

June 1, 1988

FEDERAL EXPRESS

Mr. Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580

Re: Interpretation of "Annual Net  
Sales" under the Hart-Scott-Rodino  
Antitrust Improvements Act

Dear Mr. Sharpe:

We are submitting this letter in accordance with our telephone conversation yesterday. Our client, [REDACTED] is currently negotiating the sale of all of the outstanding stock of one of its wholly-owned subsidiaries, [REDACTED] and it is unclear whether a filing under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") is required in connection with this transaction. Specifically, the question is whether this transaction meets the "size of the transaction" test under the Act. The transaction has a value of less than \$15 million, but because this is a transaction where the acquiring person would obtain 50% or more of the voting securities of [REDACTED] we must consider whether the annual net sales or total assets of [REDACTED] exceeds \$25 million. In this case, total assets are less than \$25 million, but it is unclear whether the annual net sales of [REDACTED] are greater than \$25 million.

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As we discussed yesterday, the operations of [redacted] are relatively unique. [redacted] is a broker-dealer. Securities and other investments are bought and sold through [redacted] by independent contractor registered representatives. The commissions earned on each transaction are reflected in their entirety on [redacted] income statement, and the portion of such commissions which is remitted to the independent contractor registered representatives is then paid out of the total commissions. [redacted] retains only a small portion of each commission, and as a consequence [redacted] acts as a conduit with respect to a substantial portion of each commission. That the commissions are remitted to independent contractors rather than employees reinforces the characterization of [redacted] as a conduit with respect to that portion of the commissions so remitted. Under these circumstances, it is unclear under the Act and the rules promulgated thereunder whether "annual net sales" was intended to cover the total commissions figure or the net commissions figure.

We enclose [redacted] income statements for the fiscal year ended December 31, 1987 (which consisted of nine months) and for the twelve-month fiscal year ended March 31, 1987. As you will note from the income statements, [redacted] for the most recent fiscal year, had revenues of [redacted] which included [redacted] commissions. However, if the commissions of [redacted] paid out to the independent contractor registered representatives were to be deducted in determining "annual net sales," then no filing under this Act would be required.

After you have had an opportunity to review this letter and the attached income statements, please advise me of the appropriate interpretation of "annual net sales" under these facts. My direct line is [redacted]

Thank you for your consideration.

Very truly yours,

[redacted signature]

[redacted]  
Enc.

called [redacted] 6-2-88

cc: [redacted]

The commissions are an expense, as indicated on the income statement and are not deducted. The total revenues are [redacted] for purposes of determining revenues under § 802.206 P.S.