

801.21  
902.4  
801.10

September 27, 2000

By Fax: 202-326-2624

Patrick Sharp  
Federal Trade Commission  
Pre-Merger Office  
Washington, DC

Dear Patrick:

This letter will recapitulate the facts of a transaction described to you on the phone this afternoon, as to which you agreed that no HSR filings would be necessary because the transaction does not meet the size of the transaction as described below.

Company A, a charitable organization buying for its endowment, proposes to purchase more than 15% of the voting securities of Mutual Fund B (taking into account its prior holdings of voting securities of B with an aggregate market value in excess of \$25 million (whereby the institutional investor exemption in 802.64 is not available). Mutual Fund B holds cash, bonds and mortgages of third parties and other non-voting securities and voting securities of third parties.

On the facts presented, where A will have less than 50% of the voting securities of B and thus will not control B, no possible reportable "secondary acquisitions" with respect to the voting securities of other persons held by B are presented. As a practical matter, this would not require HSR filings in any event because Mutual Fund B in each case holds, as a matter of policy, less than 10% of the voting securities of other persons.

Rule 801.21 provides for purposes of 7(A)(a)(3) . . . that

cash is not an asset of Fund B and voting and non-voting securities of other persons shall not be considered assets of Fund B.

Rule 802.4 provides that an acquisition of voting securities of an issuer (Mutual Fund B)

Mutual Fund B holds no assets for HSR purposes of 7(A)(a)(3), except possibly for some falling  
under 7(A)(a)(2) and therefore its holdings do consist only of those assets whose purchase

While the voting securities of others that are held by Mutual Fund B do not constitute  
assets for such HSR purposes, they would be the subject of potential reportable secondary  
acquisitions, if and when A had acquired 50% or more of the voting securities of Mutual Fund B.  
That is the place where anti-competitive concerns might arise under the HSR Act.

I appreciate your calling back to confirm the conclusion we reached over the

Sincerely,

I concur. (PS) [Redacted]