

[REDACTED]
[REDACTED]
Professional Corporation
[REDACTED]
[REDACTED]

November 23, 1999

VIA FACSIMILE

Bernard Rubenstein, Esquire
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

RE: Hypothetical on Applicability of Hart-Scott-Rodino ("HSR") Act
Filing Requirements

Dear Mr. Rubenstein:

This letter is a follow-up to two previous telephone discussions we had on October 26, 1999 and November 10, 1999 regarding the application of the filing requirements of the HSR Act to a particular hypothetical transaction which I presented to you. You had provided me with informal advice, after consultation with your colleagues, regarding the filing requirements with respect to the hypothetical transaction. Your last voice-mail message indicated that you would welcome further discussion to clarify your earlier comments.

I have attached a descriptive summary of the hypothetical transaction which we discussed and a brief summary of the applicable provisions which we reviewed prior to making our inquiries to you. I would appreciate it if you could review the attached summary and call me so we can further discuss this matter.

If you have any questions, please give me a call.

Very truly yours,
[REDACTED]

[REDACTED]
Attachment
[REDACTED]
[REDACTED]

Summary of Proposed Transaction

Corp. A and Corp. B, unrelated entities each of which is assumed to have in excess of \$100 million in annual net sales, create a new company ("Joint Venture") which is initially capitalized with a \$50,000 contribution by each of Corp. A and Corp. B. In exchange for their contribution, Corp. A and Corp. B each receive 50% of the voting securities of the Joint Venture and the right to designate 50% of the directors.

Corp. B then purchases 50% of the voting securities of a wholly-owned subsidiary of Corp. A ("Sub 1") for approximately \$8-9 million. Sub 1 is a holding company which owns 100% of the voting securities of two operating subsidiaries, one of which has total assets on its balance sheet of approximately \$39 million ("Sub 2"). Of the approximately \$39 million of total assets on Sub 2's balance sheet, about \$32-33 million are classified as bonds (a number of them being short-term government obligations) which Sub 2 holds as a reserve against insurance claims of its customers. The Stock Purchase Agreement for Corp. B's purchase of 50% of the voting securities of Sub 1 provides that immediately upon consummation of such sale, each of Corp. A and Corp. B shall contribute their respective 50% ownership interests in Sub 1's voting securities to the Joint Venture.

A chart of diagrams summarizing the proposed transaction is attached hereto.

The above transaction would appear to be exempt from a filing requirement by reason of application of Section 7(c)(2)(A) of the HSR Act and Rule 802.4. The reason for the exemption would be a failure to satisfy the Size-of-Transaction Test. If the proposed transaction is viewed as a formation of a joint venture, then the provisions of Rule 801.40 would apply in determining if a filing is required.

Issue Presented

Our understanding of the key dispositive issue in determining if a filing is required for the proposed transaction is how the assets of the Joint Venture are counted in determining if the Size-of-Transaction Test is met under the rules for formation of a joint venture. Specifically, is Rule 802.4 applicable to exclude certain exempt assets when determining if the Size-of-Transaction Test is met in the formation of a joint venture? } YES

It is our belief that Rule 802.4 could be applied to the proposed transaction to exclude the value of the bonds held by Sub 2, thereby resulting in Corp. A and Corp. B receiving voting securities of an issuer, the Joint Venture (through contribution of the stock of Sub 1), which has annual net sales and total assets less than \$25 million (and non-exempt assets less than \$15 million). } LESS

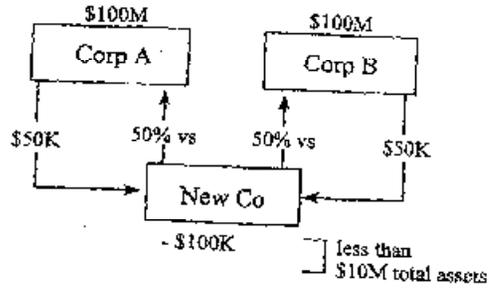
Thus, the Minimum Dollar Value exemption under Rule 802.20 would apply to result in the transaction not satisfying the Size-of-Transaction Test under the joint venture provisions in Rule 801.40.

THIS IS NOT CORRECT IF IT APPLIES TO EXEMPT ASSETS UNDER 802.4 IS NOT APPLICABLE TO THE JOINT VENTURE PROVISIONS IN RULE 801.40. ATTACHMENT

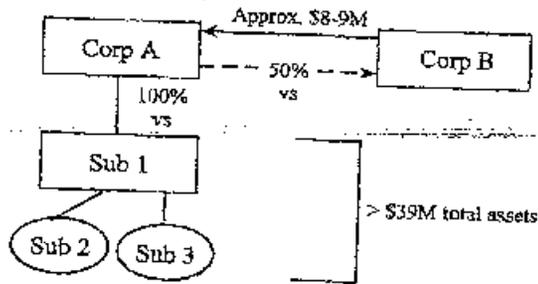
[REDACTED]

YOU CAN'T CLAIM TO BE EXEMPT UNDER 802.20 MEET THE \$25 million ASSET THRESHOLD IN 802.20.

FORMATION OF NEW CO



SALE OF 50% OF SUB1 STOCK TO CORP B



CONTRIBUTION OF SUB1 STOCK TO NEW CO

