

802.35

ATTORNEYS

July 14, 1999

VIA FACSIMILE: ORIGINAL TO BE MAILED

Nancy Ovuka, ~~Esq.~~
Federal Trade Commission
Pre-Merger Notification Office
Bureau of Competition
6th Street & Pennsylvania Ave., N.W.
Washington, DC 20004

1999 JUL 20 A 9 01
FEDERAL TRADE
COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

RE: Notification requirements surrounding acquisitions of voting securities by ESOP trusts

Dear Nancy:

Thank you for spending so much time on the telephone with me today answering my various questions. I would like to confirm what you stated during our telephone conversation regarding acquisitions of voting securities by ESOP trusts. In the course of our conversation, we narrowed the issue to whether, when an ESOP trust satisfies the requirements of 16 CFR § 802.35(a) and (b) – i.e., meets the qualifications of section 401 of the Internal Revenue Code and is controlled by a person that employs the beneficiaries – the ESOP trust would have a potential reporting obligation if, as a result of a stock-for-stock merger between its ultimate parent entity and another issuer (“issuer B”), the ESOP trust will receive an otherwise reportable amount of issuer B voting securities.

[REDACTED]

Nancy Ovuka, Esq.
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After speaking with Dick Smith and others, you stated that such a "back-door" ^{side} acquisition of issuer B voting securities by an ESOP trust would not be a potentially reportable transaction. Please do not hesitate to call me at [REDACTED] I have misstated the PNO's position on this matter. Thank you.

Sincerely,

[REDACTED]

7/15/99

[REDACTED]

, which will become
an 802.35 ESOP
controlled by B,

RS concurs

[REDACTED]