

Page 801.11

[REDACTED]

September 14, 1990

Mr. Richard Smith

via federal express

Notification Form

Dear Mr. Smith:

This letter is intended to confirm our telephone conversation of September 12,


the acquired person for a conditional purchase price of \$29,000,000. It is our concern that although the book value of the assets of the acquired person is only \$4,000,000, and the annual sales approximately \$3,000,000, because we are selling the assets for \$29,000,000 we might be subject to pre-merger notification filing. However, you have confirmed that the "size of the person" test is determined by the book value of the assets as reflected on the last regularly prepared financial statements, provided such financial statements are no more than fifteen months old. Accordingly, it is our understanding that the change in structure of the anticipated transaction from a stock sale to an asset sale will not trigger the filing of a pre-merger notification form.

I understand that we cannot receive a written opinion in the form of a no-action

that we have misinterpreted the law and regulations with regard to pre-merger notification filings, or that the facts of this situation conjure up a "red flag" which should be further investigated, we would appreciate you advising us of this fact.

If we do not hear from your office to the contrary, we will proceed with this transaction on the assumption we do not have to file a pre-merger notification form. Thank

Very truly yours,



pursuant to Rule 8.01, the size-
person test includes the required person
plus all entities it controls. The
board must state that it is required

advised that if "goodwill" represents a
balance sheet as an asset then it
must be included in size-tests.

Dick Smith