged [redacted] - the formation of which Congress tried to encourage in passing the 1984 Tax Act - relate only to the mode of financing employed; since the effects of the transaction are purely internal, no substantive Section 7 issues are likely to arise in such circumstances. Thus, in our view notification should not be required.

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We would appreciate your response as soon as possible, and thank you and the other members of the staff for your assistance.

Best regards.

Very truly yours



Not exempt under 802.30 - must file.
Wayne, Kaplan, Andy, Suzanne & Dana concur
called  2-26-85 This
transaction is not exempt ^{under 802.30} and you must
file if it meets the size requirements.

Patrick