

Facts of this letter indicate B is passive investor who wishes extremely small % [redacted] to acquire voting stock. This status is not lost due to being [redacted] a co-partner with parent issuer.

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January 13, 1995

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION  
JAN 13 12 52 PM '95

BY HAND

Victor L. Cohen, Esq.  
Federal Trade Commission  
Premerger Notification Office  
600 Pennsylvania Avenue  
Washington, D.C. 20580

Re: Applicability of the Investment Exemption

Dear Mr. Cohen:

The purpose of this letter is to confirm the details of our telephone conversation of January 9, 1995 among you, [redacted] and me concerning the applicability of the "investment exemption" set forth in Section 7A(c)(9) of the Clayton Act, 15 U.S.C. § 18a(c)(9), and 16 C.F.R. § 802.9.

The circumstances [redacted] and I described to you were as follows: A and B are corporations that have recently formed a joint venture ("JV") to engage in certain business activities in a foreign country. Corporation A holds a 40% interest in the JV, and Corporation B holds the remaining 60% interest. B holds a majority of the seats on JV's governing board, though A has minority representation on the board, plus a veto right with respect to certain decisions of the board.

A and B are also co-venturers (along with other parties) in several limited partnerships. In each of those situations, both A and B are limited partners. In one case, A's limited partnership interest is large enough to make it the ultimate parent entity of the partnership.

Additionally, A and B are co-investors in a company ("C") in the following proportions: B and its affiliates own approximately 82% of C, and A owns the remaining 18%. B and its affiliates hold a majority of the seats on C's governing board. A has minority representation on the board of C, plus a veto right with respect to certain decisions of the board.

B now wishes to purchase certain voting securities of A. The voting securities to be acquired by B will represent approximately 0.01% of the total outstanding voting securities of A. The value of those voting securities will be in excess

\* RS }  
JS } agreed

[redacted]

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of \$15 million. B has no intention of participating in the formulation, determination or direction of the basic business decisions of A. B has no director on A's board and does not intend to nominate any such director. B does not intend to solicit proxies from A's stockholders or to propose any corporate action requiring the approval of A's shareholders. In short, B intends to hold the voting securities of A as a passive investor.

We inquired of you whether B's proposed acquisition of voting securities of A is exempt pursuant to the "investment exemption." In particular, to the extent that A and B are co-venturers, we asked whether this fact would negate the availability of the investment exemption.

You informed us that a person acquiring voting securities does not lose its entitlement to rely on the investment exemption solely on the ground that the acquiring person is a co-venturer with the acquired person. So long as the circumstances surrounding B's acquisition of the voting securities of A indicate that B intends to be a passive investor, B should be able to rely on the 7A(c)(9) exemption. In this regard, you noted that the percentage of A's voting securities to be acquired by B is minimal.

On the basis of our discussion, [REDACTED] and I intend to advise our respective clients accordingly. If this letter does not accurately reflect your advice to us, I would be grateful if you would contact me at your earliest convenience. Thank you for your assistance.

Very truly yours,

[REDACTED]