

802.63
(c)(1)

[REDACTED]

[REDACTED]

December 14, 1988

Re: 16 C.F.R. Part 801,
Section 801.1(c)(1)
and
16 C.F.R. Part 802,
Section 802.63

RECEIVED
FEDERAL TRADE COMMISSION
DEC 14 1988

Patrick Sharpe, Esq.
Federal Trade Commission

Room 303
6th Street - Pennsylvania Avenue, N.W.
Washington, D.C. 20580

DEC 14 9
NOV 11 1988
3 02 PM '88

Dear Mr. Sharpe:

Pursuant to our telephone conversation, we hereby request the staff's concurrence with our view that the acquisition by our client (the "Company") of a drilling rig under the following fact circumstances is exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The Company is currently in possession of a drilling rig, which it leases pursuant to a Bareboat Charter Party (the

~~long term financing agreement to which it transferred title of~~

financing from a lender (the "Lender") who in return received a pledge from Lessor of all the payments due under the Charter and a mortgage on the rig itself. In addition, the Lender obtained a guarantee from the Company's parent corporation ("Parent") for all sums due under the Charter by the Company. The Company has at all times remained in possession and control of the rig, and has continued to bear all risks of ownership.

[REDACTED]

Patrick Sharpe, Esq.
December 14, 1988
Page 2

For approximately two years, the Company has been in default in the payment of the rental sums due under the Charter. Because Lender's financing arrangements are

seek payment from the Company and/or Parent under the Charter and the guarantee of Parent.

Charter remedies include acceleration of all rental payments, which would be in an amount sufficient to cover the Lender's financing, the Lessor's equity and the Lessor's tax indemnity.

Should Lender foreclose its mortgage and terminate the lease, the Company and the Parent (through its guarantee) will incur significant liability to Lessor in indemnification for lost tax benefits.

In an effort to prevent Lender from foreclosing on the rig, exercising remedies under the Charter and seeking payment of the full amount remaining unpaid from the Company and/or Parent, the parties propose to enter into a debt restructuring arrangement pursuant to which the following will occur:


Lessor back to the Company;

2. The Company will pay to the Lessor an amount

3. The Company will expressly assume payment of the indebtedness owed by the Lessor to Lender, obligations which the Company and Parent were already indirectly responsible for under the Charter and the guarantee of Parent; and

4. Certain obligations of the parties will be terminated, including all further liability of the Company and the Parent under the Charter and a Tax Indemnification Agreement pursuant to which the Company has agreed to indemnify Lessor for certain tax liabilities.

Following this transaction it is expected that the remaining indebtedness owing by the Company to the Lender will be restructured on terms that will permit its payment by the Company.



Patrick Sharpe, Esq.
December 14, 1988
Page 3

We believe that the following factors are significant in a determination that the above described transaction is not subject to the requirements of the Act.

throughout the term of the lease.

2. The above-described transaction represents an unwinding of a lease transaction and a bona fide

3. The direct assumption of indebtedness owed to the Lender by the Company does not increase the practical liability of the Company or the Parent because, under the terms of the Charter, the Company is liable for payment of such indebtedness. Accordingly, it does not appear that such assumption should be included for purposes of determining threshold amounts under the Act.

4. The fair market value of the rig is approximately \$5,000,000 to \$8,000,000. The amount in excess of such fair market value is being paid in settlement of existing and contingent liabilities of the Company and the Parent under the Charter and the Tax Indemnification Agreement which are being terminated. Accordingly, it does not appear that such amount should be included for purposes of determining

we would appreciate you advising us at your earliest convenience as to your interpretation that as a result of the

paragraphs 3 and 4 above, such transaction is exempt from the ratification requirements of the Act.

respect to the matters discussed herein, please do not hesitate to call the undersigned directly at

and told him this is not
exempt under c1 or 802.63.
802.63 applies to creditor
getting title. 802.63 also
focuses on the participation in
not the dissolution of lease financing.

Also, informed him
that I am not an
attorney.