

802.10; 7A(c)(10)

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FEDERAL TRADE COMMISSION
OFFICE

1999 MAY 17 P 4:47

May 17, 1999

Mr. Richard B. Smith
Pre-Merger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Filing Obligations In
Connection With a Spin-Off

Dear Dick:

I am writing to confirm our discussion the other day concerning the filing obligations related to the spin-off of a subsidiary to the shareholders of its parent.

To frame my questions, I had described to you a hypothetical shareholder who had filed a notification and report form to acquire in excess of \$15 million of the voting securities of Corporation A and who, following the expiration of the waiting period, had acquired those voting securities and exceeded the \$15 million threshold. Corporation A subsequently announced that it would spin-off a 100% owned subsidiary, Corporation B, to its shareholders by distributing Corporation B's voting securities pro-rata to those shareholders. The hypothetical shareholder would receive in excess of \$15 million of the voting securities of Corporation B pursuant to the spin-off.

I asked two questions concerning the filing obligations related to these events. My first question was whether the hypothetical shareholder would have to file before acquiring the shares of Corporation B pursuant to the spin-off? You explained that no filing would be necessary because the staff now interprets Rule

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-2-

May 17, 1999

802.10 to exempt a pro-rata spin-off of a subsidiary to the shareholders of its parent.

My second question was whether the hypothetical shareholder would have to file if he subsequently chose to acquire any voting securities of Corporation B in addition to those he had obtained through the spin-off. You explained, first, that Rule 802.10 would not exempt the acquisition of any voting securities of Corporation B other than those acquired pursuant to the spin-off. You also explained that the shareholder's prior filing with respect to the acquisition of the shares of Corporation A would not provide an exemption with respect to the acquisition of any shares of Corporation B. For these reasons, you indicated that a shareholder who held, as a result of the spin-off, in excess of \$15 million of the voting securities of Corporation B would have to file before acquiring any additional shares unless there was another exemption specifically applicable to the transaction.

As always, thank you for your assistance.

Very truly yours,

[Redacted signature]

5/18/99 Left phone mail message for writer
advising that the PMO office agrees with the conclusions.
(NYO returned letter.)
RBS Smith