801.11(e)

[redacted]

July
28th
1988

[redacted]

This material may be subject to the confidentiality provisions of Section 7A (h) of the Hart-Scott-Rodino Act which prohibits release under the Freedom of Information Act

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 and Purchase by [redacted]

Dear Mr. Kaplan:

On Tuesday, July 19, 1988, I discussed with you my conclusion that a proposed transaction consisting of several [redacted] spin off a substantial number of operating businesses, valued in excess of $100 million, to a new independent company [redacted] and to a newly formed wholly-owned subsidiary of [redacted] employee stock ownership plan [redacted] to be formed at Closing [redacted] the afternoon of August 31, 1988. On the basis of the facts described by me, you agreed with my conclusion that neither [redacted] would constitute one transaction for which the acquiring party would not meet the "size of the parties" test. Also, you agreed that this transaction possibly would be exempt under the exemption covering certain [redacted] acquisitions, 16 C.F.R. § 802.35.

You suggested that I summarize in writing the transaction details you and I discussed. Such a summary follows. (You also requested that I provide you a copy of a

letter to you dated June 9, 1987 describing a substantially similar transaction for which you apparently concluded that no filing was required under 16 C.F.R. § 802.35. A copy of that letter is enclosed.)

Within the next week or so, [redacted] will be formed by certain members of the management of Company A to be nominally capitalized. During this period [redacted] will form and nominally capitalize [redacted]. Neither company will have a [redacted]

[redacted] occur on a simultaneous and interdependent basis. First, Company A will transfer to [redacted] a group of Company A's subsidiaries in exchange for three different classes of [redacted] stock (see further discussion of these securities below), and a note from [redacted]. Second, Company A will sell to [redacted] a second group of subsidiaries in exchange for a cash payment of $305 million. Third, [redacted] will borrow from financial institutions the sum of $335 million. Fourth, an [redacted] will be created for the benefit of the employees of [redacted] and [redacted]. The [redacted] will be run by an independent institutional trustee initially selected by the organizers of [redacted] and subject thereafter to appointment and replacement by [redacted]'s board of directors. Fifth, the [redacted] will borrow $315 million from [redacted] which immediately will be used by the [redacted] to purchase 100% o[redacted]'s voting securities.

Additionally, the [redacted] will incur $30 million of transaction costs.

On the basis of the foregoing, you agreed that these interdependent and simultaneous acquisitions would not require

[redacted] This is because the acquiring party [redacted] would acquire Company A subsidiaries or for transaction costs, and [redacted] will have no other assets.

As we discussed on July 19, and in a supplemental telephone call on July 26, as part of this integrated transaction Company A will acquire preferred stock [redacted] in

exchange for certain of Company A's subsidiaries. More specifically, the class A and B preferred stock to be acquired will confer no rights with respect to the designation of directors of [redacted] except given the occurrence of certain limited contingencies. The class C convertible preferred stock will confer upon Company A the power to designate one or two Newco directors (out of five or seven), apparently similarly to the preferred stock as described in the attached letter at page 3, which you and the author concluded "would not be subject to HSR reporting . . . ." As you and I discussed in our supplemental phone call on July 26, we believe that the acquisition of class C preferred stock also should not be reportable because [redacted], which is both an acquired and acquiring person in this transaction, should not be viewed as meeting the size of the parties test for any purpose; the funds it borrows immediately and simultaneously are used for the acquisition of Company A subsidiaries and for expenses. You indicated that, under this analysis, even if technically a filing arguably was required, the FTC may be inclined to

Finally, as we discussed on July 19, the [redacted] exemption, § 802.35, may provide an independent basis for concluding that a filing is not necessary for the acquisitions by [redacted]. In this regard, we discussed the June 9, 1987, letter referred to above (copy enclosed), which addressed a substantially similar transaction. For that transaction, you apparently concluded that the [redacted] acquisition of [redacted] common stock would be exempt under § 802.35 and that the acquisition of the operating businesses of Company A for cash and non-voting preferred stock would be exempt as part of one interdependent and contemporaneous [redacted] transaction. We do not see any reason why such an analysis should not also apply to the transaction proposed by our client.

The exact terms of the proposed transaction are still subject to negotiation by the parties, but are not expected to change in any material respects.

Thank you again for your time and please let me know promptly if this letter does not accurately reflect our conversations or if it raises any questions in your mind as to my conclusion that these transactions do not require a HSR filing.

Sincerely,

[redacted]

[redacted]

Enclosure

notified the writer that facts were insufficient to determine reportability

[redacted]

[redacted]

preferred [redacted]

W E Kaplan
7/28/88