

(JK)

Unrecorded 03/24/87 (JK)

Advised to file - [redacted] only has two (2) out of four (4) indicia of beneficial

[Large redacted block]

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Jeffrey Kaplan, Esq.
Premerger Notification Office
Federal Trade Commission
Room 303
Washington, D.C. 20580

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PREMERGER
NOTIFICATION
OFFICE

Dear Mr. Kaplan:

I would be grateful if you or one of your colleagues could respond to this inquiry regarding the reportability of a proposed transaction. For your reference enclosed herewith is a photocopy of the premerger notification filing made by my client, [redacted] on October 24, 1986 with respect to the acquisition of voting securities of [redacted], which was the acquired person for purposes of such filing. This filing is, of course, confidential pursuant to 15 U.S.C. § 18a(h), and we do not intend by this communication to waive the protection afforded by the Hart-Scott-Rodino Act against public disclosure.

[redacted] pursuant to Section 801.1(c)(8) of the Hart-Scott regulations, he held such stock indirectly by reason of his Hart-Scott "control" over several layers of entities. More specifically, [redacted] had contractual control, pursuant to Section 801.1(b)(2), over [redacted]; [redacted] held approximately 60% of the voting securities of [redacted]; [redacted] held 100% of the voting

1/ [redacted] directly held a minority of the voting securities of [redacted]. The majority interest was held by a trust ("Trust M"), pursuant to Section 801.1(c)(3) of the regulations. However, the terms of the trust agreement gave [redacted] power to vote any shares constituting the corpus of Trust [redacted]. [redacted] exercised "control" over [redacted] by reason of Section 801.1(b)(2).

but he did not exercise control

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securities of [redacted]
and [redacted] held 42.3% of the voting securities of [redacted]
(I refer to this corporate chain as the "First Chain.")
That was true in 1986, and in essence it remains true today.

The 1986 filing was occasioned by certain trans-
actions, more fully described in response to Item 2(a)
therein, pursuant to which [redacted] proposed to acquire in-

First Chain described above, the new chain of "control" (the
"Second Chain") would result partly from the provisions of

801.1(b)(1)(1). Thus the top of the Second Chain would
mirror the top of the First Chain, as described in footnote
1 above. All of this is spelled out in the 1986 filing.

*is this the
word?*

Following the expiration of the waiting period in
connection with the 1986 filing, the transactions described
therein were effected. At the present time [redacted] continues to
hold indirectly, as described above, 74% of the outstanding
voting securities of [redacted]. The remaining 26% of such voting
securities are publicly held.

In addition, [redacted] continues to control numerous
other companies through the First Chain. Among them is
[redacted]; by reason
of Section 801.1(c)(8), [redacted] holds 61% of the voting
securities of [redacted], and the remaining 39% are
publicly held.

It is now proposed to merge [redacted] with [redacted]
so that a new company (herein "Newco") will be
substituted as a holding company for the operating companies
in both corporate chains. As a result of this trans-

Chain, which mirrors Trust M at the top of the First Chain,
as Trust R. The voting securities constituting the corpus
of Trust R are held by Trust R, pursuant to Section
801.1(c)(3). However, [redacted] has the power to vote such
shares, and accordingly he is deemed to "hold" such shares

not necessarily

I do not believe the precise steps by which this merger
(footnote continued)

*but is trust
"control" not held
has authority to
control*

or

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action, [redacted] will hold indirectly 68% of the voting securities of Newco. Fourteen percent of the voting securities of Newco will be held by the former public shareholders of [redacted] and 18% will be held by the former public shareholders of [redacted]

These transactions are depicted in the three "before and after" charts enclosed with this letter. These [redacted]

The proposed transaction may be viewed as involving the acquisition of voting securities of Newco by Trusts M and R respectively, pursuant to Section 801.1(c)(3) and (c)(8). Newco, however, will be a "foreign issuer" within Section 801.1(e)(2)(ii), and both Trust M and Trust R are ~~foreign persons~~ within Section 801.1(c)(2)(i).

have the power to designate 50% or more of the directors of Newco. Accordingly, the "acquisitions" of voting securities of Newco by Trusts M and R are exempt pursuant to Section 802.51(b).

This leaves the question of whether [redacted] has a reporting obligation in connection with the proposed transactions.

(footnote continued from previous page)
will be accomplished are material to your analysis, and

^{2/} Most of the public shareholders of [redacted] and [redacted] who will become public shareholders of Newco,

securities of Newco, their acquisitions are exempt under

reporting. My client believes that no "United States person" will be acquiring voting securities of Newco valued in excess of \$15,000,000. We will, however, keep this point in mind, as well as the "investment only" exemption, as we proceed.

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In the proposed transaction, [redacted] and [redacted] will each be acquiring and acquired entities. Both [redacted] and [redacted] are controlled by [redacted] by reason of holdings of voting securities. Accordingly, I

should be exempt pursuant to Section (c)(3) of the Hart-Scott-Rodino Act

802.30, which indicates that an entity possessing contractual "control" but holding no voting securities is

believe the facts presented in this letter are not analogous

801.1(c)(8).

Moreover, unlike the situation addressed in [redacted] entity, [redacted] both before and after the proposed transaction.

Please note also that in his 1986 filing [redacted] gave full and complete information on the First Chain, including SIC breakdowns for revenues derived from U.S. operations by subsidiaries of [redacted]. Similarly, [redacted], as the

I look forward to being in touch with you to discuss this matter.

Sincerely yours,

Enclosure