

August 19, 1986

Patrick Sharpe, Esq.  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
Room 301  
Washington, D.C. 20580

Dear Mr. Sharpe:

This will confirm your telephonic advice today that the following transaction satisfies the minimum value exemption and is not reportable.

A, a natural person, is the u.p.e. of B, a solvent corporation the majority of whose stock A holds. B's sales and assets do not exceed \$25 million.

C is a corporation that satisfies the size of person test. C proposes to purchase all of the stock of B for an aggregate purchase price that exceeds \$14 million but does not exceed \$15 million.

A has loaned B money pursuant to B's notes. The aggregate balance B owes A is now approximately \$1 million. B is current in its loan payments to A, and there is little question but that B would be capable of paying off the loan over time in accordance with its terms. However, because A will no longer control B once C acquires B, A would prefer that his loan to B be paid off at or prior to closing. Thus, A simply wants the loan payment to be accelerated in view of the fact that A will not control B after C purchases B.

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In order to effectuate A's intentions, the parties are considering any of four methods:

- 1) prior to closing, B would repay the loan to A from its cash flow; or
- 2) prior to closing, B secures a loan from a third party, the proceeds of which are used to relieve B's debt to A; or
- 3) C arranges the third party loan to B and guarantees the loan, the proceeds of which are used to pay off A; or
- 4) C makes the loan to B so that B may retire its debt to A.

You advised that under these circumstances the means by which A's loan to B is retired is a business matter between the parties; that the value of the transaction is the amount C pays for B's stock; and that C's acquisition of B's stock would entail the assumption of B's liabilities (including the debt to A) anyway. We concur in your conclusion that any of the foregoing ways of accelerating payment of A's loan to B do not count towards determining the value of the transaction. The result is that the minimum value exemption applies because the purchase price for the stock of B is not more than \$15 million and B has less than \$25 million in sales and assets.

Thank you for your prompt assistance.

Sincerely,

I concur

Patrick Sharpe  
called [redacted] 6-22-84

Andy concurs

Upon later review the letter appears to equate the PMN position that any <sup>direct</sup> assumption of liabilities bargained for between the parties must be added to the ... Thus, in method 3 above, at least, the ... to be added.