

802.63

(c)(1)

[REDACTED]

December 14, 1988

[REDACTED]

Re: 16 C.F.R. Part 801,
Section 801.1(c)(1)
and
16 C.F.R. Part 802,
Section 802.63

Patrick Sharpe, Esq.
Federal Trade Commission
Bureau of Competition
Room 303
6th Street - Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Sharpe:

Pursuant to our telephone conversation, we hereby request the staff's concurrence with our view that the acquisition by our client (the "Company") of a drilling rig under the following fact circumstances is exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The Company is currently in possession of a drilling rig, which it leases pursuant to a Bareboat Charter Party (the "Charter"). In 1983, the Company entered into a sale lease-back financing pursuant to which it transferred title of the rig to a third party ("Lessor") who in turn leased the rig back to the Company. To finance a portion of the sale and lease-back transaction, the Lessor obtained non-recourse financing from a lender (the "Lender") who in return received a pledge from Lessor of all the payments due under the Charter and a mortgage on the rig itself. In addition, the Lender obtained a guarantee from the Company's parent corporation ("Parent") for all sums due under the Charter by the Company. The Company has at all times remained in possession and control of the rig, and has continued to bear all risks of ownership.

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For approximately two years, the Company has been in default in the payment of the rental sums due under the Charter. Because Lender's financing arrangements are non-recourse with respect to the Lessor, and because the fair market value of the rig is substantially less than the amount of the obligations owed to Lender, Lender's only recourse is to seek payment from the Company and/or Parent under the Charter and the guarantee of Parent.


Charter remedies include acceleration of all rental payments, which would be in an amount sufficient to cover the Lender's financing, the Lessor's equity and the Lessor's tax indemnity.

Should Lender foreclose its mortgage and terminate the lease, the Company and the Parent (through its guarantee) will incur significant liability to Lessor in indemnification for lost tax benefits.

In an effort to prevent Lender from foreclosing on the rig, exercising remedies under the Charter and seeking payment of the full amount remaining unpaid from the Company and/or Parent, the parties propose to enter into a debt restructuring arrangement pursuant to which the following will occur:

1. Title to the rig will be transferred from Lessor back to the Company;
2. The Company will pay to the Lessor an amount in cash not to exceed \$9,000,000;
3. The Company will expressly assume payment of the indebtedness owed by the Lessor to Lender, obligations which the Company and Parent were already indirectly responsible for under the Charter and the guarantee of Parent; and
4. Certain obligations of the parties will be terminated, including all further liability of the Company and the Parent under the Charter and a Tax Indemnification Agreement pursuant to which the Company has agreed to indemnify Lessor for certain tax liabilities.

Following this transaction it is expected that the remaining indebtedness owing by the Company to the Lender will be restructured on terms that will permit its payment by the Company.



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We believe that the following factors are significant in a determination that the above-described transaction is not subject to the requirements of the Act:

1. The Company has maintained possession and control of the rig with all risks of ownership throughout the term of the lease.

2. The above-described transaction represents an unwinding of a lease transaction and a bona fide debt workout of a lease financing transaction between the Company and a creditor in the ordinary course of the creditor's business.

3. The direct assumption of indebtedness owed to the Lender by the Company does not increase the practical liability of the Company or the Parent because, under the terms of the Charter, the Company is liable for payment of such indebtedness. Accordingly, it does not appear that such assumption should be included for purposes of determining threshold amounts under the Act.

4. The fair market value of the rig is approximately \$5,000,000 to \$8,000,000. The amount in excess of such fair market value is being paid in settlement of existing and contingent liabilities of the Company and the Parent under the Charter and the Tax Indemnification Agreement which are being terminated. Accordingly, it does not appear that such amount should be included for purposes of determining threshold amounts under the Act.

We would appreciate you advising us at your earliest convenience as to your interpretation that as a result of the application of §801.1(c)(1) or §802.63 to the above-described transaction, and as a result of the factors mentioned in paragraphs 3 and 4 above, such transaction is exempt from the notification requirements of the Act.

In the meantime, if you have any questions with respect to the matters discussed herein, please do not hesitate to call the undersigned directly at [REDACTED]

Very truly yours,

called [REDACTED] 12-15-88
and told him this is not
exempt under c1 or §802.63.
§802.63 applies to creditor
getting title. §802.63 also
focuses on the establishment not
not the dissolution of lease financing.

Also, informed him
that I am not an
attorney.