

April 18, 1989

Memorandum to the Files:

Advice from Federal Trade Commission Premerger

*informed  
in I am  
at an attorney*

9 4 32 PM '89  
FEDERAL TRADE  
COMMISSION  
PREMERGER  
NOTIFICATION  
OFFICE

On April 18, 1989, [redacted] and I spoke with Patrick Sharpe, an attorney with the Premerger Notification Office of the Federal Trade Commission, to request an informal interpretation pursuant to 16 C.F.R. § 803.30 of the Premerger Notification Rules ("Rules") promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The facts I

and the advice he rendered are set forth below.

Facts

One corporate person ("A") holds 40% of the voting securities of a corporation ("C"). Another corporate person ("B") owns 25% of the voting securities between A and B relating to the shares of C held by B. First for a fixed period of time (roughly five months) A

the right to vote the shares held by B in connection with any transaction involving the sale of C or the sale of A's and B's shares of C. Second, A has an arrangement with B such that at a fixed future date (approximately two

similar convertible notes. In either event, the conversion of the notes into voting securities of B would result in A controlling B and thereby holding C shares now owned of record by B. I noted that A, in its Schedule 13D filing, describes itself as the beneficial owner of the shares of C nominally owned held by B.

Discussion

I asked Mr. Sharpe whether A would be viewed under the Act and Rules as the beneficial owner of the

shares of C held by B and therefore as holding those shares pursuant to 16 C.F.R. § 801.1(c) and therefore

set forth in Statement of Basis and Purpose issued with the Rules (which indicia include the right to obtain the benefit of any increase in value or dividends, the risk of loss of value, the right to vote the stock or to determine who may vote the stock, and the investment discretion including the power to dispose of the stock). Mr. Sharpe

the shares of C held by B. I concluded that the right to

to vote in an election of directors. I noted that prior to the annual meeting of stockholders in 1988, B gave its proxy to A to vote the shares of C held by B. However, no

discuss this set of facts with his colleagues before rendering any advice and at my request agreed to call me back later in the afternoon.

#### Advice

the Premerger Notification Office, including principally Mr. Sipple, and that he could now advise us that, if the proxy or contractual right held by A to vote B's shares of C was irrevocable, it would be viewed under all the facts as being the beneficial owner of B's shares of C and therefore A would be viewed as controlling C. I advised Mr. Sharpe (and since I have confirmed by review of multiple available documents) that the contractual arrangement which gives A the right to dispose of B's shares of C and to vote B's shares in connection with any approval of a sale of C is not revocable by B for a fixed period extending at least until the exercise date of the put arrangement and apparently extending until a fixed

unilaterally to revoke A's right to vote B's shares. I

mentioned again to Mr. Sharpe that A's right to vote the B shares did not explicitly include the right to vote in an election for directors of C, and Mr. Sharpe confirmed that ~~he had mentioned that fact to Mr. Sharpe. While the~~

---

public documents could be read to permit A to vote B's shares of C in an election for directors, it appears most likely that the parties simply did not consider director elections since no election is anticipated before the sale of A's and B's shares of C. This description conformed to Mr. Sharpe's understanding of the facts and he confirmed that on these facts A held B's shares of C.

I thanked Mr. Sharpe for his cooperation in giving us prompt advice on this matter and said that I would confirm that advice in writing if we decided to rely ~~on that advice in making a determination as to the~~ reportability of a transaction.

---

~~\_\_\_\_\_~~  
I concur with  
this. BS,  
called ~~\_\_\_\_\_~~  
4-20-89