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*Rutter 8/22/98
8/23/98*



Date: August 19, 1998

TO: Alice Villavicencio

FAX NUMBER: 202/326-2624

FROM:



COMMENTS: Pursuant to our telephone conversation earlier today, attached please find revised fact scenarios. I look forward to further discussing this matter with you. Thank-you.

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of the entities being acquired

I. Entity A is acquiring the warehouses of a number of entities (entities C through J), all of whom have the same ultimate parent entity, entity B. In the same transaction, entity A also is acquiring 25% of the voting securities of the warehousing business being conducted on the real estate from entity K and 25% of the voting securities of a transportation business (unrelated to the real estate) from entity L. (entity K is "related" to entity B, but not included within entity B, entity L is included within entity B). Entity A is not related to any other entity involved in the transaction. Assuming the size-of-the-parties and the size-of-the-transaction tests are met, does Section 802.2(h) apply to exempt the acquisition of the warehouses, or does the acquisition of 25% of the voting securities of entity K constitute an "acquisition of a business conducted on the real property," thereby requiring a Hart-Scott-Rodino filing? If the acquisition of the warehouses is exempt under Section 802.2(h), are the other acquisitions (25% acquisition of voting securities of entity K and 25% acquisition of voting securities of entity L) analyzed separately from the real estate acquisition (and from each other) for purposes of Hart-Scott-Rodino? *yes*

K acquires Warehousing business

II Entity A is acquiring 100% of the voting securities of entity B, whose ultimate parent entity is entity C. Assume the size-of-the-parties test is met and that the acquisition price is less than \$15,000,000. Under Section 802.20(b), if the last regularly prepared balance sheet of entity B indicates total assets of \$25,000,000 or more, is a filing required even if (i) prior to the subject transaction, substantially all of the assets of entity B will be transferred to entity C, leaving entity B as merely a "shell corporation," and (ii) the net sales of entity B are less than \$25,000,000?

Call reference on 5/17/98

The test under 802.20 is based on the last regularly prepared balance sheet. How

could purchasing minority interest, but the purchasing asset may be included pursuant to 802.20(b)