

[REDACTED]

June 23, 1987

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

VIA FEDERAL EXPRESS

Wayne Kaplan, Esq.
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580


Re: Telephone Conversation Concerning Computation of
Size of Natural Person Under Section 801.11(b) (1)

Dear Mr. Kaplan:

The purpose of this letter is to confirm your recent telephone conversations with [REDACTED] concerning the provisions of Section 801.11(b)(1) of the rules promulgated by the Commission (the "Rules") under the provisions of Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), insofar as they relate to the recomputation of financial statements for purposes of determining whether a natural person satisfies the size-of-the-parties test under the Act and the Rules. Specifically, this will confirm our understanding that Section 801.11(b)(1) permits the elimination of duplicative assets when consolidating assets of a natural person and assets held by entities included in the "person" of which such natural person is the ultimate parent entity.

Section 801.11(b)(1) of the Rules provides in relevant part that "[i]f the . . . total assets of any entity included within the person are not consolidated in such statements [the financial statements of the person], the . . . total assets of the person filing notification shall be recomputed to include the . . . nonduplicative total assets of each such entity" 16 C.F.R. Section 801.11(b)(1). The Statement of Basis and Purpose of Rules Implementing Title II of the Act, as revised, which was published in 1978 in conjunction with the publication of Section 801.11(b)(1) of the Rules, further provides as follows:

The term "nonduplicative" makes clear that the consolidation may not consist simply of adding the sales and assets of unconsolidated entities, since, for example, the parent corporation's interest in an


Wayne Kaplan, Esq.
June 23, 1987
Page 2

unconsolidated entity have [sic] been carried as an asset on the parent corporation's books; therefore, to add the assets of the unconsolidated entity without subtracting the asset already reflected would be to count the same assets twice.

43 Fed. Reg. 33450, 33473 (1978).

Consistent with the foregoing, we have eliminated duplicative assets from the recomputed financial statements prepared on behalf of a certain natural person ("Mr. A"). Specifically, we have eliminated from the total assets of Mr. A, certain notes receivable (the "Notes"), the payees of which are certain of the entities included in the "person" of which Mr. A is the ultimate parent entity (the "Person"). Mr. A is the maker of the Notes. The value of the Notes has been eliminated in our calculations because the value of certain assets purchased with funds loaned to Mr. A (and evidenced by the Notes) by certain of the entities included in the Person has already been included in the recomputed financial statements of the Person. In other words, consistent with our understanding of Section 801.11(b)(1) of the Rules, and with generally accepted accounting principles, we have eliminated intercompany balances and transactions in preparing the recomputed financial statement of Mr. A.

We wish to confirm that the accounting methods utilized by the accountants in preparing such recomputed financial statements comply with the provisions of the Act and the Rules. Accordingly, information concerning assets included and assets excluded in our computations is set forth below.

Preliminarily, please be advised that the recomputed financial statements of Mr. A include the value of all "investment assets" held by Mr. A and the value of all assets held by each entity included in the Person, disregarding liabilities but less depreciation. 16 C.F.R. Sections 801.11(1)(2), 801.11(b), (d).

Based upon the foregoing, we have concluded that the recomputed financial statements prepared for Mr. A, solely for purposes of determining whether the size-of-the-parties test has been satisfied, have been prepared in accordance with the provisions of Section 801.11(b)(1) of the Rules. Further, we have concluded that such financial statements are "regularly prepared" financial statements under Section 801.11(c) of the Rules. Finally, we have concluded that Mr. A has no reporting obligation under the Act and the Rules, since the value of the total assets of Mr. A is equal to less than \$10,000,000.

[REDACTED]
Wayne Kaplan, Esq.
June 23, 1987
Page 3

We intend to rely upon the conclusions set forth in the preceding paragraph. Please telephone the undersigned if your interpretation of the relevant Rules differs from ours. Thank you for your assistance.

Very truly yours,
[REDACTED]
[REDACTED]

[REDACTED]
cc: [REDACTED]

reviewed by [REDACTED] appears to be
in accordance with
general accounting principles
6/24/87

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ASSETS AT FEBRUARY 28, 1987

	<u>MR. A</u>	<u>ENTITIES CONTROLLED BY MR. A</u>
Cash	[REDACTED]	[REDACTED]
U.S. Treasury Bills (Note 1)	[REDACTED]	[REDACTED]
Marketable Securities (Note 2)	[REDACTED]	[REDACTED]
Notes Receivable (Note 3)	[REDACTED]	[REDACTED]
[REDACTED] (Note 4)	[REDACTED]	[REDACTED]
Fixed Assets - Net Accumulated Depreciation	[REDACTED]	[REDACTED]
Other Receivables (Note 5)	[REDACTED]	[REDACTED]
Prepaid Expenses	[REDACTED]	[REDACTED]
Other Assets	[REDACTED]	[REDACTED]
TOTAL ASSETS (Note 6)	[REDACTED]	[REDACTED]

Under the provisions of the Freedom of Information Act, the disclosure of the information which restricts release of information.

Note 1 - U.S. Treasury Bills are marked-to-market with the closing bid prices.

Note 2 - The estimated current values for Marketable Securities were determined as follows:

- Stocks - Quoted closing prices
- Bonds - Quoted latest bid prices

Note 3 - The estimated value of Notes Receivable represent the outstanding principal plus accrued interest as follows:

Demand Note dated [REDACTED] with interest @ 10%

Demand Note dated [REDACTED] with interest @ 10%

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Note 4 - The estimated current value of the [REDACTED] is based on historical cost less accumulated depreciation as follows:

	<u>Mr. A</u>	<u>Entities Controlled by Mr. A</u>
Cost	[REDACTED]	[REDACTED]
Accumulated Depreciation	[REDACTED]	[REDACTED]

Note 5 - Other Receivables are made up of advances, refundable deposits and loans receivable plus accrued interest.

Note 6 - The following intercompany receivables/payables have been excluded from the total assets of the Person:

Note receivable from Mr. A to one of the entities controlled by Mr. A

[REDACTED]

Accounts receivable from Mr. A to one of the entities controlled by Mr. A

[REDACTED]