

801.40 (1)

This material may be subject
to the provisions of the
Freedom of Information Act
which requires release of
information unless it is
determined that disclosure
is in the interest of national
defense.

July 26, 1988

Dear Mr. Kaplan:

I write to confirm our telephone conversation today, concerning the reportability under the Hart-Scott-Rodino Antitrust Improvements Act of a transaction which I outlined as follows:

A group of investors consisting of individuals in management along with one outside entity have formed a new corporation [redacted] for the purpose of acquiring 100% of the voting securities of Company (a \$100 million person). [redacted] is no 50% shareholder. The acquisition is to be accomplished in two stages. First, [redacted] will make a cash tender offer for Company shares which, it can be assumed, will result in [redacted] acquiring control of Company. Sufficient financing has been arranged to allow [redacted] to buy the tendered shares. At the second stage, [redacted] and Company will merge, and any untendered shares will be cashed out. At this point, the surviving entity will borrow funds substantially in excess of those needed to finance the acquisition of Company; these amounts will be well in excess of \$10 million and will not be borrowed until the closing of the merger.

We understand that the acquisition of Company by [redacted] is not reportable because, pursuant to §801.11(e), [redacted] will not have \$10 million in assets at the time of its acquisition of Company through the tender offer, and therefore will not meet the requirements of Sec. 7A(a)(2).

As to whether the formation of [redacted] is reportable under §801.40, the question we discussed is whether [redacted]

has at least \$10 million in assets valued according to §801.40(c). You explained that for purposes of §801.40(c)(1), the full face value of financing for which agreements have been secured is not included in valuing the "assets" of the new corporation. Rather, the parties are to estimate the economic value of having secured those credit agreements. Assuming that the financing is at market rates and that there are no other unusual circumstances, you pointed out that it is highly unlikely that this value would approach \$10 million. Assuming this to be the case, the requirements of §801.40(b) are not met and the formation of [REDACTED] is not reportable.

I would appreciate your letting me know if this is contrary to your recollection of our conversation.

Thank you for your assistance.

Sincerely,

[REDACTED]

Wayne Kaplan, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

VIA FEDERAL EXPRESS

[REDACTED]

Letter is incorrect. For §801.40(c) the full face value of financing is included. It is not included for §801.11(e) where it is taken down after the acquisition.

Wayne Kaplan
7/28/88

Writer was informed on
7/28/88