

June 9, 1987

the certain liability provisions of  
Section 7A (b) of the Sherman Act  
shall restrict release under the  
Freedom of Information Act

REC'D  
JUN 10 9 03 AM '87  
FEDERAL TRADE COMMISSION

BY HAND

Mr. Wayne Kaplan  
Premerger Notification Office  
Room 303  
Federal Trade Commission  
Sixth Street & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Re: Corporate Reorganization

On May 19, 1987 you and I discussed whether or

employee stock ownership plan (the "ESOP") and by certain members of Newco management, would be "spun-off" as an independent legal entity. On the basis of the facts described by me, and after deliberations among you and your colleagues, you informed me that the transactions as described would not be subject to HSR reporting obligations largely due to the new exemption covering certain ESOP acquisitions at 16 C.F.R. § 802.35, given that the transactions described were all interdependent and due to occur more or less simultaneously. This letter responds to your request at the end of our conversation that

transaction for your records.

As described in our telephone conversation, the

trustee initially selected before closing by

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Newco's Board of Directors. At closing, the ESOP will own

stock to be acquired by the ESOP will be allocated to the accounts of Newco's employees over time.

Management of Company A, which management will be leaving to run the new company after closing, will acquire at closing a 0.5 percent equity stake in Newco for well under \$15 million. However, under a restricted stock plan, Newco management may be awarded over time up to an additional 9.5 percent of Newco common stock on a fully


Newco common stock, the anticipated fair market value of which will be substantially in excess of \$15 million.

In addition to the Newco preferred stock and warrants, and the cash received from the sale of Newco common stock to the Newco ESOP and management team, Company A at closing will receive a substantial cash payment (financed by bank debt and publicly-offered debentures) in consideration for the operating facilities to be transferred to Newco. It is anticipated that a portion of such debentures will be offered in conjunction with warrants to purchase up to 5 percent of the common stock of Newco on a fully diluted basis.

In the event of full dilution, then, the ESOP will own 51 percent of Newco, Company A 34 percent (upon exercise of all the warrants), Newco management 10 percent (upon the awarding and vesting of all shares available under the restricted stock plan), and others 5 percent (upon exercise of all warrants).


As noted previously, all of the foregoing transactions are presently contemplated to occur more or less simultaneously and are all interdependent.

On the basis of the foregoing, you advised that the ESOP's acquisition of Newco common stock would be exempt under § 802.35, Newco's acquisition of the operating businesses from Company A for cash, non-voting

  
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preferred stock and warrants, would be exempt in this particular case as part of one interdependent and contemporaneous ESOP transaction, Company A's acquisition of ~~the~~ preferred stock would not be subject to HSR

  
appoint, and not the power to vote for the election of Newco directors, and that Company A's acquisition of the warrants would not be reportable until such time as Company A might choose to exercise them. (While we did

  
transaction tests would not be met by any of these acquisitions, and the acquisitions of warrants by debentureholders will not be subject to HSR reporting until such time as the warrants may be exercised.)

I trust the foregoing is responsive to your request. Thank you again for your assistance in this

Yours very truly,  


OK. Wayne Kaplan 6/10/87  
but limited to these specific facts.