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August 17, 1995

VIA FACSIMILE

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AUG 17 6 11 PM '95  
FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Hart-Scott-Rodino Reportability Analysis Regarding  
Application of Rule 802.63

Dear Dick:

I am writing to confirm the substance of the telephone conversation that we had yesterday, in which you agreed with our conclusion that Rule 802.63 (Certain acquisitions by creditors and insurers) exempts from Hart-Scott-Rodino reporting requirements the creditor's acquisition in the transaction discussed below. We represent only the creditor in this transaction. Further, we understand that your advice is limited to the following facts.

Presently, Company A holds a mortgage note, which is owed by Company B. Company A and Company B are not competitors. Company A is an institutional investor, as defined by Rule 802.61 that previously extended credit to Company B in its ordinary course of business. Company B has experienced severe financial difficulties, and recently announced that it would file for bankruptcy unless a suitable white knight could be found to buy the Company.

Company B has found its white knight in Company C, which has agreed to acquire control of Company B, through an exchange of voting securities. As a condition of its agreement to purchase Company B, Company C is requiring satisfactory restructuring of Company B's present debt.

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As part of this debt workout, Company C has requested Company A to restructure the existing mortgage note owed by Company B. This specific debt restructuring is the transaction that we are analyzing for Hart-Scott-Rodino reporting purposes.

The three parties (Company A, Company B, and Company C) have agreed to the following restructuring. In exchange for its current mortgage note owed by Company B, Company A will receive from the new parent of Company B, which will be Company C, the following: (1) a new note secured by Company C, equal in value to approximately one-half of the previous note; and (2) voting securities in Company C, equal in value to approximately one-half of the previous note. The effect of this transaction will be drop the interest payments owed to Company A to approximately one-half of their current level. The transaction clearly is part of a bona fide debt workout necessary to keep Company B out of bankruptcy.

It is my understanding from our conversation yesterday, that you agree that the creditor exemption (Rule 802.63) applies to the creditor's acquisition of Company C voting securities in this fact pattern. Specifically, Company A's acquisition from Company C, of a new note and voting securities of Company C, is exempt from a potential Hart-Scott-Rodino filing because it represents a creditor's acquisition pursuant to a bona fide debt workout.<sup>1</sup>

If my understanding is inaccurate, or if you have any questions, please contact me immediately. As I indicated in our conversation, all of the interested parties are operating under a tight time deadline, and we appreciate the prompt attention you have given this matter.

<sup>1</sup> We are not involved in analyzing the other parts of this transaction with respect to Hart-Scott Rodino reporting requirements. Our telephone conversation related only to Company A's acquisition of securities from Company C and did not relate to Company C's acquisition of Company B's voting securities. We have not attempted to determine if that transaction is reportable.

8/23/95 - Writer confirms that Company A, the original lender to B, competes with neither B or C. A will not take C's voting stock until after (maybe very soon after) C takes control of B (the entire deal is one big transaction for C to take control of B and B to work-out its debt obligations.) I advised that A could use 802.63 for its taking of C's stock once C controlled the debtor, B.  
RBSmith