

[REDACTED]

801.1(A)
801.1(B)

[REDACTED]

May 9, 1994

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

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Dear Patrick:

The purpose of this letter is to confirm the oral advice you gave me today regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 to a proposed transaction. The following is a discussion of the relevant facts upon which your advice was given.

Our client satisfies the \$100 million standard of the size of person test and the other party to the transaction, an issuer engaged in [REDACTED] had over \$25 million of net sales in the last fiscal year. The issuer currently is indebted to our client in the approximate amount of \$20 million. The parties propose to enter into an agreement in which (i) our client will receive an assignable right to purchase 80% of the voting securities of the issuer for nominal consideration; (ii) the ultimate parent of the issuer (a natural person) will be released from certain personal guarantees of the issuer's indebtedness to our client; and (iii) our client will receive the contractual right to elect three out of four members of the issuer's board of directors. Our client plans to assign the right to purchase the voting securities to an unrelated group of investors.

802.63?
Right to elect 3 directors
stay with client

In concluding that no notification filing is required, you stated that the right to purchase the voting securities and the contractual right to elect 75% of the board of directors are separable. As long as our client does not exercise the right to purchase the voting securities, merely having that right, even when coupled with having the contractual right to elect board members, is not a reportable event under the Act.

I acknowledge that the conclusion that no notification filing is required would change if our client decided to exercise its right to purchase the voting securities, instead of assigning such right. Likewise, your advice did not extend to whether a filing is required for the purchase of the voting securities by the unrelated group of investors.