

801.10 (c)(1)(ii)

[REDACTED]

[REDACTED]

August 9, 1991

Richard D. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
Room 312
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

VIA TELECOPIER

Dear Dick:

This letter serves to confirm our telephone conversation of August 7, 1991, in which [REDACTED] and [REDACTED] also

concurrence with my interpretation of 16 C.F.R. § 801.10(c)(1)(ii) (the "rule"), as it applies to the following facts:

Corporations X and Y are entering into an option agreement that contemplates the formation of a non-corporate joint venture between them. X will initially pay \$500,000 for an option to acquire a 50% interest in the joint venture, which may be exercised within a 60-day option period. If the option is exercised, there will be a closing within 10 business days thereafter.

[REDACTED]

so that the joint venture agreement will be available for execution at the

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[Redacted]

*but cannot be earlier
than 10 days before signing
of option*

As you know, the rule defines "market price" as the lowest closing quotation or lowest closing bid price, as applicable, "within the 45 or fewer calendar days which are prior to the consummation of the acquisition but not earlier than the day prior to the execution of the contract, agreement in principle or letter of intent to merge or acquire." On the basis of the

(i.e., 10 business days after conclusion of the option period), and then count back 45 calendar days. If on the 45th day prior to the latest possible closing date, the closing market price of [Redacted] stock multiplied by the number of shares which [Redacted] is to receive is less than \$45 million, then [Redacted] will not be deemed to have not the requirements as an acquirer of the young securities under Section 7A of the Clayton Act.

I might add that this interpretation, in these circumstances, comports fully with the

parties presumably entered into their agreement on the basis of market prices prevailing at that time. As noted above, the number of shares stated in the earlier agreement was

If this letter does not correctly reflect our interpretation or misstates the views of the

interpretation set forth above. Thank you for your consideration.

Sincerely yours,

[Redacted signature]

8/9/91 called [Redacted]

*Advised that in no case can
45 day period be earlier than
day before option signed. Would
also suggest that 45 day calculation
be used for each day of the 10:
the which transaction might*

[Redacted]

*Also, if stock taken is valued at
15 MM of [Redacted], no reportable event
has taken place. [Redacted]*