





September 12, 1991

BY FAX

Richard B. Smith, Esq.
Premerger Notification Office

Washington, D.C. 20580

Dear Mr. Smith:

I am writing to memorialize our telephone conversation

improvements not or 1970 and the regarderons promargated thereunder.

FACTS

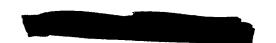
pursuant to which his shares in Company A will be offered to the public through investment bankers. That offering is scheduled to occur before the end of this month. Our client, Company B, proposes to negotiate with X for a direct purchase from X of

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outlined in 16 C.F.R. §801.30.

The timing of the secondary offering and the Hart-Scott-Rodino waiting period present a problem. The Hart-Scott-Rodino waiting period incident to Company B's acquisition of Company A voting securities will evnire only after the date of

voting securities to Company B and, for some reason (which we do



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Antitrust Division successfully challenge Company Ris

Accordingly, Company B proposes to agree with X that,

secondary offering and any diminution in the share price from the time of the first secondary offering to the subsequent secondary offering. Without such a guarantee, X will not be willing to sell the Company A stock to Company B.

conversation, we do not believe that this proposed agreement between X and Company B in any way violates the Act. It is true that, when X and Company B agree to the transaction, the price risk incident to the ownership of Company A voting securities

vote the Company A stock. Thus, these key elements of beneficial ownership of Company A stock will remain with X.

Moreover, the proposed arrangement is not part of an avoidance device. X has not acted as Company B's agent in acquiring Company A voting stock and Company B will not make any open market purchases of Company A stock. Company B is also not delaying its premerger filing under the Act. As we discussed, the arrangement with X is the functional equivalent of X selling Company B an option to purchase Company A stock, the acquisition of which would be clearly exempt under the regulations. 16

unusual fact pattern does not provide a significant regulatory gap or loophole to the Act's reporting requirements.

In cum, we believe that the proposed arrangement between X and Company B does not violate the Act or its

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involved in this transaction, our client will be taking immediate steps in reliance on this advice and, accordingly, we would very much appreciate hearing from you by close of business tomorrow, September 13, whether the Staff disagrees with our conclusion.

We appreciate your consideration of this issue and would, of course, be happy to answer any further questions that you may have.

