

[REDACTED]

April 6, 1989

HAND DELIVERY

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

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Dear Mr. Sharpe:

By letter of March 27, I wrote to you requesting informal interpretive advice regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the rules promulgated thereunder (the "Rules") to the fact situation outlined in that letter, a copy of which is attached hereto. On April 4 we spoke concerning this request, and you informed me that the Staff had determined that no exemption would be available because the annual net sales of Newco would be deemed to be the annual net sales for the most recent fiscal year of Company A, which were in excess of \$25 million, making the exemption under Rule 802.20 unavailable. However, you did recognize that Company A's annual net sales for fiscal 1988 included sales with respect to assets that have been sold by Company A and that those assets will not be transferred to Newco.

You stated further that if prior to the closing Newco had a restated statement of annual income showing annual net sales relating to the transferred assets of less than \$25 million, Company A, would be justified in relying on such restated statement of income. In connection with the proposed transaction, prior to the closing, Company A plans to prepare an unaudited pro forma balance sheet and an unaudited pro forma annual income statement for Newco which will reflect only the

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transferred assets and liabilities and the annual net sales relating thereto. These statements will be prepared utilizing accounting policies and principles consistent with those previously used by Company A. The pro forma statements being prepared are to be used for, among other things, the determination of the purchase price to be paid by Company B for its equity interest in Newco. The pro forma annual income statement will show 1988 annual net sales of less than \$25 million.

Based upon your oral advice, the fact that the pro forma annual income statement will show 1988 annual net sales of less than \$25 million and the exemption under Rule 802.20, Company A proposes to proceed with the outlined transaction without filing a Notification and Report Form under the Act. Please contact me at 312-245-8460 by April 12, if I have misstated your oral advice.

I want to thank you for your prompt attention to my earlier request.

Very truly yours,

[REDACTED]

[REDACTED]
I disagree. Pro forma financial statements are not regularly prepared financial statements. called [REDACTED] 4-17-89.