

15 U.S.C. 182(a)(2); 182(a)(3);
Rule 802.20; Rule 801.21

February 23, 1995

VIA FEDERAL EXPRESS

Federal Trade Commission
Premerger Office
6th and Pennsylvania Ave, N.W.
Washington DC 20580

ATTN: Ms. Alice Villavicencio
Compliance Specialist

RE: Premerger Notification Requirements

Dear Ms. Villavicencio:

As we have discussed with you over the past several days, our firm has been asked to advise a party to a prospective merger with respect to the premerger notification requirements under the Hart-Scott-Rodino Act, 15 U.S.C. 18a. Having researched Section 18a including the applicable regulations and discussed the same with you, we would like to confirm our understanding of the requirements.

For purposes of this letter, we make the following assumptions:

1. "A" is a company which is engaged in commerce and has total assets or annual net sales of \$100,000,000 or more.
2. "B" is a company which is engaged in commerce, but not engaged in manufacturing, and has total assets of \$10,000,000 or more.
3. A and B will engage in a tax-free reorganization in which A acquires 100% of the voting securities or assets of B.

Size of Person Issue

In the past A has advanced credit to B in the ordinary course of business. B is currently planning to use cash or other quick assets to reduce this debt. Prior to the proposed merger, B's regularly prepared (and audited) balance sheet will reflect total assets of less than \$10,000,000. We understand that because B's assets will be less than \$10,000,000, the "size of person" test in 15 U.S.C. 18a(a)(2) will not be met. With

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respect to a subsequent stock-for-stock transaction, therefore, neither A nor B will be required to file a premerger notification.

Size of Transaction Issue.

We understand that in an asset acquisition which satisfied the requirements of 18a(a)(3)(A) (in that A would hold 15% or more of the assets of B) but which did not satisfy Section 18a(a)(3)(B) (in that the total aggregate amount of B's assets would not exceed \$15,000,000) the premerger notification requirements would not apply pursuant to 16 CFR 802.20.

We understand that in an acquisition of assets, 16 CFR 801.21 is applicable in determining whether Section 18a(a)(3)(B) is satisfied. Pursuant to 801.21, cash is not considered an asset of B. Hence, if A is acquiring assets of \$15.5 million from B, but \$1 million of such assets consists of cash, then 18a(a)(3)(B) will not be satisfied. Neither A nor B, therefore, will be required to file a premerger notification.

Finally, we understand that the "exclusion of cash from assets" provision in 801.21 would be applied in measuring assets for purposes of 802.20(a) the same way it is applied in measuring assets for purposes of 18a(a)(3)(B).

If our understanding on any of the foregoing points is incorrect, please advise us immediately. If you have any questions or comments, please call us at [REDACTED]. Again, we appreciate your assistance.

Very truly yours,

[REDACTED]

BY: [REDACTED]

[REDACTED]